

121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-27339-2023

Date of decision: 06.12.2023

Suresh Kumar

.....Petitioner

V/s

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Mayur Karkra, Advocate
for the petitioner.

Mr. Arun Gupta, AAG Punjab.

DEEPAK MANCHANDA J. (ORAL)

1. By way of present writ petition petitioner has sought quashing of the impugned order dated 18.04.2012 (Annexure P-12) and letter/communication dated 04.11.2022 (Annexure P-16) declining the annual increment of service rendered by the petitioner on adhoc basis with a further prayer to decide legal notice dated 21.01.2023 (Annexure P-17) seeking annual increment of service rendered by the petitioner from 01.11.1993 to 06.12.1995.

2. The facts emanating from the pleadings of the present case are that petitioner was appointed by respondent No.4 on the post of Electrician on adhoc basis vide letter dated 07.05.1987. Thereafter, vide separate appointment letters the petitioner continued on the same post, he was again issued a letter of appointment vide letter dated 08.10.1988 (Annexure P-3) and was appointed as Electrician with effect from 19.09.1988. Thereafter, on 12.11.1993 the petitioner

was appointed to the post of Junior Mechanic Electrical against the sanctioned

post under the pay scale of Rs.1200/- per month and allowances as admissible as payable to the employees of Milk Union, Patiala on adhoc basis giving temporary appointment till such time a regular arrangement is made.

3. Learned counsel for the petitioner contends that other employees who were inducted in the Engineering Section on ad-hoc basis along with the petitioner were made regular whereas the petitioner was not made regular. Thereafter, the petitioner requested respondent No.4 regarding making him regular or providing him requisite increments and emoluments on the same scale on ad-hoc basis as given to other persons appointed along with the petitioner, but the same was declined vide reply dated 18.03.1998 (Annexure P-8). Aggrieved by the same a representation dated 30.09.1998 reiterating his claim was submitted claiming that he is entitled to eight increments same as his co-employees of the respondent-Union but, vide reply dated 8.12.1998 (Annexure P-11) the same was declined. He further submits that the petitioner is continuously pursuing his claim regarding increments for the service rendered by him but till today no such relief has been granted. Hence, the present writ petition.

4. Heard and perused the case file.

5. A bare perusal of Annexures P-12 and P-16 reveals that petitioner was appointed to the post of Junior Mechanic Electrical on temporary basis/adhoc basis with the conditions that same can be terminated at any time without any notice or compensation where petitioner was adjusted till such time a regular arrangement is made. As per Annexure P-12 which was communicated on 18.04.2012 vide which the prayer for granting annual increment for the period on which petitioner worked on adhoc basis it was clarified that the petitioner was employed for the post of Junior Mechanic Electrical with the basic pay of Rs.1200/- plus as per the salary paid to the employees of Milk Union, Patiala and

was granted regular salary scale of Rs.1200-30-1560-40-2000-50-2100 per month for the said post when vide order dated 06.12.1995 the petitioner was promoted to the post of Mechanic Electrical under the pay scale of Rs.5000-150-5800-200-7000-220-8100. It was further clarified that the annual increment of service done on the adhoc basis was applicable only when the appointment of the employee was done on the basis of adhoc/89 days of division (bifurcate) salary scale and the period for which services done on adhoc basis is more than one year. It is clearly mentioned therein that since the appointment of the petitioner for the post of Junior Mechanic Electrical was not done on adhoc basis/89 days nor he had been paid salary for the post of Junior Mechanic Electrical on the designated pay scale hence, there was no justification for granting increment for the period of service rendered from 01.11.1993 to 05.12.1995. Accordingly, the petitioner was not entitled for such increment. Undisputedly, the said letter dated 18.04.2012 (Annexure P-12) was never challenged by the petitioner and is being challenged now after the gap of more than ten years by way of present petition. Moreover, the prayer of the petitioner for granting annual increment of services rendered by the petitioner from 01.11.1993 to 06.12.1995 after the gap of more than twenty years is also not tenable. Being a stale claim and is barred by the principle of delay and laches. Further, the legal notice dated 21.01.2023 after two decades will also not help the petitioner to have a fresh cause of action for a stale claim which is related to the year 1993 to 1995 and does not help the petitioner being a fence-sitter who slept over his rights for such a long period.

6. The Hon'ble Apex Court in the case of **State of Uttar Pradesh and others Vs. Rajmati Singh, Civil Appeal No. 9329 of 2022** has held as under:-

18. In "Union of India and Ors. v. Tarsem Singh" (2008) 8 SCC 652, this Court summarized the settled principles in the following manner:-

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought 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."

*19. Close to the facts of this case, in "**C. Jacob v. Director of Geology and Mining And Other**" (2008) 10 SCC 115, this Court, having found that the employee suddenly brought up a challenge to the order of termination of his services after 20 years and claimed all consequential benefits, held that the relief sought for was inadmissible. The legal position in this regard was laid out in the following terms:*

"10. Every representation of the Government for relief, may not be applied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a decision is issued by a court/tribunal to consider or deal with the representation, usually the directee (person

directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of "acknowledgement of a jural relationship" to give rise to a fresh cause of action.

12. When a government abandons service to take alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for the purpose of pension. That will be a travesty of justice.

13. Where an employee unauthorisedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches the court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage discipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back wages."

20. Taking into consideration the cumulative effect of the facts in this case, coupled with the legal principles cited above, we are satisfied that the claim of the respondent is stale, highly belated, time barred, and the same ought not to have been entertained by the Tribunal or the High Court after a span of over three decades.

21. We reiterate that undue sympathy and a perceived liberal approach by a judicial forum can lead to significant adverse consequences. It not only gives rise to illegitimate expectations in the mind of fence sitting employees, but also leads to undue burdens on the public exchequer. Not only this, the indulgence

shown by a Court solely on equitable considerations, dehors the law, breeds indiscipline in public services and incorrigible employees start looking for a dividend on the period of their absence or for dereliction of duty. While there is no evidence to suggest that the respondent deliberately absented herself from duty, the facts speak for themselves in that she failed to take any recourse provided under law for more than three decades. We may say at the cost of repetition that the respondent had hardly served as an untrained teacher on temporary basis for a period of 2h years and in terms of the impugned judgment of the High Court, she has been held entitled to get arrears of pay of more than 40 years, besides all the retiral benefits. We are, therefore, of the view that the High Court ought not to have drawn adverse inferences against the appellants or put the entire onus on them to prove that the respondent was unjustifiably denied the resumption of duties. The approach of the High Court in this regard is completely erroneous and contrary to the settled principles of law. The impugned Judgment thus cannot sustain and is liable to be set aside.

7. Keeping in view, the facts of the present case and the judicial precedent cited above, the present petition is devoid of merits and is hereby dismissed.

06.12.2023
Sapna

(DEEPAK MANCHANDA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No