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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 10.08.2020

Pronounced on: 21.08.2020

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W.P. (C) 1724/2017

H.N. SHARMA & ANR.

..... Petitioners

Through: Mr. G. Tushar Rao & Mr. Mayank
Sharma, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Ms. Latika Chaudhary, Advocate
for R-1 & 2.

Mr. Ujjwal Kumar, Advocate for
R-3.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

1. Present petition is filed seeking quashing of the order dated 01.02.2017 issued by Respondent No. 2, Department of Training and Technical Education (DTTE), GNCTD as well as for issuance of writ of mandamus directing the Respondents to pay interest @ 8% per annum on the delayed payment of arrears of pension to the Petitioners, from the respective dates, in pursuance of and as per the judgement dated 27.08.2013, passed by this Court in the case of Shri Chander Prakash Kaushal, in W.P. (C) 24/2010.

2. Petitioner No. 1 joined Respondent No. 3 as a Lecturer on 26.08.1975 and superannuated as Principal on 31.10.2003. Petitioner No. 2 joined Respondent No. 3 as a Lecturer in the year 1980 and superannuated from Respondent No. 3/School as Senior Lecturer on 31.07.2004. Admittedly, retiral dues of the Petitioners were not released on their retirement.

3. It is the case of the Petitioners that Government of Delhi had been disbursing grant-in-aid to Respondent No. 3 since the year 1973-1974, under the Rules approved by Government of India for Award of grant-in-aid to Private Technical Institutions, vide letter dated 13.02.1973. Petitioners were getting their salaries from the grant-in-aid received from the Delhi Government to the extent of 95%, the remaining 5% being contributed by Respondent No. 3/School.

4. Shri Chander Prakash Kaushal, another employee of the same School, retired on 31.12.2004, but was not given his pensionary benefits till 2010. He filed a Writ Petition, being W.P. (C) 24/2010 in this Court, seeking pension along with arrears as well as interest, from the date of his retirement, till the date of release of payment by the Respondents.

5. Vide order dated 26.11.2010, this Court, taking cognizance of the Office Order dated 08.11.2010 issued by Respondent No. 2, directed the Respondents to take necessary steps to disburse the pensionary benefits within two weeks and listed the Petition for further hearing, for deciding the interest component on the delayed payments. Relevance of the Office Order dated 08.11.2010 was that from this order it was revealed that the Lieutenant Governor had accorded sanction for payment of benefits of pension and GPF to employees of Respondent No. 3/School as far back

as on 22.12.2003. Despite this, pensionary benefits were not released to the employees for several years.

6. In the Petition filed by Shri Chander Prakash Kaushal, this Court vide judgment dated 27.08.2013, directed the Respondents to pay simple interest @ 8% per annum on the delayed payment of arrears.

7. Case of the Petitioners herein is that although sanction for grant of pensionary benefits to the employees of Respondent No. 3, dates back to 22.12.2003, Petitioners were deprived of the same for years. Petitioner No. 1 started receiving pension only from June, 2012, calculated with effect from November, 2003, along with the arrears. Petitioner No. 2 started receiving pension from September, 2011, calculated with effect from August, 2004, along with arrears. However, no interest on delayed payment of arrears was given to the Petitioners, despite directions of this Court in the case of Shri Chander Prakash Kaushal.

8. Since Petitioners were similarly placed as Shri Chander Prakash Kaushal, they approached Respondent No. 3 on numerous occasions, making oral requests and representations to release interest on the delayed payment of arrears, seeking benefit of the judgement on principle of parity. Respondent No. 3 also sent letters/representations to Respondent Nos. 1 & 2, some of which, from 20.09.2013 upto 05.02.2016, have been placed on record.

9. Vide letter dated 08.09.2016, Respondent No. 2 through its Deputy Director, informed the Principal of Respondent No. 3 that the judgment in the case of Shri Chander Prakash Kaushal was applicable only to him and the request of the Petitioners was considered and rejected. Aggrieved by this communication, Petitioners filed a writ petition before this Court

being W.P. (C) 10021/2016. Vide order dated 02.11.2016, Court disposed of the petition directing the Respondents to treat the petition as a representation and after hearing the Petitioners, pass a reasoned order, within four weeks.

10. In compliance thereof, Respondent No. 2 considered the representation and rejected it, vide order dated 01.02.2017. Relevant part of the order is as follows:-

“And whereas there is no delay in awarding the pensionary benefits to Shri H.N. Sharma and Ms. Krishna Shrestha, (both employees of SUSA) who retired on 31.10.2003 & 31.07.2004 respectively and whose pension case was settled on June, 2012 & September 2011. The gap period may be attributed to procedural contingency.

As regards decision Hon'ble High Court of Delhi in the matter of C.P. Kaushal, Law & Finance Department, GNCTD are of the opinion that the said High Court order is applicable to petitioner only.

Hence in view of the above, the department has duly considered the writ petition of the petitioners as their representation and found that interest on pensionary benefits is not payable to Sh. H.N. Sharma & Ms. Krishna Shrestha. Hence the representations of both the applicant is rejected”.

