IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.03.2022

DELIVERED ON: 21.03.2022

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.13463 of 2021

Mr.S.Ramakrishnan ...Petitioner

Vs.

1. The Chief Executive Officer,
   Perambalaur Sugar Mills Ltd.,
   No.36, Eraiyur P.O.,
   Perambalur District,
   Tamilnadu-621 333.

2. The Government of Tamil Nadu,
   Rep. By its Principal Secretary to Government,
   Industries (MIC.2) Department,
   Secretariat, Chennai-600 009. ...Respondents

PRAYER:Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in relation to impugned order in Rc.No.79/96/E3 dated 25.09.2020, quash the same and to direct the first respondent to grant revision of pay scale to the petitioner as per G.O.Ms.No.302 dated 25.08.2000 from 01.01.1996 and all consequential monetary benefits which the petitioner is legally entitled to.

For Petitioner : M/s.S.Rajeni Ramadoss

For Respondents: Mr.R.Balaramesh for R1
Mr.A.M.Ayyadurai,
Government Advocate for R2

ORDER

Challenge in the writ petition is to the order of the first respondent dated 25.09.2020, in and by which the claim of the petitioner seeking the benefit of G.O.Ms.No.302, Industries MIC2 Department dated 25.08.2000 has been rejected and for a consequential direction to the first respondent to grant revision of pay scale to the petitioner as per G.O.Ms.No.302 dated 25.08.2000 from 01.01.1996.

2. The case of the petitioner is that he was working as Senior Manager in Perambalur Cooperative Sugur Mills and retired from service, on attaining the age of superannuation on 30.06.1998. The Government had ordered revision of Scale of Pay of erstwhile cadre officers in the Public Sector and Cooperative Sugar Mills through G.O.Ms.No.302, Industries Department dated 25.08.2000 and according to the said Government Order, the revision shall take effect from 01.01.1996 with monetary benefits from 01.01.1996, which imply that officers who retired from 01.01.1996 to 31.12.1998 were not entitled to any monetary benefits under the said Government Order. Aggrieved over the same, similarly placed persons approached this Court by filing W.P.No.18383 of 2001 and this Court, vide order dated 21.10.2011, had held that the petitioners therein are entitled to revision of pay scale as per G.O.Ms.No.302 dated 25.08.2000 on and from 01.01.1996.

3. It is the claim of the petitioner that in the light of the aforesaid order of this Court, the petitioner, who retired from 30.06.1998 will be entitled to the financial benefits stipulated under G.O.Ms.No.302, (Industries MIC 2) Department dated 25.08.2000. The petitioner, in this regard, has also submitted a representation dated 29.07.2019 to the first respondent seeking financial benefits arising out of 6th Pay Commission, but there was no response. Therefore, the petitioner had filed W.P.No.30539 of 2019 and this Court, vide order dated 25.10.2019, had directed the first respondent to consider the petitioner's representation dated 29.07.2019 and to pass orders within a period of twelve weeks. While so, the first respondent has rejected the petitioner's rejection, vide the impugned order dated 25.09.2020 and challenging the same, the petitioner has filed the present writ petition.

4. The first respondent has filed a counter affidavit, wherein it has been stated that the petitioner had retired from service before the implementation of G.O.Ms.No.302, Industries MIC2 Department dated 25.08.2000 and hence, the petitioner is not given the said monetary benefits of the revised scale of pay and further stated that the petitioner had retired from service on 30.06.1998 and all the monetary benefits were received by him in the year 1998 itself and having kept quiet for more than 20 years, now the petitioner had filed the present writ petition and hence, prayed that the writ petition is to be dismissed solely on the ground of delay and laches.

5. Mrs.Rajeni Ramadoss, learned counsel for the petitioner

contended that when this Court has directed that similarly placed person is entitled to the benefit of G.O.Ms.No.302, Industries MIC2 Department dated 25.08.2000 on and from 01.01.1996, rejecting the request of the petitioner is totally discriminatory and therefore, on the sole ground, the impugned order is liable to be set aside.

6. Mr.R.Balaramesh, learned Standing Counsel for the first respondent has not disputed the fact that similarly placed person has been granted the relief of G.O.Ms.No.302, Industries MIC2 Department dated 25.08.2000 and however, contended that the writ petition is liable to be dismissed on the ground of delay and laches, since the petitioner was approached this Court nearly after more than twenty years. The learned counsel for the first respondent would further submit that petitioner is the only person left to be granted the benefit of G.O.Ms.No.302 dated 25.08.2000 and in support of his submissions, has placed reliance upon the following decisions:

(i) S.S.Balu and Others v. State of Kerala and Others [2009 (2) SCC 479] ;
(ii) State of Uttar Pradesh and Others v. Arvind Kumar Srivastava and Others [2015 (1) SCC 347];
(iii) Chairman / Managing Director, U.P. Power Corporation v. Ramgopal [2020 (2) CTC 834]; and
(iv) Union of India v. N.Murugesan [2022 (2) SCC 25].

