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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 14.11.2022

+ W.P.(C) 4426/2017 & C.M. No. 43338/2018

DR. DILIP KUMAR

..... Petitioner

versus

INDIAN COUNCIL OF AGRICULTURAL RESEARCH (ICAR) &
ORS
..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Barun Kumar Sinha, Ms. Pratibha Sinha and Mr. Mudit Kaul, Advocates.

For the Respondent: Mr. S.K. Gupta, Advocate.

CORAM:-

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 23.01.2017 whereby the original application of the petitioner impugning order dated 16.12.2016 (also impugned herein) was dismissed. Petitioner is also aggrieved by order dated 16.12.2016 whereby the original application filed by the petitioner seeking a declaration that he is *inter-alia* entitled to retirement pension has been dismissed on the ground of limitation.
2. The Tribunal in the impugned order has held that petitioner took voluntary retirement from service on 22.01.1994 and the petitioner

thereafter filed an application in 2015 seeking grant of pension which was rejected on the ground of delay.

3. Petitioner joined Indian Council of Agricultural Research (ICAR) on 10.06.1973. As per the petitioner on completion of 20 years of service petitioner applied for voluntary retirement as per the rules which was approved by the competent authority and petitioner was relieved on 22.01.1994. Petitioner thereafter joined the services of United Nations Development Project in 1994 where he continued till 29.09.2005.

4. Thereafter he returned to India and was selected as Director of Central Institute of Fisheries Education in the year 2005 and then submitted a request for payment of voluntary retirement benefits which was denied on the ground that petitioner did not have qualifying service of 20 years when he had taken voluntary retirement from ICAR.

5. Learned counsel submits that there was some period on which petitioner was on leave on account of illness and death in his family. He submits that as per the rules the request for voluntary retirement could have been processed only after completion of 20 years of service and at the time when voluntary retirement was sanctioned no such objection was taken so petitioner was under a belief that he had the qualifying service of 20 years.

6. This is disputed by learned counsel for the respondent who submits that in 1981 itself petitioner was informed that the period of leave shall be treated as extraordinary leave and shall not be counted

for the purpose of continuity of service or pension.

7. The controversy in the present case is two fold. One is as to whether the petitioner had completed 20 years of qualifying service prior to seeking voluntary retirement and the effect of the competent authority acceding to the request for voluntary retirement for the purposes of grant of pension and the other issue that arises is as to whether the Tribunal was justified in rejecting the petition solely on the ground of limitation.

8. Learned counsel for the petitioner submits that pension being a recurring right limitation would not apply as a cause of action to seek the relief of pension would accrue from month to month and at best the claim of pension could be restricted to some period prior to filing of the petition.

9. By the impugned order the Tribunal has merely considered the period of delay as not having been sufficiently explained by the petitioner and dismissed the petition solely on the ground of limitation.

10. Reference may had to the judgment of the Supreme Court in *Union of India & Ors. vs. Tarsem Singh, 2008(8) SCC 648* wherein the Supreme Court has held 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.

8. In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to sixteen years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.

11. In *Tarsem Singh (Supra)* the Supreme Court has held that normally a belated service-related claim would be rejected on the ground of delay and laches, however, one of the exceptions to the rule

is cases relating to continuing wrong. The Supreme Court has held that where a service-related claim is based on the 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. The Supreme Court further mentioned a caveat in the form of an exception to the exception i.e if the grievance is in respect of any order or administrative decision which related to or affected several others then reopening the issue would affect the settled rights of third parties. In those circumstances applying the exception to exception the claim would not be entertained. As an example, the Supreme Court stated that if an issue related 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. The Supreme Court thereafter directed that in such cases the consequential relief of recovery of arrears would be restricted normally to a period of three years prior to the date of filing of the writ petition.

12. We notice that the Tribunal has not adverted to the law laid down by the Supreme Court in *Tarsem Singh (Supra)*. The claim of the petitioner is for grant of pension on account of the alleged qualifying service rendered by the petitioner. No doubt there is a gross unexplained delay on account of the petitioner in approaching the Tribunal, however, since the grant of pension is a continuing wrong and cause of action accrues on a month to months basis, we are of the view that the Tribunal should have at least considered the claim of the petitioner on merits and not rejected it solely on the ground of limitation. Since the case of the petitioner is with regard to payment of

pension it also does not fall within the category of exception to the exception as carved out by the Supreme Court.

13. In view of the above, the impugned orders are set aside. The original application of the petitioner is restored to its original number. The Tribunal shall consider the case of the petitioner on merits and in case pension is found to be payable, restrict the same to a period of three years prior to approaching the Tribunal by way of the Original Application.

14. It is clarified that this Court has neither considered nor commented upon the merits of the contention of either party on the admissibility of the claim of the petitioner for grant of pension.

15. Petition is allowed in the above terms. Parties are directed to appear before the Tribunal for directions on 16.12.2022. Since the claim of the petitioner has been pending for several years, we request the Tribunal to expedite the proceedings.

SANJEEV SACHDEVA, J.

TUSHAR RAO GEDELA, J.

NOVEMBER 14, 2022

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