

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.1813/2003**

% **28th March, 2017**

K. ASOKAN Petitioner

Through: Mr. Krishna Kumar, Advocate

versus

NUCLEAR SCIENCE CENTRE & ORS. Respondents

Through: Ms. Malvika Trivedi, Advocate
for R-1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Petitioner, by this writ petition under Article 226 of the Constitution of India, seeks the relief of grant of higher pay grade in the scale of Rs.3000-4500/- as payable to a Scientist-D instead of the pay grade of Rs.2200-4000/- at which the petitioner was appointed as Scientist-C/Scientist Coordinator.

2. The facts of the case are that the respondent no.1 issued an advertisement in December, 1993 for various posts including the post of Scientist Coordinator. As per the subject advertisement, the pay grade/scale for the post in question was specifically advertised at Rs.2200-4000/-. Petitioner was selected and petitioner was appointed

in terms of the Selection Committee report dated 24.2.1994. As per the recommendations of the Selection Committee petitioner though was granted a pay-scale of Rs.2200-4000/- yet, the petitioner began this pay-scale with four increments from the first date of appointment itself. This benefit the petitioner has got because of petitioner having the qualification of Ph.D in Physics without experience instead of the alternative eligibility criteria of appointment being M.Sc in Physics with experience. The petitioner had accepted this appointment but petitioner thereafter filed repeated representations for grant of pay-scale of Rs. 3000-4500/- instead of the pay-scale of Rs. 2200-4000/- with inbuilt four annual increments from the date of appointment, and as was granted to the petitioner when he was appointed with the respondent no. 1.

3. Petitioner claims that in view of the representations of the petitioner, a Grievance Committee was constituted and this Grievance Committee in its report observed that the grievance of the petitioner is genuine. As per the respondent no.1 the Grievance Committee however did not recommend grant of the higher pay grade but only recommended that petitioner be given the next promotion immediately on the same becoming due, and accordingly, petitioner was granted the

promotion to the next higher pay-scale of Rs. 3000-4500/- w.e.f. 1.10.1998.

4. It may be noted that after the Board of the respondent no. 1 did not accept the recommendations of the Grievance Committee the petitioner had preferred a review but that review preferred by the petitioner before the Board was also rejected and so informed to the petitioner vide inter office memo dated 2.12.2002.

5. Petitioner further pleads in the writ petition that petitioner has been discriminated against because certain other persons who had Ph.D qualifications were granted higher pay grade but same benefit was not extended to the petitioner. This aspect of discrimination against the petitioner is by the petitioner comparing himself with six other persons as mentioned in para 14 of the writ petition.

6. The writ petition is a completely frivolous writ petition and is wholly misconceived. The writ petition is basically an endeavor to speculate by litigation. The writ petition is therefore liable to be dismissed on various counts which are stated hereunder.

7. (i) The first reason for dismissal of the writ petition is that the petitioner is estopped from claiming a higher pay grade of Rs. 3000-4500/- inasmuch as the subject advertisement which was issued

and under which the petitioner applied and was appointed prescribed the pay grade specifically and only as Rs.2200-4000/-. Petitioner therefore with open eyes applied under an advertisement in which a specific pay grade was mentioned and petitioner accepted that pay grade not only by applying as per the advertisement but taking employment/appointment in the pay grade of Rs. 2200-4000/-. Thus the petitioner has acted upon the advertisement as also the appointment letter, got such benefit of employment, and thus the petitioner is accordingly estopped from claiming a higher grade pay.

(ii) Another reason for the petitioner being estopped from claiming the higher pay grade is that petitioner though had been granted the pay grade of Rs.2200-4000/-, but this was with the benevolent modification in that petitioner was to start his first pay with four increments being already granted to the petitioner right from the first date of appointment. If the respondent no.1 would have strictly gone by the advertisement the petitioner would not have got the higher pay of built-in four annual increments. Therefore, petitioner had already got the benefit of higher pay from the beginning, and which was a pay higher than the pay-scale beginning as was prescribed in the advertisement. Petitioner therefore having got an addition benefit of having the higher eligibility criteria of Ph.D (Physics) instead of M.Sc. (Physics) with

experience and which was otherwise not due, hence petitioner is estopped from claiming still further benefit. In fact, the claim of the petitioner to higher pay-scale if it is granted, there would result discrimination against the other candidates who had Ph.D qualifications and who would not have applied because the pay grade as per the advertisement because the pay-scale fixed was only Rs. 2200-4000/-. If other candidates knew that they could get a higher pay grade of Rs.3000-4500/- instead of Rs.2200-4000/- as per the advertisement then such other persons would also have applied as per the advertisement and sought the higher pay grade after the appointment with the respondent no. 1. Petitioner therefore cannot be granted the higher pay grade because this would amount to discrimination against those other candidates who had Ph.D qualification and who did not apply pursuant to the subject advertisement in spite of they having the eligibility criteria of Ph.D in Physics.

