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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-24333-2014

Date of Decision : October 31, 2018

Dharam Singh

.... Petitioners.

Versus

State of Punjab and another.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Sunny Singla, Advocate,
for the petitioner.

Mrs. Anju Arora, Addl. A.G. Punjab,
for the respondent.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ of Mandamus directing the respondents to revise the Pay Scale of the petitioner w.e.f. 1.11.1971 instead of 16.07.1975 with further prayer to fix the pay scale of such petitioner whose unrevised pay falls between two stages in new time scale in the revised pay scale in the next stage, as per law laid down by this Court in **CWP No. 2208 of 1989, Lekh Raj Khera and others Vs. State of Punjab and another, decided on 24.03.2009 (Annexure P/8)** and as per law laid down by this Court and Hon`ble Apex Court that once benefit is granted by the Hon`ble Court to the similarly situated persons, the same should also

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be granted to other similarly situated persons, though they not have approached the Court.

2. As per the petitioner, he had joined as a Teacher in the Education Department and retired after attaining the age of superannuation. The Government of India had appointed the "Kothari Commission" to recommend the pay structures, methods of recruitment, training and qualifications and all other allied matters, improvement of the education in the country. The Kothari Commission submitted its report and recommended the pay scales for various categories of teachers and also recommended that the Government should revise the pay scales of all the categories of the Teachers after 5 years. The Punjab Government accepted the recommendations of the Kothari Commission and ordered for its implementation. The teachers, though were not satisfied to accept the same, as they believed that with the revision of their pay scales after five years with effect from 1.11.1971, the anomaly would automatically disappear. As per the petitioner, the respondents discriminated the teachers in implementation of the recommendations when they revised the pay scales of Classical and Vernacular [C&V] Teachers alone. The petitioner was placed in dis-advantageous position when the C&V Teachers, who were holding the lower post than the Masters, were allowed annual increment of Rs.10/- in the revised pay scale from the stage of Rs.240/- to Rs.350/- and from Rs.220/- to Rs.340/- and number of writ petitions were filed including **CWP No. 2208 of 1989, Lekh Raj Khara and others Vs. State of Punjab and another**, and the said writ petitionw

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as disposed of vide order dated 24.03.2009 (Annexure P/8). On receipt of such information, the petitioner also made a request to the respondents to fix his pay with effect from 1.11.1971 vide representation dated 5.7.2009 (Annexure P/9). Similarly situated employees also approached this Court by filing CWP-18675-2009 and the same was also allowed, but the claim of the petitioner has not been considered and as such, the present writ petition before this Court.

3. In reply filed by way of affidavit on behalf of both the respondents, plea was taken that the petitioner joined the Education department on 26.10.1965 and he retired on 31.08.2013. However, the petitioner had not made any representation for grant of pay scale w.e.f. 1-11-1971 instead of 16.7.1975 except for the one submitted on 5.7.2009 (Annexure P/9) i.e., after his retirement. The petitioner cannot agitate the issue after considerable delay. More so, the cause of action had arisen when CWP-2208-1989 which was admitted on 24.03.2009 and as per decision of Hon`ble Full Bench of this Court in **Saroj Kumari and others Vs. State of Punjab and others, 1998(3) SCT 664**, if a person approaches the Court after reasonable time, the same is liable to be rejected. Plea was also taken in the reply of the respondents that as the petitioner belonged to JBT cadre, he is not identically placed and as such, the present writ petition deserves to be dismissed.

4. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the present case has checkered long drawn history. There was

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different rounds of litigation by various persons claiming the same relief on the basis of recommendations having been made by Kothari Commission, which were accepted by the State of Punjab and thereafter, implemented by the State Government, but still the petitioner was discriminated against. The contention raised by the respondent is not tenable that the petitioner is a JBT teacher and as such, his case is not covered as per the recommendations made by Kothari Commission or as per the judgment of this Court in **Lekh Raj Khera's case (supra)**. However, as the recommendations of Kothari Commission were specific that the pay scales for various categories of teachers should be revised by the State Government after five years and the said recommendations were accepted by the Punjab Government which were ordered to be implemented then nothing is left by way of doubt not to include JBT teachers.

5. Otherwise also, the matter in controversy is squarely covered as per the judgment of this Court in **Major Singh Khatkar and others vs. State of Punjab and others, 2011(4) S.C.T. 786**, wherein this Court had dealt with the issues including the fact that the recommendations are applicable to all the teachers.

6. The State of Punjab issued instructions dated 17.07.2002 to all the Financial Commissioners, the Principal Secretaries and the Administrative Secretaries to the Government of Punjab. The relevant extract of the said instructions is as under:-

- (i) Wherever the rights of the parties have been settled by a judgment of the Court, the State has taken all remedies available to it in law against that judgment even upto the

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highest court of the land and the judgment has attained finality, then the State must accept the judgment and implement it in its true spirit and command. There is implicit obligation on the part of the State to grant same relief to other members of the cadre whose claim was based upon identical facts and point of law.

