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

% *Date of Decision: 02nd March, 2023*

+ W.P.(C) 12087/2022

BRIJ KISHORE GUPTA Petitioner
Through: Mr. P. M. Tiwari and
Mr. Manoj Kr. Gupta, Advocates.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Ved Prakash Tripathi,
Senior Panel Counsel with Mr. Girjesh
Kumar Narula, Advocate for R-1.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed seeking quashing/setting aside of Administrative Instructions for implementation of the 'Provisions of General Insurance (Rationalisation of Pay Scales and other Conditions of service of Officers) Amendment Scheme, 2010, as being discriminatory as they restrict the benefit of the Scheme to employees who left National Insurance Co. Ltd. ('NICL') and joined other Government Departments between 01.08.2007 to 08.10.2010. A direction is also sought to the Respondents to release the retirement benefits arising out of enhanced pay and allowances under the said Notification dated 08.10.2010 as well as Circular of NICL dated 18.10.2010.

2. Petitioner joined the NICL on 04.06.2007 as an Administrative Officer and left the organisation on 17.06.2010. Petitioner thereafter joined as Ordinance Officer in the Ministry of Defence on 29.06.2010, upon being selected through an examination conducted by UPSC in

the year 2008.

3. A Gazette Notification being S.O. No.2470(E) was issued on 08.10.2010 (hereinafter referred to as 'Notification, 2010) providing for revision of scales of pay and allowances of Class-I Officers in NICL. Pursuant to the Notification, 2010, Administrative Instructions were issued on 18.10.2010 for implementation of the Notification, 2010. As per para 2 of the Circular dated 18.10.2010, which deals with 'eligibility', the Notification, 2010 applies to all Class-I Officers who were in service as on 01.08.2007 and continue to be in service on the date of the issue of the Notification, 2010 or those who were in service on 01.08.2007 and died/retired/superannuated or sought voluntary retirement thereafter and also applies to those who were appointed on any date after 01.08.2007.

4. Grievance of the Petitioner is that he had served NICL between 04.06.2007 to 17.06.2010 and joined Ministry of Defence after obtaining NOC from NICL and through proper channel. Being an erstwhile employee of NICL, he is entitled to pay revisions notified by the Notification, 2010 dated 08.10.2010 read with Circular dated 18.10.2010. The Circular has been given effect from 01.08.2007 when the Petitioner was in service of NICL and therefore he cannot be deprived of the higher pay scales. It is submitted that the Petitioner could not approach the Court earlier as he was unaware of the Notification, 2010/Circular and learnt of the same only recently through a friend in October, 2020.

5. When the writ petition was first listed on 22.08.2022, following order was passed by the Court, requiring the Petitioner to explain why the writ petition should not be dismissed on ground of gross delay and laches:-

“ ...

3. The petitioner seeks to assail the provisions of General Insurance (Rationalization of Pay Scales and other Conditions of service of

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Officers) Amendment Scheme 2010.

4. At the outset, it has been put to learned counsel for the petitioner as to why the present petition should not be dismissed on the ground of gross delay and laches especially when it is an admitted position that the petitioner was well aware of the impugned scheme in the year 2010 itself. He prays for and is granted four weeks' time to examine the issue and file an additional affidavit.

5. List on 18.01.2023."

6. Pursuant to the said order, an additional affidavit had been filed by the Petitioner. It is stated in the affidavit that since the Petitioner had joined Ministry of Defence after leaving NICL, he was unaware of the Notification published or circulated in NICL as the same was not published outside the said Institution and learnt of the same only in the month of October, 2020 through a friend. It is further stated that claims relating to pay scales give rise to continuing cause of action or successive wrongs and Courts have repeatedly held that in cases of continuing or successive wrongs, delay and laches or limitation will not thwart the claim as long as the claim, if allowed, does not have adverse repercussions on settled third party rights. Reliance is placed on the judgments of the Supreme Court in ***Union of India and ors. v. Tarsem Singh, (2008) 8 SCC 648***, for the said proposition as well as on ***Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, (2012) 5 SCC 157***.

7. I have heard learned counsels for the parties and perused the affidavit dated 10.09.2022, since delay and laches was the first hurdle that the Petitioner was required to cross by virtue of order dated 22.08.2022.

8. Before proceeding to examine if the present petition is barred by delay and laches, it would be useful to refer to the law of delay and laches in the context of writ petitions, as it has evolved over the years. In ***State of Uttaranchal and Another v. Shiv Charan Singh Bhandari and Others, (2013) 12 SCC 179***, the Supreme Court observed that

delay and laches on part of a Government servant may deprive him of

the benefit otherwise entitled to. Law leans in favour of those who are alert and vigilant and even if there is no prescribed period for filing writ petitions under Article 226 of the Constitution of India, yet they should be filed within a reasonable time. A person, who allows things to happen and then approaches the Court and puts forward a stale claim, trying to unsettle settled matters, can certainly be refused relief on account of delay and laches. An employee who sleeps like Rip Van Winkle and gets up from slumber at his own leisure, deserves to be denied relief. I may also refer to another judgment of the Supreme Court in *State of M.P. and Others v. Nandlal Jaiswal and Others*, AIR 1987 SC 251, wherein the Supreme Court held that power of the High Court to issue a writ is discretionary and in exercise of the discretion, the Court should not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. This judgment was relied on by the High Court of Punjab and Haryana in *Suraj Mal v. The State of Haryana and Others*, 2014 SCC OnLine P&H 18673, where the issue under consideration was revision of pay scales and the writ petition was filed nearly nine years after retirement. The writ petition was dismissed on account of delay and laches, there being no satisfactory explanation and relevant para of the judgment is as under:-

“15. 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. In Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan, (2006) 4 SCC 322, the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.”

9. Examining the facts of the present case on the touchstone of the law enunciated by the Supreme Court on the doctrine of delay and

laches, there is no dispute that the Petitioner seeks benefit of higher pay and allowances under Notification, 2010 dated 08.10.2010 and a Circular dated 18.10.2010, issued pursuant to the said Notification for its implementation. The only explanation for coming to the Court after 13 years is that Petitioner learnt of the Notification only in October, 2020, through a friend. In the opinion of this Court, this cannot serve a plausible or satisfactory explanation entitling the Petitioner to seek relief. In any event, even this plea is belied from the mere fact that the Notification, 2010 dated 08.10.2010 is a Gazette Notification and has been in public domain from the date of its publication. Ignorance of a fact can be no reason to approach the Court belatedly. It is trite that a person who sleeps over his right is not entitled to any relief from the Court and the Court would assist only those who are vigilant in prosecuting their rights.

10. Ordinarily, claims relating to pay and allowances are considered as giving continuous cause of action to an employee and Courts have been entertaining writ petitions though restricting the arrears to three years prior to the date of an employee approaching the Court in given cases. The present case, however, is not a case of higher pay and allowances *simpliciter*. From a plain reading of the writ petition, it appears that the Petitioner is seeking benefit of enhanced pay and allowances under Notification, 2010 published on 08.10.2010 and Circular dated 18.10.2010, from the date of his discharge from NICL with 10% interest on arrears. Para 2 of the Circular deals with eligibility and para 2.1 provides that the Scheme shall apply to Class I Officers who were in service as on 01.08.2007 and continue to be in service on the date of the Notification or who have subsequently died/retired on superannuation/opted for voluntary retirement or those who were appointed after 01.08.2007. From the provisions of para 2.1, it is crystal clear that Petitioner was appointed on 04.06.2007 and left

NICL on 17.06.2010 and therefore does not fall in any of the sub-
paras of para 2.1 as it is his own case that he had submitted technical
resignation for joining Ministry of Defence on 29.06.2010 as
Ordinance Officer. As per the case set up in the petition, Petitioner
joined Ministry of Defence after submitting technical resignation with
NICL and through proper channel. Nothing is spelt out in the writ
petition as to whether at the time of joining the subsequent employer,
Petitioner was granted any benefit of past service and/or pay
protection. Therefore, it cannot be ascertained as to what would be the
impact of granting higher pay scales to the Petitioner after 13 years on
the salary he is drawing under the Ministry of Defence, which is not
even impleaded as a party in the present petition. In this situation,
permitting the Petitioner to rake up a stale claim after over a decade,
despite the Notification, 2010 being in public domain on the date of its
publication, would be unjust not only towards NICL but also the
current employer of the Petitioner.

11. For all the aforesaid reasons, the writ petition cannot be
entertained as the relief claimed is clearly barred by delay and laches.

12. Writ petition is accordingly dismissed.

JYOTI SINGH, J

MARCH 02, 2023/shivam/kks