11. Aggrieved by the rejection order dated 01.02.2017, Petitioners filed the present Writ Petition.

12. Contention of learned counsel for the Petitioners is that once the grant of Pension/GPF benefits to the employees of Respondent No. 3 was approved by the Competent Authority on 22.12.2003, there was no reason

or justification for not paying pension to the Petitioners, when they retired. Respondent Nos. 1 and 2 were bound to take immediate steps to ensure release of the benefits and allot PAO numbers to the School. It is argued that in the case of Chander Prakash, Court has not accepted the plea that School did not fulfill the conditions and this caused delay. Once the payment was delayed the Petitioners are entitled to interest. Law on interest on delayed payment of retiral benefits is well settled.

13. It is contended that case of the Petitioners is identical to that of Chander Prakash and thus the action of the Respondents in denying the benefit of the judgement, amounts to discrimination and is violative of Article 14 of the Constitution of India. Impugned order, it is argued has rejected the relief sought by the Petitioners on two-fold grounds and both cannot be sustained in law. As to rejection for the reason that the judgement applies only to Chander Prakash it is submitted that benefit of a judgement must be given to all similarly placed employees and this applies with greater vigour in service jurisprudence, as repeatedly held by various Courts.

14. As far as alleged administrative contingency is concerned, it is argued that firstly Respondent Nos. 1 and 2 have not brought on record any such contingency, except to state that the approval was conditional and the School did not fulfill the conditions, till 2010. This ground is fallacious and stands rejected in the judgement of Chander Prakash. Correspondence on record shows that the School had been repeatedly requesting them to release the dues and after the pronouncement of the judgement, had again requested to implement the same for the Petitioners.

School had even prepared the cheques towards the interest amounts in so far as its 5% share was concerned.

15. *Per contra*, learned counsel for Respondent Nos. 1 & 2 submits that there has been no delay on the part of Respondent Nos. 1 & 2 in releasing the pension of the Petitioners. It is submitted that Department of Personnel & Training (DoPT), Government of India, vide letter dated 23.11.2009 had informed Respondent No. 2 that it was for the Delhi Administration to take a decision if it wanted to adopt the Pension Scheme under the CCS (Pension) Rules, 1972, for the employees of Delhi Administration, its attached Subordinate formations/Aided Schools and other Organizations, under their control, who had joined the service on or before 31.12.2003, as by that time the New Pension Scheme had been introduced in Government of India and was applicable to the Government servants who had joined on or after 01.01.2004.

16. Learned counsel further submits that as far as Finance Department of Government of NCT of Delhi was concerned, it had accorded conditional concurrence for introduction of Pension/GPF Scheme to the employees of Respondent No. 3 on 28.10.2003. The conditions laid down by the Finance Department as brought out in the reply are as under:-

“i) A Management Committee shall be constituted as provided under the GIA Rules. Legally elected representative of the Society will give a firm commitment to pay their share of CPF along with interest from the relevant date at the prescribed rates in the Consolidated Fund of Govt. of Delhi.

ii) The PF Contribution from the date of admittance to the fund with interest thereon upto the date of switching

over to the rules, shall be credited to the consolidated fund of Delhi. The employee's subscription together with interest hereon on that date, in the contributory provident fund may be converted into GPF account to which he shall subscribe from the date of switch-over.

iii) The management shall continue to contribute monthly at the rate of 5% of 8 1/3% of the pay as defined in Rule 10 of the GIA Rule for those employees who will be governed by these rules and the same shall be credited to the Consolidated Fund of Delhi, towards pension and gratuity benefits as envisaged thereon.”

17. It is further submitted that the Lieutenant Governor after considering the recommendations of Department of Training & Technical Education had accorded Approval on 03.11.2003. As many as 8 letters/reminders were sent to Respondent No. 3 to fulfill the conditions required by the Finance Department so that benefits of GPF and pension could be given to employees. However, Respondent No. 3 complied with the conditions only in 2010 and thus Respondent Nos. 1 & 2 cannot be blamed for the delay on part of Respondent No. 3.

18. In so far as grant of benefit of the judgment in the case of Shri Chander Prakash Kaushal to the Petitioners herein is concerned, learned counsel for Respondent Nos. 1 & 2 submits that the said issue was examined by the Finance & Law Department of the Government of NCT of Delhi. It was noticed that the relevant and important fact of delay by Respondent No. 3 in complying with the conditions of the order of Respondent No. 2 was not brought to the notice of the Court in that case. Inaction of Respondent No.3 in complying with mandatory conditions

being a cause of delay, is a crucial fact which takes the case of the Petitioners out of the purview of the judgement and disentitles them to claim its benefit.

19. Learned counsel next contends that even otherwise, Petitioners can neither claim the benefit of the judgment in Shri Chander Prakash Kaushal nor independently seek interest on delayed payment of retiral benefits, having approached this Court belatedly. She argues that the cause of action for claiming the interest on alleged delay in release of pension, if any, arose in favour of the Petitioners in and around the years 2011 & 2012 respectively, but Petitioners filed the writ petition in this Court for the first time in 2016. Shri Chander Prakash Kaushal had approached the Court well in time, in the year 2010, seeking release of pension as well as interest on delayed payment. Even after Chander Prakash filed the Petition, Petitioners only waited for its outcome as fence-sitters. The judgment in the case of Shri Chander Prakash Kaushal was pronounced on 27.08.2013 and even thereafter Petitioners waited for nearly three years to approach the Court.