(ii) The State Government shall as expeditiously as possible in any case not later than four months react and respond to a legal notice/representation served upon it by any of its employees in redressal of his grievance/grant of relief, which has been granted to his co-employees similarly situated, in furtherance to the judgment of the Court. Unless for reasons to be indicated in the reply, the State feels compelled to deny such relief. Needless to point out that denial must neither be evasive nor intended to circumvent the orders of the Court.

(iii) In the event such an employee is compelled to approach the court of law, whereupon the court awards interest and/or costs while allowing such a petition, then the expenditure incurred by the State including the costs/interest paid in furtherance to the orders of the Court, should be recovered from the erring officer(s).

(iv) The concerned quarters of the Government are expected to work out the details in furtherance to the above directions and issue pervasive but definite instructions to all its departments forthwith to ensure compliance.”

7. In **State of Karnataka & Ors. Vs. C. Lalitha**, (2006) 2, SCC, 747, Hon'ble the Supreme Court, while considering the right of similarly situated persons, observed as under:-

“18. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has

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approached the court that would not mean that persons similarly situated should be treated differently.....”

8. But still the petitioner in the present case has to knock at the doors of this Court.

9. In **Major Singh Khatkar's case (supra)**, this Court, while discussing the judgment of **Lekh Raj Khera's case (supra)**, observed that the judgment in the said case had already attained finality and the same has since been implemented vide circular dated 18.08.2010. Despite these instructions having been issued, unfortunately, the petitioner has to knock at the door of this Court. In **Major Singh Khatkar's case (supra)**, this Court while disposing of the said writ petition, observed as under:-

“It is a matter of concern that the above directions issued by this Court as far back as in the year 2002 are being flouted with impunity. The State has failed to discharge its obligation to grant relief to similarly situated persons at its own level. Under such circumstances, it cannot be permitted to plead delay and laches where the State itself is responsible for unnecessary litigation which could be conveniently tackled at administrative level on account of concluded and binding judgments of this Court and the Hon'ble Supreme Court.”

10. Hon'ble Full Bench in **Saroj Kumari and others vs. The state of Punjab and others, 1998 (5) Services Law Reporter, 266**, has examined the question of re-fixation in the context of delay in approaching the Court wherein it has been held as under:-

“9. Learned counsel for the petitioners submitted that in case of wrong fixation of pay to which an employee may be entitled under the relevant rules, instructions or even on

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account of a judgment, there is no question of any limitation as the wrong payment of salary every month is a continuing wrong against him which gives rise to recurring cause of action each time he is paid salary which is not computed according to the relevant rules, instructions or a judgment, the employees in such a case has a right to ask for a direction to the State Government or to the employer to fix the pay correctly right from day one in accordance with the relevant rules and instructions. However, while granting the relief of arrears of pay etc., the same can be confined to three years and two months which is the period of limitation provided for getting a relief of realization of arrears in a civil suit.

14. For the foregoing reasons we are of the view that in cases where only fixation of pay according to the relevant rules/instructions or a judgment is prayed for, the writ petition cannot be dismissed at the threshold on the ground of delay and laches but the payment of arrears can be restricted to a reasonable period. Three years and two months would be considered a reasonable period as that is the period for which a person can ask for the payment of arrears before a Civil Court.”

11. As regard to the issue of delay in filing the writ petition, this Hon'ble Court in **Major Singh Khatkar's** case (supra) observed as under:-

“The question of re-fixation of the salary, in fact, gives a recurring cause of action to the government employee as every month he loses some amount from his salary or retiral benefits on account of wrong fixation of salary. Thus, the doctrine of delay and laches cannot be permitted to be invoked as thumb rule in every case. The judgments cited on behalf of the State mostly pertained to appointment matters, seniority and policy matters. In **C. Lalitha's case (supra)**,

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Hon'ble the Supreme Court has clearly held that similarly situated persons should not be treated differently. Similarly, in **Shiv Dass's case (supra)** cited on behalf of the respondents, Hon'ble the Supreme Court has again clearly held that in cases of pension, at the most, relief could be restricted to three years."

12. Needless to say that the petitioner is having recurring cause of action and as per view taken by Hon`ble Full Bench of this Court, his case is squarely covered. The petitioner's right cannot be defeated merely on account of delay and laches, though the relief for arrears can be restricted to a period of three years as observed by Hon`ble Apex Court and Full Bench of this Court, referred to hereinabove.

13. Resultantly, the present writ petition is allowed in terms of decision of this Court in **Lekh Raj Khera's case (supra)**. However, the claim for arrears is restricted to three years preceding the filing of the writ petition.

(SHEKHER DHAWAN)
JUDGE

October 31, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes