

07.01.2022

Court : 04
Item : 22
Matter : MAT
Status : ALLOWED
Transcriber: nandy

MAT 363 of 2020

with

CAN 2 of 2021

Sarwari Begam

Vs.

The State of West Bengal & Ors.

Mr. Chandan Dutta, Advocate

.....for the Appellant

Mr. Tapan Kumar Mukherjee, Ld. A.G.P.

Mr. Ranjan Saha, Advocate

.....for the State

The writ-petition filed by the appellant was dismissed solely on the ground of delay. What can be perceived from the impugned order that the learned single Bench was of the view that the stale claim should not be resurrected after such a long delay.

The attention of the single Bench was drawn to the judgement of the Supreme Court in case of ***M.R. Gupta Vs. Union of India & Ors.*** reported in **(1998) 5 SCC 628** wherein the Apex Court has held that the matter pertaining to pay fixation cannot be dismissed on the ground of lapses and laches or the limitation having intervened in the meantime. It is further held that the dispute of such nature is a recurring one and on each month when the pay or the pension is paid it gives a fresh cause of action.

The relevant excerpts of the Apex Court judgment is quoted hereunder:-

“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. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action."

The instant dispute pertains to re-fixation of the pension in terms of the circulars, which according to the appellant was applicable. Such cause of action cannot be said to be barred nor the writ-petition should be dismissed on the ground of lapses and laches as the wrong is the continuing one.

We thus set aside the order dated January 3, 2020.

The writ-petition being **WP 20842 (W) of 2018** is **restored** to its original file and number.

The single Bench is requested to dispose of the writ-petition as expeditiously as possible on merits.

The appeal being **MAT 363 of 2020** is **allowed**.
There shall be no order as to costs.

The connected application being **CAN 2 of 2021** also stands **disposed of**.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)