20. Learned counsel relies on judgement of the Supreme Court in *State of Uttar Pradesh & Ors. v. Arvind Kumar Srivastava & Ors [(2015) 1 SCC 347]*, wherein the Supreme Court has held that when a particular set of employees is given relief by the Court, all identically situated persons need to be given the same benefit, but this principle is subject to the well-recognized exception of delay and laches. Those persons who do not challenge the wrongful action and wake up after long delay only because their counterparts, who had approached the Court in time succeeded, cannot claim benefit of the judgment rendered in the case of the

counterparts. For the same proposition, reliance is placed on the judgement of the Jammu & Kashmir High Court in the case of ***Mangat Ram v. State of J&K & Ors., SWP No.2761/2017 decided on 05.10.2018.***

21. Contrary to the stand of Respondent Nos. 1 and 2, Respondent No. 3 has supported the case of the Petitioners. It is stated in the Counter Affidavit that the issue raised by the Petitioners is covered by the decision in the case of Shri Chander Prakash Kaushal. Petitioners are similarly situated former employees of Respondent No. 3 and there cannot be any discrimination between the two set of similarly situated employees.

22. It is argued that there is definitely a long delay on the part of the Respondent Nos. 1 and 2, in releasing the Pension of the Petitioners and thus the Petitioners cannot be denied interest on delayed payments. On the basis of the stand taken by Respondent No. 3 in the Affidavit in Response to the Counter Affidavit of Respondent Nos. 1 and 2, learned counsel for Respondent No. 3 submits that Respondent Nos. 1 and 2 are unnecessarily fastening the liability on Respondent No. 3, only to cover up their own wrong. The delay is purely on the part of Respondent Nos. 1 and 2 and this is evident from the Minutes of Meeting dated 17.08.2010, held in the office of Principal Secretary (Finance), wherein it was recorded that the Lt. Governor had given approval to extend Pension/GPF benefits to employees of Respondent No. 3 on 03.11.2003. DTTE however, did not implement the decision in the said Meeting and it cannot blame Respondent No. 3 for the delay.

23. It is further argued that for the first time, Respondent Nos. 1 and 2, vide letter dated 21.09.2010 addressed to Controller of Accounts,

Government of Delhi, made a request to him to allot PAO-13 to Respondent No. 3 for maintaining the GPF Account and authorizing pension and other retiral dues to its employees and thus there was nothing that the School was required to do in the meantime.

24. In compliance of the judgement by this Court in the case of Shri Chander Prakash Kaushal, Respondent Nos. 1 and 2 vide letter dated 24.09.2013, sought details from Respondent No. 3 of the other employees, to whom the benefit of the judgement was to be given, along with a statement of Arrears. Respondent No. 3 vide its letter dated 07.11.2013 asked Respondent Nos.1 and 2 to resolve the issue of interest, for both the Petitioners and also made calculations of the 5% Management Share and prepared the cheques for an amount of Rs. 33,735 and Rs. 31,231/- for the Petitioners, respectively, on account of interest. Respondent Nos. 1 and 2 vide letter dated 04.09.2015 addressed to Respondent No. 3, conveniently shifted the entire blame on the latter, but Respondent No.3 in its reply dated 24.09.2015, had immediately refuted their stand.

25. After the arguments of learned counsel for Respondent No. 3 concluded, Ms. Latika Chaudhary learned counsel for Respondent Nos. 1 and 2, reiterating that Respondent Nos. 1 and 2 cannot be faulted, drew the attention of the Court to an Additional Affidavit filed bringing on record the sequence of dates and events between 19.12.2003 till 31.11.2010. It was sought to be argued that it was Respondent No. 3 who was delaying responding to the several reminders of Respondent Nos. 1 and 2 in fulfilling the conditions required at their end and the chronology in the affidavit vindicates the stand.

26. I have heard learned counsels for the parties and examined their submissions.

27. It is uncontroverted that Petitioner No. 1 superannuated on 31.10.2003, while Petitioner No. 2 superannuated on 31.07.2004 and started receiving Pension only from June 2012 and September 2011, respectively. Though there is no dispute that the arrears were disbursed, but the delay of nearly 6 years, in release of pensionary benefits, is a fact, which stares at the Respondents.

28. It is equally undisputed that in the case of Shri Chander Prakash Kaushal, who was also an employee of Respondent No. 3, this Court had delivered a judgement on 27.08.2013 granting Simple Interest @ 8% per annum, till the date of payment of arrears, on ground of delay in release of the pensionary benefits. The justification sought to be rendered by Respondent Nos. 1 and 2 in the reply is that the Finance Department had awarded conditional concurrence for introduction of Pension/GPF Scheme to the employees of Respondent No. 3 and Respondent No. 3 had failed in fulfilling those pre-conditions, despite several letters and reminders sent by Respondent Nos. 1 and 2. Respondent No. 3, on the other hand, has clearly controverted this position and submitted that there was no delay on its part.

29. Court has perused the Minutes of the Meeting dated 17.08.2010 and it is clear that the Lt. Governor had sanctioned/approved the introduction of Pension Scheme to the employees of Respondent No. 3 on the lines of the Government Aided Schools, as far back as on 03.11.2003. Significantly the Minutes record that the said decision had not been implemented by DTTE till date and DTTE was directed to implement the

order of the Lt. Governor, subject to the fulfillment of the conditions prescribed, while according the Approval.

