

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

+ **W.P.(C) No.11324/2015**

% **11th January, 2017**

RAJ KIRAN KAUR Petitioner

Through: Mr. Rajesh Goshwami, Advocate
with Mr. Sushil Kumar, Advocate.

versus

GURU HARKRISHAN PUBLIC SCHOOL & ORS. Respondents

Through: Mr. Srivats Kaushal, Advocate for
respondent No.1.
Mr. Sumit K. Batra, Advocate for
respondent No.4.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the relief of payment of monetary benefits by application of 6th Pay Commission Report to teachers of the schools in Delhi in terms of the order of the Director of Education dated 11.2.2009.

2. It is seen that the petitioner in this case superannuated from the respondent no.1/school on 31.10.2010. Calculation of the terminal dues including calculation of payment of pension which is to be made is in terms of a specific order which is passed when an employee superannuates, and it

is such order which gives cause of action to an employee/teacher of the school to challenge the same on the ground that the same wrongly calculates the terminal dues including the pension. Such an order which is passed calculating the terminal dues and pension is not a recurring cause of action. All specific amounts are calculated by a specific order or orders passed. Petitioner's case is that the amounts have been wrongly calculated under different heads at the time of superannuation of the petitioner, and therefore, wrongly calculating the amounts payable to the petitioner is only a singular cause of action and there is no recurring cause of action. Once there is only a single cause of action of an order or orders passed of wrongly calculating the terminal dues of the petitioner including the pension, and which was/were passed when the petitioner retired way back on 31.10.2010, this writ petition which is filed on 3.12.2015 will be barred by limitation and has to be dismissed by applying the doctrine of delay and *laches* as held by the Supreme Court in the case of *State of Orissa and Another Vs. Mamata Mohanty (2011) 3 SCC 436*, and relevant paras of which judgment 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.”

3. Obviously, if a suit is time barred, the limitation period cannot be circumvented by claiming that limitation period does not apply to writ petitions. It is for this reason that ratio has been laid down by the Supreme Court in the case of *Mamata Mohanty (supra)* inasmuch as, the Limitation Act, 1963 otherwise can be conveniently overlooked simply by a person pleading that in a writ petition under Article 226 of the Constitution of India, limitation period does not apply. Provision of Article 226 of the Constitution of India is for enforcing the laws of this country, including the Limitation Act, and powers under Article 226 of the Constitution of India cannot be exercised to breach the laws.

4. In view of the above, the petition is barred by delay and *laches* and the same is therefore dismissed, leaving the parties to bear their own costs.

JANUARY 11, 2017
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VALMIKI J. MEHTA, J

