

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA No. 1655 of 2017

Reserved on : 21.03.2022

Pronounced on : 19.04.2022

Food Corporation of India and others

.....Appellants

Versus

Dharam Chand Sharma

.....Respondent

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Rajesh Garg, Senior Advocate with
Ms. Neha Matharoo, Advocate for the appellants.
Mr. Naresh Chhokar, Advocate for the respondent.

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VIKAS SURI, J.

This Letters Patent Appeal has been preferred aggrieved against the judgment dated 15.02.2017 titled as *Dharam Chand Sharma vs. Food Corporation of India and others*, rendered by the learned Single Judge whereby the writ petition was allowed and as a one-time measure, the writ petitioner was given one month's time to submit his option in terms of the Circular dated 01.05.1995 (Annexure P-10) and in case he so opts in terms of the said circular, then he will have to return the amount already received on account of the promotion along with interest @ 8.5% per annum.

It would be expedient to tersely notice the facts culled out from the pleadings. The writ petitioner had joined the services of the appellant-

Food Corporation of India (FCI) on 03.03.1972 as Assistant Grade-III (D). Thereafter, he was notionally promoted to the post of Assistant Grade-II (D) against the panel year 1982 for pay fixation w.e.f 01.12.1982 and to the post of Assistant Grade-I (D) against the panel year 1994 for pay fixation w.e.f 01.12.1994, vide order dated 07.01.1998 (Annexure P-1). The said order records the reason for issuance of the same in the year 1998, the relevant portion of which reads as under:-

“Consequent upon revision/recasting of Zonal Seniority of AG.III (D) in terms of Regulation 16(1) of FCI (Staff) Regulations, 1971 by implementing the judgment of Hon’ble High Court, Delhi pronounced on 11.1.94 in CWP No.4006/90 and CWP No.1319/91 and C.W.P. No. 4681/93 and confirmed by Hon’ble Supreme Court of India by dismissing SLP filed by FC, the AG-III/II (Depot) whose particulars are given in Annexure were earlier considered for notional promotion (not shown in the seniority list) but their promotion orders could not be served upon them due to their involvement in vigilance cases. On completion of the penalties, their cases have been considered, as per the details given in the said Annexure and are deemed to have been promoted to the post of AG.II (Depot)/AG.I (Depot) at the relevant period against different panels as indicated against each on notional basis in the scales which ever are applicable to them.”

In the aforesaid order, the writ petitioner’s name for panel year 1982 figured at serial No.15 and for panel year 1994 at serial No.16. There is no dispute with regard to the order dated 07.01.1998. It has also been pleaded that the writ petitioner had his pay fixed and got promotion as Manager (D) w.e.f 01.12.2006 and retired from service on 31.05.2008. The writ petitioner (respondent herein) after his superannuation had instituted CWP-14426-2008, which was disposed of vide order dated 31.08.2009,

granting leave to file a representation and also a direction for its consideration within the specified time. The said order has been reproduced in para 12 of the writ petition and reads as under:-

“The arrears, which were due to the petitioner have been released. The grievance of the petitioner is that this amount was due to him in the year 1998 but has now been released in the year 2008. He, accordingly, prays for grant of interest on the amount, which now clearly stands admitted that it was due to him. The petitioner also prays for stepping up of his pay viz-a-viz his juniors who are drawing more. This prayer of the petitioner is being not attended to by saying that he should first get his pay fixed.

Let the petitioner file a representation, since the amount due has already been released to the petitioner. It will be appropriate for the petitioner to represent against the denial of interest as well as for stepping up of his pay. If the petitioner does so within a period of one month from today, the same shall be considered and decided by the respondent by passing a speaking order within a period of 3 months thereafter. If any grievance is left, the petitioner would be at liberty to approach appropriate forum in this regard.

The writ petition is accordingly disposed of.”

The representation filed by the respondent pursuant to aforesaid order was considered by the authorities and declined vide order dated 22.12.2009 (Annexure P-13). The order so passed was challenged by way of CWP-20893-2012 and the decision of the said petition has as such been impugned in the present appeal.

Learned senior counsel appearing for the appellants-FCI has made two fold submissions. It has been submitted that the respondent is seeking the benefit of circular No.5 of 1995 dated 01.05.1995 (Annexure

P-10), much after expiry of validity period for giving option, which stood exhausted by the end of July 1995 itself. Even as per the said circular, in the facts and circumstances of the present case with reference to Clause 5 thereof, the writ petitioner could avail no benefit on the plea that his junior having taken the benefit of the said circular was having more pay. The second submission is with regard to limitation and in that regard it is submitted that even the first writ petition (CWP-14426-2008) was highly belated and hit by delay and laches. Institution of subsequent writ petition after decision of the representation in terms of the direction passed in the earlier case, would not obliterate bar of limitation or issue of delay and laches or condone the inordinate delay. Issuance of directions by Court, even as an exception, to permit the writ petitioner to now exercise option in terms of a Circular the validity period of which stood expired in end of July 1995, would have serious administrative implications apart from financial burden on the appellant-FCI and as such, would be unsustainable and thus, is liable to be set-aside.