30. DTTE had, vide letter dated 21.09.2010, informed the Controller of Accounts, Government of Delhi, about the pendency of the writ petition of Shri Chander Prakash Kaushal in this Court, also pointing out that the Court had taken a serious view and directed the DTTE to make payment to the Pensioner immediately and the matter be given priority. It is important to note here that after the judgement was passed, vide letter dated 24.09.2013, DTTE had requested the Principal of Respondent No. 3 to intimate the number/details of other employees, if any, along with the Statement of Arrears, to whom the benefit of the judgement dated 27.08.2013 could be given and relevant para of the letter is as follows :

*“Sub: - 1. W.P (C) NO. 24/2010 Chander Prakash Kaushal Vs.GNCTD &Ors.
2. Details of interest payable to Shri H.N .Sharma &Miss Krishna Shrestha.*

Sir,

Please refer to your letters No. SUSA /DTTE /2013-14/862 dated 19/09/2013 and No. SUSA/DTTE/2013-14/863 dated 20/09/2013 on the above noted subjects. In this connection, you are requested to kindly intimate the number/ details of the other employees, if any, alongwith the statement of arrears to whom the benefit of the order dated 27.08.2013 of the Hon'ble High Court may arises.”

31. Stand of Respondent No. 3 that it did not delay release of the interest, post judgement, is vindicated by the letter dated 07.11.2013 addressed by them to DTTE which is as follows:

*“SARADA UKIL SCHOOL OF ART Speed Post
Aided & Financed by Govt. of N.C.T (Delhi)
Office: 66/1, Janpath, New Delhi-110001
Tele: 91-11-23321372 Fax: 91-11-23311917*

No. 1505A/DTTE/2013/877 Dated: 07.11.2013

To

*The Deputy Director (Plg.)
Department of Training & Technical
Education Muni Maya Marg,
Pitam Pura, Delhi*

*Sub: Reimbursement of management share in respect of
interest on delayed Payment of pension of Shri H.N.
Sharma & Miss Krishna Shrestha.*

Sir,

This is in continuance of this office letter No. FI/SUISA/DTTE/2013-14/873 dated 24.10.2013, wherein you were asked to resolve the case of interest payment in respect of delayed payment of pension amount of Shri H.N. Sharma (retired on 31.10.2003) & Miss Krishna Shrestha (retired on 31.07.2004). This is with a view to prevent further court proceedings and unnecessary wastage of Govt. fund in litigation. Your reply is still awaited.

Meanwhile, cheque No. 079765 dated 21.10.2013 for Rs. 33375/- in favour of Shri H.N. Sharma & Cheque No. 079766 date 21.10.2013 for Rs. 31231/- in favour of Miss Krishna Shrestha as 5% management share is kept disbursed on release of 99% Govt. share.

This is your kind information and perusal at your end.

*YOURS FAITHFULLY
-/SD*

(UMESH BAHUKHANDI)
PRINCIPLE”

32. Another letter dated 04.09.2015 by the DTTE is relevant in this context, which is in response to the letter by Respondent No. 3 seeking to process the case of the Petitioners at the earliest. DTTE informed Respondent No. 3 that it was processing the case as per the request of Respondent No. 3, but strangely blamed Respondent No. 3 for the delay and sought details of persons, responsible for it, so that responsibility could be fixed.

33. In my view, contentions raised by Respondent Nos. 1 and 2 have no force. Once the Approval was granted by the Lt. Governor on 03.11.2003, there was no reason/justification for not implementing the said decision. In the case of Shri Chander Prakash Kaushal, the same defense was sought to be taken, as is evident from reading of paragraphs 4, 5, 6 and 7 of the judgement, but the same did not find favour with the Court. Relevant paras of the judgment are as under:

“4. It is not disputed that petitioner was entitled to pension and petitioner retired on 31.12.2004. Pension has been paid however much later in the year 2010. The respondent No. 3-institute has stated that it could not deposit its share of contribution towards the pension and the provident fund because respondent Nos. 1 & 2 had to give a PAO account number in which such amount had to be deposited. This PAO account number was not allotted till the year 2010, and when so allotted, the amount was deposited by the respondent No. 3 in the PAO account.

5. Grant-in-aid was given to the respondent No. 3 as per the letter of the Lt. Governor dated 03.11.2003 which

required fulfilment of the following conditions by the respondent No. 3:

“a) Constitution of Management committee as per Grant-in aid Rules.

(b) The Provident Fund contribution from the date of admittance to the Fund with interest thereon, i.e. employers share upto the date of switching over to the Rules, shall be credited to consolidated Fund of Delhi.

(c) The Management shall continue to contribute monthly at the rate of 5% of 8 1/3% of the pay as defined under the Rule 10 of Delhi School Education Act 1973 for those Sarda Ukil School of Art (SUSA) employees who will be governed by these Rules and the same shall be credited to consolidated Fund of Delhi, towards pension and gratuity benefits as envisaged therein.”

6. There is no issue so far as condition (a) of constitution of Management Committee and the issue is only contribution by the Management as per conditions (b) and (c) above. Respondent No. 3 had informed the requirement of giving PAO account number to the respondent Nos. 1 & 2 in terms of its letter dated 04.04.2006. Respondent Nos. 1 & 2, however, did not give the necessary details till 2010, and when the same was given, the necessary amount was deposited by the respondent No. 3. Therefore, the delay from 01.01.2005 till 04.04.2006 or till the end of April 2006 would be of the respondent No. 3 and thereafter of the respondent No.1.