(iii) Therefore, petitioner having applied under the advertisement with a specific pay grade, petitioner took appointment under the specific pay grade, petitioner in fact got an initial higher pay-scale with four annual increments already granted on his date of the appointment, grant of higher pay-scale to the petitioner would amount to

discrimination against other candidates who did not apply pursuant to the advertisement although they had qualification of Ph.D in Physics, and therefore, petitioner is estopped from claiming the higher pay grade of Rs. 3000-4500/-.

(iv) I cannot agree with the argument urged on behalf of the counsel for the petitioner who has argued that since as per the subject advertisement on the basis of which petitioner was appointed provided for start of higher salary/grade in case candidate had suitable experience and qualification hence the petitioner should get the higher pay grade as prayed, inasmuch, as per this relevant portion of the advertisement of a higher salary/grade being granted, it is noted that petitioner was in fact granted a higher commencement of salary with four annual increments already being granted right from the first date of the appointment of the petitioner. Also, the relevant line relied upon on behalf of the petitioner uses the expression “may” and this expression has to be literally interpreted, otherwise, “may” will have to be read as “shall” that a candidate shall get higher salary/grade. In any case, and as stated above, petitioner already got benefit of four annual increments right from the first date of his appointment with the respondent no. 1, and therefore I reject the argument urged on behalf of the petitioner of the petitioner being entitled to higher pay grade on

account of the subject advertisement providing for grant of higher starting salary/grade with respect to candidates having suitable experience and qualifications.

8. (i) Another reason for dismissing of the writ petition is that the writ petition is hopelessly barred by delay and *laches*. Though the Limitation Act, 1963 does not apply strictly to a writ petition, the principles of the Limitation Act apply and writ petitions which are filed after the limitation period have to be dismissed by applying the doctrine of delay and *laches* as held by the Supreme Court in the case of *State of Orissa & Another Vs. Mamata Mohanty, (2011) 3 SCC 436*. The relevant paras 52 to 54 of *Mamata Mohanty's* case (*supra*) read as under:-

“52. In the very first appeal, the respondent filed writ petition on 11.11.2005 claiming relief under the Notification dated 6.10.1989 w.e.f. 1.1.1986 without furnishing any explanation for such inordinate delay and on laches on her part. Section 3 of the Limitation Act 1963, makes it obligatory on the part of the court to dismiss the Suit or appeal if made after the prescribed period even though the limitation is not set up as a defence and there is no plea to raise the issue of limitation even at appellate stage because in some of the cases it may go to the root of the matter.

53. Needless to say that Limitation Act 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the Respondent claimed the relief from 1.1.1986 by filing a petition on 11.11.2005 but the High Court for some unexplained

reason granted the relief w.e.f. 1.6.1984, though even the Notification dated 6.10.1989 makes it applicable w.e.f. 1.1.1986.

54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time.”

(ii) It is seen that this writ petition is filed in the year 2003 whereas the petitioner got appointment on 24.2.1994. If the petitioner wanted to challenge the appointment terms dated 24.2.1994 of the denial of grant of higher pay grade of Rs. 3000-4500/- and instead the petitioner being granted pay grade of Rs.2200-4000/- with four annual increments built-in on the first salary of the petitioner, then petitioner had to within three years of 24.2.1994 file judicial proceedings to challenge the denial of grant of higher pay-scale. This writ petition however, as already stated above, has been filed on 5.3.2003 and hence the same is hopelessly barred by time as the writ petition had to be filed at the maximum by 24.2.1997.

(iii) I reject the contention urged on behalf of the petitioner that since petitioner has been filing repeated representations hence there is no delay inasmuch as filing of the representations will not increase the limitation period unless the limitation period can be extended on the principles of the Limitation Act amounting to acknowledgement under

Sections 18 and 19 of the Limitation Act i.e it must be shown that the employer had informed the petitioner that his representations were pending favorable consideration. However, there is no communication of the respondent no. 1 that the case of the petitioner was being favorably considered, and hence mere filing of the representations will not extend the limitation period. The writ petition is therefore barred by the doctrine of delay and *laches* by applying the principle of limitation, and accordingly for this second reason the writ petition is bound to be and is dismissed.