Per contra, counsel for the respondent has justified passing of the impugned judgment by the learned Single Judge on the ground that when the said Circular was issued, the same was not circulated in the depot where the writ petitioner was posted and as such the same was not to his knowledge. Reference in that regard was made to the communication dated 26.06.2010 (Annexure P-9), which was after the representation stood declined on 22.12.2009 (Annexure P-13).

We have heard learned counsel for the parties at length and with their able assistance perused the available records.

Learned senior counsel refers to para No.11 of the writ petition wherein the writ petitioner had pleaded the fact of Circular No.5 of 1995 not having been circulated by the Area Manager/District Manager, FCI, District Office, Hisar to the centres under its control, like Tohana Depot, where the petitioner was then posted. Reference to the communication dated 26.06.2010 has also been made in the said paragraph. In reply thereto, the appellant had specifically denied the contents of the said para and refuted the said plea by stating that wide circulation was made by the Food Corporation of India of the said Circular and number of employees exercised their options in response to the same but the petitioner preferred to get normal promotion instead of opting for the notional Selection Grade in terms of the Circular. It has been further pleaded that at the stage when option of the said Circular was no more available and moreover, when the petitioner had already got two normal promotions, received arrears in that regard and had also retired on attaining the age of superannuation on 31.05.2008, it would not be relevant. Admittedly, there is no replication to the aforesaid averments made in the written statement or even by way of filing any appropriate response to the same.

Attention has also been invited to the affidavit of the respondent dated 23.08.2018, filed by describing the same as written statement/reply in the Letters Patent Appeal which was taken on record by order dated 05.09.2018. In para No.3 of the said affidavit, the respondent had categorically admitted that it was in the year 1999 that he came to know that his junior Shri Satya Pal was drawing more salary than him on the basis of order dated 29.04.1998.

It has been vehemently urged that as per the admission of the writ petitioner (respondent herein), the cause of action had accrued to him way-back in the year 1999 and for the next 8 years till after his retirement, he had chosen not to approach any Court of law. Thus, as such the claim sought to be raised in the year 2008 by way of CWP-14426-2008, as well as subsequently, was not only highly belated but hopelessly time barred. It has also been submitted that the plea of limitation (including delay and laches) can be taken up even at the appellate stage, as there can be no acquiescence in law. Moreover, responses obtained under RTI neither extend limitation nor give rise to fresh cause of action. Much stress has also been laid on the terms of the Circular, the benefit of which has been sought by the writ petitioner. It has been submitted that the said Circular stood acted upon and closed, as the last date for exercise of option was end of July, 1995. It has further been submitted that as per the embargo contained in the provisions of Clause 5 of the said Circular, which specifically provided that the persons senior to employee who had opted under the Circular shall not be entitled for step-up of pay at par of such optees, the respondent was not liable to be granted the notional benefit. It is further submitted that the writ petitioner was promoted to the post of Assistant Grade-II (Depot) against the panel year 1982 and then to the post of Assistance Grade-I (Depot) against the panel year 1994 and, thereafter, was not entitled for grant of Selection Grade. The Circular as such could not now be applied, the writ petitioner having taken promotions, whereas the junior being referred to namely Shri Satya Pal, had opted for the notional Selection Grade instead of normal promotion. In such case, a senior could not claim step-up in pay in view of the candid prohibition contained in Clause 5 of Circular No.5 of 1995

(Annexure P-10) and the same could not be bifurcated or selectively applied to suit the convenience of an employee.

With regard to the claim to payment of interest on the arrears released to the writ petitioner has also been opposed on the ground that on the one hand interest is being claimed on arrears of salary and on the other, benefits of Circular (Annexure P-10), whereby if the option had been exercised at the relevant time, the optee employee would have to return all the benefits of promotional post up to 12 years when the notional Selection Grade was to be released to the said employee. However, no explanation has been brought to our notice for the delay in payment of arrears after passing of the order dated 07.01.1998 (Annexure P-1), which is the basis for claiming interest on the delayed payment.