7. In view of the fact that the pension of the petitioner was paid with delay and this act of delay has caused loss of interest to the petitioner, petitioner is held entitled to interest @ 8% per annum simple from 01.01.2005 till the date of payment of the pension. Liability towards interest

to be paid to the petitioner will be shared inter se by the respondent No. 3 and the respondent No. 1. Respondent No. 1 will be liable to pay interest till 31.04.2006 and thereafter till the actual date of payment of pension, interest liability will be in the proportion of 5% by respondent No. 3 and 95% by respondent No. 1.”

34. Even assuming for the sake of argument that there was some delay on the part of Respondent No. 3, the same cannot be to the disadvantage of the Petitioners. After the approval by the Lt. Governor, it was the duty of the Respondents to ensure that the decision was implemented at the earliest and the PAO account number allotted, so that the Pension could be released. PAO number was not allotted till 2010. Delay for nearly 7 years in release of Pension has no satisfactory explanation or a valid justification and the Petitioners are rightfully entitled to interest on the delayed release of retiral benefits.

35. Perusal of the impugned order shows that the reasons to deny the interest on Pension are two-fold. One of the reasons is that the gap period is attributable to procedural contingencies and there is no delay. To say the least, this reasoning cannot be sustained in law. For employees, who retired in 2003/2004, pension is released in the years 2011/2012, and yet it is claimed that this cannot be perceived as ‘delay’. What would then be termed as a ‘delay’ is anybody’s guess. ‘Procedural contingencies’ portrayed as cause of delay, in release of pensionary benefits and that too without anything on record, to explain or substantiate, except inter-se correspondence, between Respondents, in my considered view, is not a valid justification.

36. It is also significant, though unfortunate, to note that, after this Court delivered the judgement in the case of Shri Chander Prakash Kaushal, who was similarly placed as the Petitioners, Respondents chose to deny the benefits of the judgement to the Petitioners herein, on the most fallacious ground that the judgement applied only to the Petitioner in the said case.

37. It has been repeatedly held by Courts, more particularly, in service jurisprudence, that if a benefit is given to an employee by a Court judgement, the same should be extended to the other employees, if they are similarly placed. Denying the benefit of the judgement rendered in the case of Shri Chander Prakash Kaushal, to my mind, as rightly contended by the Petitioners, is an act of discrimination with the Petitioners and antithesis to the word 'Equality' enshrined in the Constitution of India. Justice Krishna Iyer, in his inimitable style, in the case of ***Maneka Gandhi vs. Union of India (1978) 1 SCC 248***, had observed and I quote a passage from the Report as under:

“That article has a pervasive processual potency and versatile quality, egalitarian in its soul and allergic to discriminatory diktats. Equality is the antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Only knight-errants of ‘executive excesses’ — if we may use current cliché — can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it is that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law: Be you ever so high, the law is above you.”

38. Supreme Court in the case of *Arvind Kumar Srivastava (supra)* clearly held that denial of benefits to similarly situated persons is violation of Article 14 of the Constitution of India. Relevant para is as under:

“22. 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:

22.1. The 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.

22.2. However, this principle is subject to well-recognised 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.

22.3. 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 persons. 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 v. Union of India* [*K.C. Sharma v. Union of India*, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). 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.”

39. What is pension and what are the goals of pension has been entrancingly elucidated in the Constitution Bench judgement in the case of *D.S. Nakara and Others v. Union of India*, (1983) 1 SCC 305 as follows:

“20. The antequated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in *Deokinandan Prasad v. State of Bihar* [(1971) 2 SCC 330 : AIR 1971 SC 1409 : 1971 Supp SCR 634 : (1971) 1 LLJ 557] wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the

Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh. [(1976) 2 SCC 1 : 1976 SCC (L&S) 172 : AIR 1976 SC 667 : (1976) 3 SCR 360]”

40. The Court also succinctly described the concept of superannuation and in that context the goals that a pension scheme seeks to subserve. Relevant paras are as under:

“23. As the present case is concerned with superannuation pension, a brief history of its initial introduction in early stages and continued existence till today may be illuminating. Superannuation is the most descriptive word of all but has become obsolescent because it seems ponderous. Its genesis can be traced to the first Act of Parliament (in U.K.) to be concerned with the provision of pensions generally in the public offices. It was passed in 1810. The Act which substantively devoted itself exclusively to the problem of superannuation pension was Superannuation Act of 1834. These are landmarks in pension history because they attempted for the first time to establish a comprehensive and uniform scheme for all whom we may now call civil servants. Even before the 19th century, the problem of providing for public servants who are unable, through old age or incapacity, to continue working, has been recognised, but methods of dealing with the problem varied from society to society and even occasionally from department to department.