9. (i) Learned counsel for the petitioner argued by placing reliance upon the service rules of the respondent no.1 that qualifications required for the subject post had to be only M.Sc plus one year experience or B.E. plus one year experience and there was no requirement of Ph.D qualification, and which Ph.D qualification was only required for the next higher post of Scientist-D, and therefore, the higher salary of Scientist-D should be granted to the petitioner. The chart of the pay-scales of the respondent no.1 relied upon by the petitioner containing the relevant requirement and the pay-scales of Scientist-C and Scientist-D are as under:-

PAY SCALES FOR SCIENTIFIC & TECHNICAL STAFF

Designation	Pay Scales	<u>Minimum</u> Qualification for recruitment
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Tech.C/	1200-30-1440-EB-30-1800	ITI Cert.
Tech.D/	1320-30-1560-EB-40-2040	ITI+3 Yrs.
Tech. E/JE-A	1400-40-1800-EB-50-2300	(ITI+6 Yrs.)
Tech.F/ JE-B	1400-40-1600-50-2300-EB-60-2600	Diploma or B.Sc.
Tech.G/JE-C	1640-60-2600-EB-75-2900	(Dip+ 4 Yrs)
Tech.H/JE-D	2000-60-2300-EB-75-3200-100-3500	
Tech.J/JE-E/E-C/SC	2200-75-2800-EB-100-4000	(M.Sc+1 Yr.)or (B.E+1 Yr.)
Tech. K/JE-F/E-D/SD	3000-100-3500-125-4500	Ph.D or (B.E+% Yrs.) (M.Tech + 2 Yr.) or Ph.D.
/EE/SE	3700-125-4700-150-5000	(Ph.D+4 Yrs.) or (B.E.+ 9 Yrs.) or (M.Tech+5 Yrs.)
/EF/SF	4500-150-5700	
/EG/SC	5100-150-5700-200-6300	
SH	5900-200-7300	
Prof.	4500-7300	

The Governing Body may as an exceptional measure offer Professorships to distinguished scientist with suitable salary.

JE-A Junior Engineer Grade A:E.C: Engineer Grade C:
SC: Scientist Grade C”

(ii) I cannot agree with this argument urged on behalf of the petitioner inasmuch as this very chart in its heading states that the qualifications are only the minimum qualifications for recruitment. Therefore, if the qualifications prescribed in the chart are only minimum qualifications then surely employer at his discretion can require higher qualifications for a particular post, and in doing so the respondent no.1 has hence committed no illegality, and consequently there does not arise a cause of action in favour of the petitioner to

claim higher pay grade of the higher post on account of petitioner having a qualification of Ph.D which is required for the appointment to the higher post of Scientist-D. In fact, and as already stated above, the respondent no.1 has been more than considerate to the petitioner because petitioner started his salary with four annual increments being in-built from day one of appointment of the petitioner. I therefore reject the argument urged on behalf of the petitioner by relying upon the chart containing the pay-scales of different posts with the respondent no.1. Also, and as already stated in detail above, petitioner is estopped from claiming a higher pay grade instead of the pay grade of Rs.2200-4000/- in terms of the subject advertisement under which petitioner applied and was appointed.

10. Counsel for the petitioner argued discrimination against the petitioner and in this regard the relevant averments are made in para 14 of the writ petition, and which para reads as under:-

“14. The petitioner made repeated requests in this regard to the respondents and made a representation even before joining that he should be given a higher grade. The Grievance Committee which consists of Retired Judge of the High Court and two external experts examined the representation of the petitioner and came to the conclusion that the prima facie, the grievance of the petitioner appears to be genuine and the petitioner should be put in the grade at par with other Scientists possessing Ph.D placed in the scale of 3000-4500. The report of the Grievance Committee which was in favour of the petitioner was never provided to the petitioner and the report has not been accepted by the Governing Body of the respondents and there have been no reasons assigned for not accepting the recommendations made by the Grievance Committee. It is submitted that this is a clear case of violation of Article 14 of the Constitution of India as the petitioner having Ph.D is offered a lower grade whereas the persons with Ph.D are placed in

the scale of Rs.3000-4500 and in fact, the other six Scientists working with the respondents with the Ph.D are being given the higher grade as per the bye laws and it is only in the case of the petitioner alone that the bye laws are not being followed for some ulterior motive of harassing the petitioner. The other six Scientists having the Ph.D who are getting the higher grade are as under:-

1. Dr. A.K.Avasthi
2. Dr. D.Kanjilal
3. Dr. A.Mondal
4. Dr. S.Mookerjee
5. Dr. Ravi Kumar
6. Dr.T.Nandi

It is relevant to note that out of the above scientists joined with the respondents, Dr. A.Mondal was given the grade of Scientist-D while he was doing Ph.D which is given for a candidate having qualification of Ph.D as per the Bye-laws of the Respondents. Incidentally, Dr. S.Mookerjee and the Petitioner obtained their doctoral degree from Department of Physics, University of Rajasthan, Jaipur and joined the Respondent based on Ph.D qualification but placed in different grades, while the Petitioner was placed as Scientist-C and Dr. S.Mookerjee in Scientist/Engineer-D.”

