

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.306 of 2002**

K.K.Masih S/o Y. Masih, Aged 62 years, Retired employee of the Electricity Department/Artizen Grade-I), Bilaspur, Tah. and District Bilaspur (CG)

---- Appellant/Plaintiff

Versus

1. Secretary, M.P.E.B. Rampur (Sakti Bhawan), Jabalpur (M.P.)
2. Executive Engineer, Chhattisgarh State Electricity Board, Raigarh, Tah. and District Raigarh (CG)
3. Regional Director, Chhattisgarh State Electricity Board, Tifra, Tah. and District Bilaspur (CG)

---- Respondents/Defendants

For Appellant	:	Mr.Ashok Kumar Shukla, Advocate
For Respondents	:	Mr.B.P.Gupta, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

16.01.2019

1. The substantial questions of law involved, formulated and to be answered in the second appeal preferred by the plaintiff are as under:-

“(i) Whether the Courts below have committed an illegality by holding that the suit filed by the plaintiff is not maintainable ?

(ii) Whether the Courts below have committed an illegality by holding that the suit is barred by limitation ?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The plaintiff/appellant herein filed a suit for declaration that he was appointed by erstwhile Madhya Pradesh Electricity Board on regular post of driver, he was promoted to Work-Charged Motor Mechanic and he retired from the post of Artizan Grade-I on 28.2.93, he was entitled for higher pay scale, but he was not paid higher pay scale, he served notice, which was not replied by the defendants, therefore, he is entitled for declaration that he is eligible for second promotion with effect from 23.2.1972 and also entitled for higher pay scale. He filed a suit on 19.6.95, which was opposed by the defendants by filing written statement. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 11.4.2001, dismissed the suit holding that the suit is barred by Section 9 of the Madhya Pradesh Administrative Tribunal Act, 1983 (hereinafter called as 'the Act of 1983') and also barred by limitation. The First Appellate Court upheld the judgment and decree of the trial Court. Questioning legality and validity of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which substantial questions of law have been framed by this Court, which have been set-out in the opening paragraph of this judgment.
3. Mr.Ashok Kumar Shukla, learned counsel for the appellant/plaintiff, would submit that both the Courts below are absolutely unjustified in dismissing the suit of the plaintiff.
4. On the other hand, Mr.B.P.Gupta, learned counsel for the

respondents/defendants, would support the impugned judgment and decree.

5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumscription.
6. The plaintiff was an employee of the Madhya Pradesh State Electricity Board and the Act of 1983 was not applicable for the employee working with Madhya Pradesh Electricity Board. It was only applicable to the employees working with the State Government. Therefore, finding recorded by the trial Court that the suit is not in accordance with law is hereby set aside.
7. I have to consider the next finding that the suit is barred by limitation.
8. The plaintiff was refused the benefit of higher pay scale on 11.10.91 vide Ex.D/16 and he retired from service on 28.2.1993 and filed a suit claiming benefit on 19.6.95 though in the plaint, cause of action has stated to be arisen on 11.10.91, but since the plaintiff was retired from service on 28.2.93, cause of action was recurring till 28.2.93 to get higher pay scale as he was in service till that day, therefore, he was entitled to file a suit within three years from the date of his retirement on 28.2.93.
9. The dispute between the parties mainly relates to fixation of pay. In the matter of M. R. Gupta v. Union of India¹ the Supreme Court has held that the question of non-fixation/wrong fixation of pay being continuous wrong gives an employee a recurring/fresh cause of

¹ AIR 1996 SC 669

action and question of limitation does not arise. Relevant paragraphs of the report state as under: -

“5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified.....

6. The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See *Thota China Subba Rao v. Mattapalli Raju*, AIR 1950 Federal Court 1).”

10. The aforesaid judgment has been followed with approval by the Supreme Court in the matter of Union of India v. Tarsem Singh² and it was held as under:-

“4. The principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. A “continuing wrong” refers to a single wrongful act which causes a continuing injury. “Recurring/successive wrongs” are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan³ explained the concept of continuing wrong (in the context of Section 23 of the Limitation Act, 1908 corresponding to Section 22 of the Limitation Act, 1963): (AIR p. 807, para 31)

“31. ... It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury.”

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong

2 (2008) 8 SCC 648

3 AIR 1959 SC 798

commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

11. Reverting to the facts of the present case in the light of principle of law laid down by the Supreme Court in the above-stated judgments (*supra*), it is quite vivid that since cause of action to get an appropriate pay scale as claimed was recurring till 28.2.93, therefore, the suit filed on 19.6.95 was within the period of limitation. The trial Court dismissed the suit on the ground of limitation, which was upheld by the First Appellate Court. In my considered opinion, both the Courts below are absolutely unjustified in dismissing the suit on the ground of limitation in view of finding reached hereinabove.

12. For the foregoing reasons, the judgment and decree passed by both the Courts below are hereby set aside. The matter is remitted to the trial Court for hearing and disposal of the suit in accordance with law. The parties are directed to appear before the

trial Court on 25.2.2019. No further notice is required. The trial Court shall conclude the trial within three months from 25.2.2019 as the suit is pending since 19.6.95.

13. The second appeal is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-