24. *A political society which has a goal of setting up of a welfare State, would introduce and has in fact introduced as a welfare measure wherein the retiral benefit is grounded on “considerations of State obligation to its citizens who having rendered service during the useful span of life must not be left to penury in their old age, but the evolving concept of social security is a later day development”. And this journey was over a rough terrain. To note only one stage in 1856 a Royal Commission was set up to consider whether any changes were necessary in the system established by the 1834 Act. The Report of the Commission is known as “Northcote-Trevelyan Report”. The Report was pungent in its criticism when it says that:*

“[I]n civil services comparable to lightness of work and the certainty of provision in case of retirement owing to bodily incapacity, furnish strong inducements to the parents and friends of sickly youths to endeavour to obtain for them employment in the service of the Government, and the extent to which the public are consequently burdened, first with the salaries of officers who are obliged to absent themselves from their duties on account of ill health, and afterwards with their pensions when they retire on the same plea, would hardly be credited by those who have not had opportunities of observing the operation of the system. [See Gerald Rhodes: Public Sector Pensions, pp 18-19] ”

25. *This approach is utterly unfair because in modern times public services are manned by those who enter at a comparatively very young age, with selection through national competitive examination and ordinarily the best talent gets the opportunity.*

26. Let us therefore examine what are the goals that pension scheme seeks to subserve? A pension scheme consistent with available resources must provide that the pensioner would be able to live: (i) free from want, with decency, independence and self-respect, and (ii) at a standard equivalent at the pre-retirement level. This approach may merit the criticism that if a developing country like India cannot provide an employee while rendering service a living wage, how can one be assured of it in retirement? This can be aptly illustrated by a small illustration. A man with a broken arm asked his doctor whether he will be able to play the piano after the cast is removed. When assured that he will, the patient replied, "that is funny, I could not before". It appears that determining the minimum amount required for living decently is difficult, selecting the percentage representing the proper ratio between earnings and the retirement income is harder. But it is imperative to note that as self-sufficiency declines the need for his attendance or institutional care grows. Many are literally surviving now than in the past. We owe it to them and ourselves that they live, not merely exist. The philosophy prevailing in a given society at various stages of its development profoundly influences its social objectives. These objectives are in turn a determinant of a social policy. The law is one of the chief instruments whereby the social policies are implemented and

"pension is paid according to rules which can be said to provide social security law by which it is meant those legal mechanisms primarily concerned to ensure the provision for the individual of a cash income adequate, when taken along with the benefits in kind provided by other social services (such as free medical aid) to ensure for him a culturally acceptable minimum standard of living when the normal means of doing so failed". (See Social Security Law by Prof. Harry Calvert, p. 1)

27. Viewed in the light of the present day notions pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But broadly stated they are (i) as compensation to former members of the Armed Forces or their dependents for old age, disability, or death (usually from service causes), (ii) as old age retirement or disability benefits for civilian employees, and (iii) as social security payments for the aged, disabled, or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions under the first head are of great antiquity. Under the second head they have been in force in one form or another in some countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude. There are other views about pensions such as charity, paternalism, deferred pay, rewards for service rendered, or as a means of promoting general welfare (see *Encyclopaedia Britannica*, Vol. 17, p. 575). But these views have become otiose.

28. Pensions to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in *Douge v. Board of Education* [302 US 74 : 83 L Ed 57] a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.

29. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical *raison d'etre* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

30. The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the courts may not so interpret such statute as to render them inane (see *American Jurisprudence*, 2d, 881).

31. From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an *ex gratia* payment but it is a payment for

the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to 10 months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.

*32. Having succinctly focussed our attention on the conspectus of elements and incidents of pension the main question may now be tackled. But, the approach of court while considering such measure is of paramount importance. Since the advent of the Constitution, the State action must be directed towards attaining the goals set out in Part IV of the Constitution which, when achieved, would permit us to claim that we have set up a welfare State. Article 38(1) enjoins the State to strive to promote welfare of the people by securing and protecting as effective as it may a social order in which justice — social, economic and political — shall inform all institutions of the national life. In particular the State shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities. Article 39(d) enjoins a duty to see that there is equal pay for equal work for both men and women and this directive should be understood and interpreted in the light of the judgment of this Court in *Randhir Singh v. Union of India* [(1982) 1 SCC 618 : 1982 SCC (L&S) 119] . Revealing the scope and content of this facet of equality, Chinnappa Reddy, J. speaking for the Court observed as under: (SCC p. 619, para 1)*

“Now, thanks to the rising social and political consciousness and the expectations aroused as

a consequence, and the forward-looking posture of this Court, the underprivileged also are clamouring for their rights and are seeking the intervention of the court with touching faith and confidence in the court. The Judges of the court have a duty to redeem their constitutional oath and do justice no less to the pavement-dweller than to the guest of the five-star hotel.”

Proceeding further, this Court observed that where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that can't be done when they are in service, can that be done during their retirement? Expanding this principle, one can confidently say that if pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later. Article 39(e) requires the State to secure that the health and strength of workers, men and women, and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 41 obligates the State within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to provide assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 43(3) requires the State to endeavour to secure amongst other things full enjoyment of leisure and social and cultural opportunities.”

41. Time and again, Supreme Court has emphasized that pension is not a bounty of the State and the right to receive pension is akin to a right of property, of the retiree. In ***State of Rajasthan and Others v. Mahendra Nath Sharma, [(2015) 9 SCC 540]***, Supreme Court held as under:

“28. It is a well-known principle that pension is not a bounty. The benefit is conferred upon an employee for his unblemished career. ...”

42. Relying on the judgement of the Court in ***D.S. Nakara (supra)***, Supreme Court observed as follows :

“28. ... We may hasten to add that though the said decision has been explained and diluted on certain other aspects, but the paragraphs which we have reproduced as a concept hold the field as it is a fundamental concept in service jurisprudence. It will be appropriate and apposite on the part of the employers to remember the same and ingeminate it time and again so that unnecessary litigations do not travel to the Court and the employers show a definite and correct attitude towards the employees. We are compelled to say so as we find that the intention of the State Government from Para 5 of the circular/memorandum has been litigated at various stages to deny the benefits to the respondents. It is the duty of the State Government to avoid unwarranted litigations and not to encourage any litigation for the sake of litigation.”