11. (i) In response to this stand of the petitioner, respondent no.1 as per its counter-affidavit (para 14) has denied the equality of the petitioner with six persons mentioned in para 14 of the writ petition by pleading as under:-

“14. In reply, it is submitted that necessary averments with respect to the report and recommendations of the Grievance Committee has been made in detail in the foregoing paragraphs and need not be reiterated here for the sake of brevity. The petitioner was aware about the report of the Grievance Committee and averments contrary to the same are denied. The reliance on the report of the Grievance Committee is completely misplaced inasmuch as it is the Governing Body, which is the deciding authority, where the report of the Grievance Committee are only recommendatory in nature. It is wrong to suggest that the report of the Grievance Committee was in any manner favourable to the Petitioner. The Petitioner has failed to make out any case of violation of Article 14 of the Constitution inasmuch as the instances of the six Scientists given by the Petitioner, who are getting higher pay scale, had applied against the post advertised in the higher grade. The rest of the contentions made in the paragraph under reply are not true and denied. Out of the list given by the Petitioner, the first three persons were appointed during the initial stage in the development of the Centre, prior to the formulation of the Bye-laws. Their primary responsibility was installation and commissioning of different scientific facilities required by the Centre.

Similarly, the remaining three persons mentioned in the list were given responsibilities in the development of various research and computational facilities of the Centre. All those six persons had several years of post doctoral/managing experience before joining the Centre. It would be improper to equate their qualification/experience with the petitioner, who did not have any post doctoral/research/teaching/managerial experience at the time of joining the Centre. Also, the job description of the Scientist Coordinator is completely different and does not require any development activity related to the Centre.”

(ii) It may be noted that petitioner was admittedly appointed as a Scientist Coordinator i.e Scientist-C. In para 14 of the writ petition when the petitioner compares himself with six other persons alleging discrimination against him, the petitioner has not pleaded that six other persons were appointed as Scientists-C or Scientist Coordinators. Accordingly, petitioner cannot successfully plead a case of discrimination because it is not pleaded or established that six other persons with whom the petitioner claims equality were appointed as Scientist Coordinator/Scientist-C in the respondent no.1 at a higher pay grade of Rs.3000-4500/-. Also, the respondent no.1 in its counter-affidavit in para 14 has stated valid facts as to how petitioner cannot claim equality with such six persons inasmuch as three out of the six persons were appointed before formulation of the bye-laws of the respondent no.1 and the other three persons had much more qualifications than the petitioner including of post doctoral experience before joining the respondent no.1, and petitioner admittedly had no experience post obtaining the Ph.D qualification.

12. Learned counsel for the petitioner then argued by placing reliance upon a document filed with the rejoinder being the letter dated 24.9.1985 addressed by the Director of the respondent no.1 to one Mr. G. Samudra, however, it is seen that this letter in no way states that Mr. G. Samudra was appointed as a Scientist Coordinator or Scientist- C (letter only says 'Scientist') and since he had a Ph.D qualification he was hence granted the pay grade of Rs.3000-4500/- inspite of being only appointed as a Scientist-Coordinator. Even assuming that Mr. G. Samudra was appointed as Scientist-C at grade pay of Rs.3000-4500/-, even then till it is known as to what personnel position existed in 1985 and whether they were identical in 1993, petitioner cannot claim equality with Mr. G. Samudra. The letter dated 24.9.1985 is therefore reproduced and which will show as baseless the stand of the petitioner that Mr. G.Samudra was a Scientist Coordinator and yet got the higher pay-scale of Rs.3000-4500/- and simply because Mr. G. Samudra had a Ph.D in Physics. This letter reads as under:-

"Prof. A.P.Patro
Director

September 24, 1985.

Mr. G.Samudra
Department of Physics
Purdue University
WEST LAFAYETTE In.47906
U.S.A

Dear Mr. Samudra,

You have been in touch with Prof. Mehta. We recently had a selection committee meeting and considered your bio-data. We are pleased to offer you the position of a "Scientist" in our Centre in the grade Rs.700-1300

which will be Rs.1100-1600 After you get your Ph.D degree. In addition to the basic pay you will be entitled to the allowance as permissible to Central Govt. employees in Delhi. The total emoluments, at the minimum basic salary of Rs.1100, will come to Rs.2715. We will provide accommodation to come to Rs. 2715. We will provides accommodation to our scientists as per Govt. rules. If you are interested in our offer please let us know the date by which you can join. We are looking forward to hearing from you.

