

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP 12351 of 2020
Date of Decision: 20.08.2020

Des Raj Kataria		Petitioner
	Versus	
State of Punjab and others		...Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Yagyadeep, Advocate for the petitioner.
Mr.T.P.S. Chawla, DAG, Punjab.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution for issuance of a writ in the nature of Mandamus directing the respondents to grant pay scale of Rs.3700-5300 w.e.f. 20.07.1989 to the petitioner at par with his juniors, namely, Joginder Singh Uppal and further the pay scale of Rs.14300-18150 w.e.f. 01.01.1998 which was granted to another junior, i.e. Paul Mohinder Singh. Further prayer is for directing the respondents to re-fix all pensionary benefits along with consequential relief.

At the outset, learned counsel for the petitioner was encountered regarding the maintainability of the writ petition on the point of delay and laches.

In response thereto, he made following submissions: -

- i) That above two juniors, namely, Joginder Singh Uppal and Paul Mohinder Singh filed Writ Petition No.15781 of 2001 which was allowed by Learned Single Bench of this Court on 26.09.2011 and in pursuance thereof, they were granted the pay scale of Rs.3700-5300/- w.e.f.

20.07.1989 and Rs.14300-18150 w.e.f. 01.01.1998, respectively,

- ii) Petitioner made a representation on 04.12.2015; thereafter, again on 31.07.2017, followed by reminder dated 18.03.2020, but no final decision has been taken in the matter by the respondents till date; thus, in view of the judgment of Hon'ble Supreme Court in **State of Uttar Pradesh and ors. Vs. Arvind Kumar Srivastava and ors., (2015) 1 SCC 347**, he is entitled for the similar benefits as has already been granted to his juniors from the respective dates;

Heard learned counsel for the petitioner and perused the paper-book.

Concededly, petitioner retired from the post of Joint Director, Agriculture (Engineering), on attaining the age of superannuation w.e.f. 30.04.2016. During his service career, he filed Civil Writ Petition No.6732 of 2000 for claiming the pay scale of Rs.3700-5300 w.e.f. 01.01.1991 equivalent to Joginder Singh Uppal, which was allowed by Division Bench of this Court on 05.02.2004 in terms of order dated 06.05.1996 passed in CWP No.11697 of 1995 tilted as Sarabjit Singh and others Vs. State of Punjab and others; respondents were directed to calculate all consequential benefits payable to the petitioner within a period of two months, but the monetary benefits were restricted to 3 years and 2 months from the date of filing of the writ petition i.e. 22.05.2000. In compliance of

above order, the petitioner was granted the pay scale of Rs.3700-5300/- w.e.f. 01.01.1991 vide office order dated 06.12.2004 (P-2) and thereafter he never raised any grievance except filing the present writ petition.

Paper-book reveals that CWP No. 15781 of 2001 titled as Paul Mohinder Singh and others Vs. State of Punjab and others filed by both the above juniors was disposed off by Learned Single Bench of this Court vide order dated 26.09.2011 in terms of decision dated 27.05.2011 passed in CWP No. 4468 of 1992. Consequently, Joginder Singh Uppal was granted the pay scale of Rs.3700-5300/- w.e.f. 20.08.1987; whereas Paul Mohinder Singh was granted the pay scale of Rs.14300-18150 w.e.f. 01.01.1998. It transpires that subsequently Director Agriculture, Punjab, vide office order dated 10.09.2012 modified the date of pay scale of Joginder Singh Uppal w.e.f. 20.07.1989 instead of 20.08.1987.

On earlier occasion, petitioner availed the remedy by way of CWP No.6732 of 2000 which was allowed on 05.02.2004; after getting all the benefits he remained satisfied and never raised any grievance before this Court; rather present writ petition is filed only on 13.08.2020. Also noteworthy, that petitioner is not a lay-man, rather throughout his service career remained posted in the officer cadre, thus, he was well aware about his legal rights. If he was having any grievance regarding the pay scales at par with his so-called juniors, he ought to have taken recourse to the remedy at the appropriate time. Concededly, petitioner stood superannuated on 30.04.2016

and as such, his relationship with the employer came to an end on that date and as on today, it would be too late for invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

No doubt, above two employees i.e. Paul Mohinder Singh and Joginder Singh Uppal filed CWP No. 15781 in the year 2001, which was allowed after 10 years i.e. on 26.09.2011 and both were granted the benefits of pay scales of Rs.14300-18150/- w.e.f. 01.01.1998 and Rs.3700-5300/- w.e.f. 20.07.1989, respectively, but perusal of the order dated 26.09.2011 clearly reveals that it was not a judgment in rem; rather applicable only to the petitioners in that case and thus, the present petitioner cannot take any benefit of the same on the ground of parity, at such a belated stage.

Although, petitioner made first representation on 04.12.2015, thereafter on 31.07.2017 followed by a reminder dated 18.03.2020 and which were dealt with at some stage by the respondents without taking any final decision in the matter, but same shall not be construed as condonation of delay or create any cause of action in favour of the petitioner in any manner, as there is no statutory basis for making the above representations.

Law is well settled by Hon'ble Supreme Court to the effect that making of repeated representations is not a ground for condonation of delay in such like cases and reference in this regard can be made to larger Bench judgment of Hon'ble Supreme Court (by

Seven Hon'ble Judges) in **S.S.Rathore Vs. State of M.P.**, AIR 1990 SC, 10 and para 22 thereof, reads as under:-

22. It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation."

Still further, the judgment cited by learned counsel for the petitioner is not helpful to the case of the petitioner, rather it goes against him in view of the principle laid down in para 23 thereof, which is extracted as under:-

"23) The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because

other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

Perusal of clause 3 of para 23 clearly reveals that benefit of a judgment in rem may be available to the similarly situated persons, but as discussed above, the order dated 26.09.2011 rendered in CWP No. 15781 of 2001 was confined only to the petitioners in that case and as such it would be construed as a judgment in *personam* and not in *rem*, therefore, the petitioner cannot take any benefit of judgment in **Arvind Kumar Srivastava’s** case (supra).

In view of the discussion made hereinabove, this Court is fully convinced that present writ petition is suffering from huge delay and laches, thus the same is completely misuse of the process of the Court.

Consequently, the writ petition is dismissed with costs of Rs. 10000/- (Rupees Ten Thousand) to be deposited with the High Court Legal Services Authority.

[MAHABIR SINGH SINDHU]
JUDGE

August 20, 2020
rajender

Whether speaking/reasoned	yes/no
Whether reportable?	yes/no