43. In a recent judgement in ***State of Himachal Pradesh and Others v. Rajesh Chander Sood and Others [(2016) 10 SCC 77]***, Supreme Court reiterated and reinforced the law on right to pension.

44. In view of the illuminating enunciation of the Supreme Court placing the right of an employee to receive pension at such a high pedestal, it can hardly be argued by the Respondents that there was no delay in releasing the pensionary benefits of the Petitioner, even after 7 long years or that they could deprive the Petitioners of the benefit of the

judgement in the case of Shri Chander Prakash Kaushal, on the ground that it was only to be applicable to the Petitioner therein.

45. In my opinion, once the judgement was rendered, it was imperative for the Respondents to implement the same forthwith and grant benefit of the interest on delayed payment of Pension, without making the Petitioners run from pillar to post and then force them into the present litigation.

46. The law on grant of interest on delayed payment of retiral benefits is no longer *res integra*. Time and again this question has cropped up before various Courts and it has been held that when the employer delays the release of Pensionary benefits, it is bound to pay interest on account of the delay. Without burdening this judgement with several judgements, for the sake of brevity, I may only refer to the judgement of the Calcutta High Court in the case of ***Padma Nath v. State of West Bengal and Others***, [2019 SCC Online Cal 2185], which captures some of the judgements on this issue. Relevant paras are as under:

“6. The decisions relied upon support the settled law on the right of a retired teacher or employee to his/her retirement benefits without any delay. The principle that the disbursement of pension and other retirement benefits should not be treated as a matter of bounty but are valuable rights and property and any delay in settlement or disbursement thereof must be compensated with the penalty of payment of interest at the current market rate till actual payment to the employee, as has been held in several cases, including in State of Kerala v. M. Padmanabhan Nair ((1985) 1 SCC 429) [see also D.D. Tewari v. Uttar Haryana Bijli ((2014) 8 SCC 894 : AIR 2014 SC 2861)]. In D.D. Tewari, the court awarded interest to the legal representatives of the deceased

employee upon holding that there has been a miscarriage of justice on denial of payment of interest.

7. In Nirranjan Kumar Mondal v. The State of West Bengal reported in (2012) 1 WBLR (Cal) 903, this court relying on Aloke Shanker Pandey v. Union of India reported in (2007) 3 SCC 545 : AIR 2007 SC 1198 explained the concept of grant of interest in that interest is not a penalty or punishment but is an accretion on capital. Interest is therefore to make good the loss of opportunity to the person who could have earned interest on a certain sum of money if that sum of money had been paid to that person on time. The element of compensation also arises from the possible gain made by the person who withheld the amount of money for a certain period of time on the premise that the person thus deprived may have earned interest on the amount invested. The equitable consideration is therefore not only to pay the principal amount to the person who has been deprived but also the amount which that person could have earned by way of interest on the principal amount for the period when the principal amount had been with the concerned authority. In S.K. Dua v. State of Haryana reported in (2008) 3 SCC 44, the issue before the Supreme Court was whether the appellant was entitled to interest on his retirement benefits which were kept pending due to certain charges pending against the appellant. The retirement benefits in that case were paid to the appellant four years after his superannuation. The emphatic words used by the Supreme Court are set out below;

“14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms

prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

8. In J. Kasthuri v. The Commissioner, Chennai Municipal Corporation, the petitioner was a widow of a Group-D employee and had challenged the recovery of the family pension granted to her. The Madras High Court found the recovery of excess pension released in favour of the petitioner to be unsustainable in view of the law laid down by the Supreme Court in the case of State of Punjab v. Rafiq Masih (White Washer). Dipali Sikder was the petitioner before the court whose husband had completed all formalities for his retirement benefits. In that case, the pension and gratuity were released two years after the petitioner's husband retired and the petitioner approached the court after her husband's death for interest on the delayed payment when the petitioner's prayer was allowed. From the aforesaid decision, it is evident that the courts have held in favour of a claim of interest on delayed payment of pension and other retirement benefits. There is also no ambiguity in the decisions of the courts that a widow or a dependant of a teacher, who has retired from service and has subsequently died, is entitled to the family pension and other retirement benefits.

9. *The question which arises in these writ petitions is, therefore, whether acceptance of the delayed payment by the widows of teachers without claiming interest for such delay at the relevant point of time can be granted after a lapse of time. Simply put, which delay would weigh with the court for the grant or refusal of the interest claimed by the petitioners? Would it be the delay on the part of the concerned authorities in releasing the retirement benefits to the petitioner/his wife or would the court give greater weightage to the delay on the part of the petitioner (widow) in approaching the court with a prayer for interest? In answering this question, the pronouncement of the law as laid down by the Supreme Court in Union of India v. Tarsem Singh reported in (2008) 8 SCC 648 may be referred to. In this decision, it was held that in cases of a continuing wrong being perpetuated by the authorities on a litigant, the court can grant relief despite a long delay in seeking a remedy on the ground that the continuing wrong results in a continuing injury which prevents the claim from becoming one where a court may refuse to exercise discretion in its extraordinary jurisdiction under Article 226 of the Constitution. Union of India v. Tarsem Singh reported in (2008) 8 SCC 648 also referred to instances where the court may refuse to exercise discretion in favour of the writ petitioner where third-party interests have been created in the intervening period of time.*