Yours faithfully,
Sd/-
(Prof. A.Patro)
Director”

13. Learned counsel for the petitioner has placed reliance upon three judgments of the Supreme Court in support of his arguments. The first judgment is in the case of ***Laljee Dubey Vs. Union of India AIR 1974 SC 252***. The second is the judgment in the case of ***D.S. Nakara Vs. Union of India AIR 1983 SC 130*** and the third judgment in the case of ***State of Bihar and Others Vs. Bihar State ‘Plus-2’ Lecturers Associations and Others (2008) 7 SCC 231***.

14. None of the judgments relied upon by the petitioner are in any manner relevant to determine the matters in controversy and are completely distinguishable on the facts of those cases with the facts of the present case.

15. So far as the judgment in the case of ***Laljee Dubey (supra)*** is concerned, learned counsel for the petitioner has relied upon the same to argue that in case of employees belonging to the same group, discriminatory treatment is prohibited, however, in the present

case petitioner has failed to show any discrimination between the same group of employees i.e similarly placed employees which show that respondent no.1 has discriminated by granting different and higher pay grades to other Scientist Coordinators/Scientists-C who were appointed by respondent no.1.

16. The judgment of the Supreme Court in the case of *D.S. Nakara (supra)* once again relied upon for not treating equally placed persons differently simply because they belong to different departments, however this judgment of *D.S. Nakara (supra)* also has no application because in *D.S. Nakara's case (supra)* the issue was of grant of increase of pension even to retired employees. In the case of *D.S. Nakara (supra)* on account of inflationary inputs etc, it was held that retired employees were also to get benefit of increase of pension in case the pay-scales of existing or subsequent employees who retired after the retired employees was increased and which entitled such subsequent employees who retired subsequently to receive higher pension. Also, I may state that the observations which are made in the judgment cannot be conveniently read to support the petitioner because observations in a judgment have to be read in the context of the facts of that particular case. An observation cannot be torn out of context and which is sought to be done on behalf of the petitioner by placing

reliance upon the observations in *D.S. Nakara's* case (*supra*) that persons holding identical posts should not be treated differently.

17. The third judgment of the Supreme Court in the case of *State of Bihar (supra)* is relied upon as per its paras 11, 23 and 33 to argue that discrimination is not possible among similarly placed employees, and to which proposition of law there is no dispute but there is no discrimination against the petitioner in the present case, and as already been discussed in detailed above.

18. The aforesaid discussion shows that the petitioner in spite of applying under a specific advertisement for a specific pay grade, and getting appointment under that pay grade and that too with four annual increments built-in from the first date, yet the petitioner wants to go back on his terms and conditions of employment without any basis. It was perfectly possible for the petitioner, in case the petitioner was not satisfied with the pay grade/scale he was getting at the time of his appointment, not to take the appointment with the respondent no.1, but petitioner did take his appointment at the specific pay-scales and with four annual increments already built-in. Petitioner therefore cannot act incongruously with the terms of his appointment simply because petitioner wants to claim more monetary emoluments than actually due to the petitioner. Also, petitioner's case was put up before the

Grievance Committee and the Grievance Committee did not accept the representations of the petitioner for grant of higher pay grade and the committee only recommended grant of first promotion to the scale of Rs.3000-4500/- when it first became due to the petitioner and which was granted to the petitioner on 1.10.1998. Relief claimed is also barred by the doctrine of delay and *laches*. Clearly therefore the writ petition is an endeavor to speculate in litigation and which should be put down with heavy hands. The petitioner has no sympathy from this Court inasmuch as petitioner is trying to be clever by half by accepting appointment at the specific pay-scale, representations of the petitioner being rejected by the Grievance Committee as also the Board of the respondent no.1, and that there is no discrimination against the petitioner, yet petitioner still wants to unnecessarily keep on pursuing unjustified relief by filing judicial proceedings.

19. In view of the above, this writ petition is dismissed with costs of Rs.30,000/-. Half of the costs will be paid to the respondent no.1 and half of the costs will be deposited with the Friendicoes, No. 271 & 273, Defence Colony, Flyover Market, Jangpura Side, New Delhi-110024 within a period of six weeks.

MARCH 28, 2017
Godara/ib/Ne

VALMIKI J. MEHTA, J