7.This Court has considered the submissions made and also perused the materials available on record.

8.The undisputed fact remains that the petitioner worked as Senior Manager in the first respondent Sugar Mill and retired from service on 30.06.1998. The relevant date of applicability of G.O.Ms.No.302, Industries Department dated 25.08.2000 was already decided by this Court in the writ petition filed by a similarly placed person in W.P.No.18383 of 2001, wherein this Court, vide order dated 21.10.2011, had held as follows:

> "12......Therefore, I have no hesitation in holding that the petitioners are also entitled to revise their pay sale on 01.01.1996 and on such revision, they are entitled to the terminal benefits like gratuity, leave salary on the basis of the new pay scale. If revised pay scale is denied to these petitioners, it would certainly amount to discrimination as all of them were in service as on 01.01.1996.
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> 13. It is an admitted fact that an adhoc payment of Rs.2,000/- was paid to these petitioners also, but

the same cannot be recovered from them as they are not entitled to any monetary benefits from 01.01.1996 to the date of retirement. Therefore, no recovery can be made on these petitioners on that score.

14. In 2008 (13) SCC 463 (Union of India and Another, Appellants v. S.Thahur, Respondent), the Hon'ble Supreme Court held as follows:

> "8. The plea that as restructuring of cadre and redistribution of posts was involved insofar as the Assistant Directors were concerned and therefore, the policy decision taken by the State Government to give benefit of upgraded scale to an Assistant Director (Executive) with effect from 01.10.1997 should not have been interfered with by the Tribunal and by the High Court is devoid of merits. There is not dispute nor there can be any, to the principle that fixation of pay and date from which the benefit of revised pay scale would be admissible is the function of the executive and the scope of judicial review of such an administrative decision is very limited. However, it is equally well settled that the courts would interfere with the administrative decisions pertaining to pay fixation and pay parity as well as the date from which the revised pay scales would be made applicable if it is found that such a decision is unreasonable, unjust and prejudicial to a section of the employees.
>
> 10.As the appellants were not required to undertake exercise of restructuring of cadre nor was it necessary to amend the Recruitment Rules, the Assistant Directors forming part of the group of 40 to which the respondent belonged could not have been denied the benefit of revision of pay scale with effect from 1.1.1996, which benefit was awarded to other similarly situated employees with effect from 1.1.1996.
>
> 11. As the decision to give benefit of revision of pay scale to the Assistant Directors with effect from 1.10.1997 was found to be unreasonable, unjust, arbitrary and prejudicial to the action of the employees, the Tribunal directed the appellants to grant benefit of revision of pay scale to the respondent with effect from 1.1.1996. The decision was not found to be erroneous or

illegal at all the therefore the High Court was justified in not interfering with the same while exercising the powers under Article 226 of the Constitution."

15. In 2009 (2) SCC 793 (Dakshin Haryana Bijli Vitran Nigam and Others, Appellants v. Bachan Singh, Respondent), the Hon'ble Supreme Court held as follows:

"27. In Rama Dayaram Shetty v. International Airport Authority of India (1979) 3 SCC 489 again this Court observed that a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

28. In view of the law as has been articulated in a large number of cases where this Court has observed that any discriminatory action on the part of the Government would be liable to be struck down. Hence, in this case, it would be totally unreasonable and irrational to deny the respondent the pensionary benefits under the scheme particularly when the appellants have failed to produce any record showing that the instructions dated 06.08.1993 and 09.08.1994 were actually got noted in writing by the respondent. In the absence of any such material, it can well be inferred that the respondent had no knowledge about the options called by the appellants."

16. The above judgments cited by the learned counsel appearing on behalf of the petitioners support the case of the petitioners.

17. Therefore, this Writ is disposed of in the following terms:

(i) All the petitioners herein are entitled to revision of pay scale as per the G.O.Ms.No.302 dated 25.08.2000 on and from 01.01.1996;

(ii) The petitioners are entitled to calculate the retirement benefits like gratuity, leave salary, etc. on the basis of their revised pay scale;

(iii) It is an admitted fact that their retirement benefits were calculated on the basis of old scale that was in existence at the time of their retirement. Therefore, the retirement benefits are to be calculated on the basis of revised pay scale on and from

01.01.1996 and the monetary benefits are to be calculated accordingly i.e., gratuity, leave salary, etc. are to be paid to these petitioners within three months from the date of receipt of a copy of this order.”