10. *On the aspect of delay, the decision of a Division Bench of this Court in Padma Rani Thakur v. The Secretary, Department of Home reported in (2007) 1 CLJ (Cal) 21 may be referred to where the court held that the rule that belated and stale claims may not be entertained is not a rule of law but a rule of practice and the principle on which the relief to a party is denied on the ground of delay is that the rights which had accrued to others by reason of such delay should not be disturbed unless there is reasonable explanation for the delay. The principle is that parallel rights should not be created or accrued in the*

interregnum when the party who ought to have come to a court stayed away. The said decision is also important for the proposition that a writ court should not dismiss a claim on the ground of delay when a citizen alleges infringement of a fundamental right; the principle being that there can be no loss of fundamental right for the non-exercise of such right.

11. That the right of writ petitioner to get his retiral dues on the date of attaining superannuation is a valuable right and a legal duty is hence cast upon the concerned authorities to ensure that such a right is not defeated; Satya Ranjan Das v. The State of West Bengal reported in (2007) 3 CLT 531.

12. In the facts of these writ petitions, if the right to payment of interest on delayed payment and the right of a widow to approach the court as well as the question of delay on the part of the writ petitioner is answered in favour of the petitioners, there does not seem to be any justification for refusing the claim of interest solely on the ground that there is no document to substantiate the pleading in the writ petition that the writ petitioner as well as her husband had made such a prayer during the lifetime of the husband (the retired teacher). Taking recourse to such a technicality would amount to depriving the petitioner of a right guaranteed under the Constitution of India as well as creating an unnatural distinction between the deceased pensioner and his dependants. If a similar prayer made by the pensioner (the retired school teacher) could have been entertained by a writ court, as is being done in a large number of cases, there is no reason why a widow should be shut out from such entitlement. The Supreme Court in S.K. Dua v. State of Haryana reported in (2008) 3 SCC 44 elevated the claim of interest in the absence of statutory rules, administrative instructions or guidelines to a constitutional right under Part III of the Constitution. Even though there has been a delay in the

present case and as well as in the other writ petitions in the actual disbursement of the pension by the authorities, this court is of the view that the right of the petitioners to claim interest on the delay in disbursing the retirement benefits to their respective husbands cannot be refused.”

47. After noting the above judgement, I may only refer to a passage from the judgement in ***State of Mysore v. C.R. Sheshadri [(1974) 4 SCC 308]*** wherein Justice Krishna Iyer in the context of inordinate delay in payment of Pension observed as under:

“8. ...A retired government official is sensitive to delay in drawing monetary benefits. And to avoid posthumous satisfaction of the pecuniary expectation of the superannuated public servant — not unusual in Government...”

48. Lastly, I must deal with the contention of Respondent Nos. 1 and 2 that the Petitioners have approached this Court in 2016 and the Petition is thus barred by delay and laches. Suffice would it be to observe that such a contention can never be sustained in view of the law as aforementioned on the fundamental right of an employee to grant of pension and the right to seek interest on delayed payment. The contention can also be examined from another angle. Courts have repeatedly held that a belated service related claim can be rejected on the ground of delay only if it affects the rights of other employees and reopening the issue would affect the settled rights of third parties.

49. In the case of ***Union of India and Others v. Tarsem Singh, (2008) 8 SCC 648***, Supreme Court observed that the exception to the Rule of

delay and laches is the case relating to a continuing wrong. Pension has been held to be a continuing wrong. Relevant para of the judgement is as under:

“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 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.”

50. Applying the observations of the Supreme Court, right to claim interest on delayed payment of pension is a continuing wrong and granting relief to the Petitioners in the present case, does not affect the

rights of any other employee in the Department. Moreover, the Petitioners have made out a case that Respondent No. 3 was writing letters/reminders to Respondent Nos. 1 and 2 to give the benefit of the judgement in the case of Shri Chander Prakash Kaushal to the Petitioners and since the case was under consideration, they had no reason to approach the Court, till the impugned order was passed, rejecting their claim.

51. Petitioners have thus made out a case for grant of relief of interest on delayed payment of retiral benefits. Petitioners are held entitled to Simple Interest @ 8% per annum on the delayed payment of arrears of Pension from the date the benefits became due to the Petitioners, till the date of actual payment. Needless to state that the payments shall be made by the Respondents in accordance with the directions passed by the Court in the case of Chander Prakash in judgement dated 27.08.2013 in W.P. (C) 24/2010. The impugned order dated 01.02.2017 issued by Respondent No. 2 is quashed and set aside.

52. Petitioners at this stage and phase of their life, not only waited for the retiral benefits for nearly 7 years, but had to struggle even thereafter for getting the benefit of the judgement passed by this Court. Despite being similarly placed, Petitioners were wrongfully deprived of their right and forced into litigation at a time when they should be peacefully enjoying their retired life with their near and dear ones.

53. In the facts and circumstances of this case, Petition is allowed with costs computed at Rs.25,000/- each, in favour of the Petitioners, to be paid by Respondent Nos. 1 and 2.

54. Directions issued by the Court, including payment of costs, shall be complied with by the Respondents within a period of three weeks from today.

55. Petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

AUGUST 21st, 2020
yo/rd