In view of the aforesaid factual position, learned senior counsel, on instructions, submits that the appellants would not be in a position to oppose the claim of interest on delayed payment of arrears and states that they concede to the said proposition for awarding interest. But at the same time, it is also submitted that the directions issued by the learned Single Judge permitting to exercise option at such a belated stage would not be sustainable in law, even if they were as a one time measure for dealing with the case of the respondent.

We are also satisfied that in view of the well settled principles, in the facts and circumstances of the present case, the appellants cannot escape the liability to pay interest on delayed payment, for which no justification or any plausible explanation is forthcoming.

From a perusal of the record, the following timeline emerges. Admittedly, the cause of action to claim the step up of pay arose to the writ petitioner in the year 1999 but the same was urged before the Court for the first time, after having retired on 31.05.2008, by way of CWP-14426-2008 and by that stage it was a dead cause as such being barred by limitation. Thereafter also, the writ petitioner pursued the matter like a lazy leisure litigant. Pursuant to the directions dated 31.08.2009 issued by this Court, the representation of the respondent was rejected by passing the order dated 22.12.2009 (Annexure P-13). Even the said order was challenged after a period of almost 3 years by instituting CWP-20893-2012, in November 2012.

Reliance has been placed on the judgment titled ***Union of India and others vs. Chaman Rana***, (2018) 5 SCC 798, to contend that mere filing of repeated representations could not be sufficient explanation for delay in approaching the Court for grant of relief and in service matters, the aggrieved must approach Court at the earliest opportunity or within reasonable time.

The Apex Court in ***Union of India and others vs. M.K. Sarkar***, (2010) 2 SCC 59, expounding the legal position where the Court or Tribunal gives a direction to consider a belated representation without examining the merits, held as under:

“15. When a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches

should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A court or tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct "consideration" without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

The aspect of delay in raising challenge and its consequential result had also been considered by the Apex Court in ***State of Uttarakhand and another vs. Shiv Charan Singh Bhandari and others***, (2013) 12 SCC 179, wherein it was held that representations relating to a stale claim or dead grievance does not give rise to a fresh cause of action. The relevant paras in that regard read as under:

"19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.

* * * *

22. In *BSNL v. Ghanshyam Dass (2)*⁶ (2011) 4 SCC 374 a three-Judge Bench of this Court reiterated the principle stated in *Jagdish Lal v. State of Haryana*⁷ (1997) 6 SCC 538 and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the Tribunal in 1997, they would not get the benefit of the order dated 7-7-1992.

23. In *State of T.N. v. Seshachalam*⁸ (2007) 10 SCC 137, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: (SCC p. 145, para 16)

“16. ... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

We are of the considered view that the petitioner from the very inception i.e. before the Writ Court in August 2008, had admittedly agitated a dead issue, which in the first place ought not to have been entertained being time barred. Representations relating to a stale claim do not give rise to a fresh cause of action. The relevant date for computing limitation would be with reference to the original cause of action and not with reference to the date on which the order dated 22.12.2009 was passed in compliance with the Court's direction. Mere submission of representation would not arrest time and the matter had to be taken before a Court of competent jurisdiction within the period of limitation/reasonable time, as the situation would

warrant. Moreover, no special circumstances had been pleaded or brought to our notice for the case of the writ petitioner to be dealt with as an exception and contrary to the mandate of the Circular itself, the benefit under which the claim for option has been made. In the absence of appropriate pleadings refuting the specific stand taken in the written statement that the circular was widely circulated and as such many employees exercised the option in response to the same, but the petitioner preferred to get normal promotions instead of opting for notional selection grade in terms of the said Circular, reliance could not be placed on that plea. Accordingly, no additional advantage to the contrary can be given with reference to the communication dated 26.06.2010 (Annexure P-9). Perusal of the same would reveal that it does not specify the material record or on what basis the said letter was issued, though it categorically records the writ petitioner's conference with the Area Manager on the same day.

In view of above and the stance of the appellants with regard to payment of interest on the delayed arrears of salary that was disbursed pursuant to the order dated 07.01.1998 (Annexure P-1), this appeal is liable to be accepted and the relief moulded appropriately.

Accordingly, the Letters Patent Appeal is allowed partially and the judgment passed by the learned Single judge is set-aside. A direction is issued to the appellants for payment of interest @ 7.5% p.a. on the arrears of salary on account of promotion vide order dated 07.01.1998 (Annexure P-1), that was admittedly paid at a much belated stage. The interest would be calculated from the date of the promotion order, till its payment. The said

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amount be disbursed to the respondent within a period of 3 months from the date of receipt of a certified copy of this order.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

April 19, 2022.
Ajay

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No