

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

+ W.P.(C) No.13318-19/2005

% 23rd January, 2017

SH. TULE RAM YADAV & ANR. Petitioners

Through: None.

versus

THE COMMISSIONER & ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition under Article 226 of the Constitution of India is filed by two petitioners, Sh. Tule Ram Yadav being petitioner no.1 and Sh. Jailal Yadav being petitioner no.2. Petitioners claim that their pay scales as per the 4th Pay Commission Report should have been fixed at Rs.1640-2900/- but the respondents have wrongly fixed their pay in the scale of Rs.1400-2600/-.

2. In the counter affidavit filed by the respondents, respondents have specifically pleaded that pay scales of the petitioners

have been fixed not at Rs.1400-2600/- w.e.f 1.1.1986 as pleaded by the petitioners, but, pay scale of both the petitioners was fixed at Rs.1640-2900/- and which is the claim prayed by the petitioners. In fact, in the counter affidavit the respondents have stated that the salary of the petitioner no.1 was fixed at Rs.2060/- w.e.f 1.1.1986, Rs.2120/- w.e.f 1.1.1987, Rs.2240/- w.e.f 1.1.1989 and so on whereby the total salary paid to the petitioner no.1 was Rs.8300/- w.e.f 1.1.1996. Respondents have also attached the service records and the relevant office orders for showing correct payment to the petitioner no.1/Sh. Tule Ram Yadav.

3. In spite of categorical statements made in the counter affidavit of the respondents that petitioners have got all their benefits as per the 4th Pay Commission Report, and which is supported by the documents, no rejoinder affidavit was filed by the petitioners.

4. Accordingly, petitioners having already been granted the reliefs as claimed in this writ petition and their pay scales have been rightly fixed as per the 4th Pay Commission Report, no further relief can be granted to the petitioners because respondents have specifically pleaded and filed documents to show payment to the petitioners as per the 4th Pay Commission Report.

5. There is another reason for dismissing of the writ petition because petitioner no.1/Sh. Tule Ram Yadav retired on 31.3.1996 and petitioner no.2/Sh. Jailal Yadav retired on 30.6.2001. This writ petition however has been filed only much later in May, 2005, and therefore, the reliefs claimed by the petitioners are clearly barred by limitation, because in order to succeed, the petitioners had to challenge a specific order allegedly giving wrong pay scales within the limitation period of three years (though of course petitioners have been given correct pay scales as detailed in the counter affidavit of the respondents) inasmuch as, the underlying principles of the Limitation Act, 1963 apply to writ petitions vide judgment of the Supreme Court in the case of *State of Orissa and Another Vs. Mamata Mohanty*, (2011) 3 SCC 436. Paras 52 to 54 of the judgment in the case of *Mamata Mohanty (supra)* are relevant and these paras 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.”

6. For the aforesaid reasons, neither there is any merit in the writ petition, and the writ petition is also barred by applying the doctrine of delay and *laches*, and hence the same is therefore dismissed, leaving the parties to bear their own costs.

JANUARY 23, 2017
Ne

VALMIKI J. MEHTA, J