9. It is the main contention of the respondents that the writ petition is liable to be dismissed on the ground of delay and laches, since the petitioner had retired from service on 30.06.1998 and received all the monetary terminal benefits in the year 1998 itself and having kept quiet for more than 20 years, the petitioner had belatedly approached this Court by filing the present writ petition.

10. In this regard, it is useful to refer to the decision of the Division Bench of Delhi High Court in Arjun Lal Makhija v. Government of N.C.T. Of Delhi and Others [W.P.(C) No.8931 of 2014 dated 07.04.2015], wherein the Division Bench of Delhi High Court has considered the various decisions of the Hon'ble Apex Court and the same is extracted hereunder:

> “In State of U.P. & Ors. V.Arvind Kumar Srivatsava & Ors [(2015) 1 SCC 347], the Apex Court took a view that it is a normal rule that when a particular set of employees is given relief by the Court, all other identically situated persons should be treated alike by extending the same benefit since not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. While laying down this principle, the Court further observed that this normal rule is subject to well- recognized exceptions in the form of laches and delays as well as acquiescence which would be a valid ground to dismiss their claim but such an exception could not be applied to those cases where the judgment pronounced by the Court was judgment in rem with intention to bestow benefit on all similarly situated persons irrespective of the fact whether such persons had approached the Court or not. Relevant paras of the said judgment wherein these legal principles have been culled out are reproduced as under:-
>
> "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.

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.

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. 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."

We may also usefully refer to some of the relevant paras of the judgment of Union of India & Ors. v. Tarsem Singh [(2008) 8 SCC 648], wherein the Apex Court took a view that an exception can be made in the case of continuing wrong as the same gives rise to continuing cause of action, subject to the qualification that third party rights will not be affected. The issue of fixation of pay has been held to be a continuous cause of action to a claimant and in the case of any delay and laches on the part of the applicant, at best, a relief can be confined to a period of three years from the date of such claimant approaching the Court.

"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 S.P. Waghmare v. Shree Dhyaneshwar Maharaj Sansthan AIR1959SC798 , explained the concept of continuing wrong (in the context of Section 23 of Limitation Act, 1908 corresponding to section22 of Limitation Act, 1963) : 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. In M.R. Gupta v. Union of India AIR1996SC669, the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1.8.1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held : 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....

In Shiv Dass v. Union of India (2007) IILLJ212SC , this Court held: The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition.... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years.

5. 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 re- opening 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 re-fixation 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 latches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, 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."

(emphasis supplied)

In the light of the aforesaid decision, it could be inferred that relief may be granted inspite of delay, if it does not affect the rights of third parties. In the case on hand, no prejudice would be caused to any third party in the event of granting the benefit of revision of pay to the petitioner as per G.O.Ms.No.302, Industries MIC2 Department dated 25.08.2000.

11.In view of the above facts and well settled legal position and taking into consideration of the fact that similarly placed persons were granted the benefit of G.O.Ms.No.302, Industries MIC2 Department dated 25.08.2000, vide order dated 21.10.2011 in W.P.No.18383 of 2001 and that the petitioner is the only person left to be granted the benefit of the aforesaid Government Order and no prejudice would be caused to the respondents in the event of petitioner being granted the similar relief.

12.Accordingly, this Court passes the following order:

(i) The impugned order of the first respondent in Rc.No.79/96/E3 dated 25.09.2020 is set aside.

(ii) The petitioner is entitled to revision of pay scale as per G.O.Ms.No.302 dated 25.08.2000 on and from 01.01.1996;

(iii) The petitioner is entitled to get retirement benefits like gratuity, leave salary, etc. on the basis of their revised pay scale;

(iv) The aforesaid exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

(v) It is also made clear that the petitioner cannot claim any interest for the disbursement of the above said monetary benefits.

13.The Writ Petition stands allowed with the above directions. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

Jvm

To

1. The Chief Executive Officer,
   Perambalaur Sugar Mills Ltd.,
   No.36, Eraiyur P.O.,
   Perambalur District, Tamilnadu-621 333.

2. The Principal Secretary to Government,
   The Government of Tamil Nadu,
   Industries (MIC.2) Department,
   Secretariat, Chennai-600 009.

+1cc to M/s.Rajeni Ramadass, Advocate, S.R.No.18662

+1cc to M/s.R.Balaramesh, Advocate, S.R.No.18741

+1cc to the Government Pleader, S.R.No.19136

W.P.No.13463 of 2021

PMK(CO)
RGA(06/04/2022)