

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 834 of 2024

With

IA NO: CAN 1 of 2024

Indian Institute of Management Calcutta & Ors.

Vs.

Ananta Kumar De & Ors.

For the Appellants : Mr. L. K. Gupta, Sr. Adv.
 Mr. D. N. Ray, Adv.
 Mr. Bhaskar Mukherjee, Adv.
 Ms. Debdeetta Dutta, Adv.

For the Respondents : Mr. Soumya Majumder, Adv.
 Mr. Ayan Banerjee, Adv.
 Ms. Mrinalini Majumder, Adv.

Hearing Concluded on : August 12, 2024
 Judgement on : September 02, 2024

DEBANGSU BASAK, J.:-

1. Appellants have assailed the judgement and order dated March 11, 2024 passed by the learned Single Judge in WPA No. 15757 of 2022. By the impugned judgement and order, learned Single Judge has allowed the writ petition of the private respondents. Learned Single Judge has held that the private respondents are entitled to the same relief and benefits at par with the writ petitioners in WP No. 4239 (W) of

2000. The learned Single Judge has directed the authorities to confer higher scale of pay equivalent to the pay scale of library staff of IIT and other universities to the private respondents with effect from the date of conferment of such benefits to the writ petitioners in WP No. 4239 (W) of 2000 and fix pension and/or other retirement benefits according to such scale forthwith and take all necessary steps according to law.

2. Learned senior advocate appearing for the appellants has contended that, the claim of the private respondents made in the writ petition resulting in the impugned judgement and order is time barred. He has contended that, the private respondents were fence sitters and did not ventilate their grievances at the material point of time. By reason of their non-action, they have made their right unenforceable.

3. Learned senior advocate appearing for the appellants has contended that, the central government issued a circular of revision of pay scale of the non-academic staff on February 28, 1989. In 1990, some of the library staffs of the appellants had filed a writ petition seeking a direction upon the appellant No. 1 as also Union of India to extend the benefits of the revised pay scale as introduced by the central government in the notification dated February 28, 1989. Such writ petition

was decided in favour of the writ petitioners therein on March 20, 1989.

4. Learned senior advocate appearing for the appellants has submitted that, Union of India preferred an appeal being FMA 80 No. 2306 of 1994 against the order dated March 9, 1994. Such appeal was allowed on April 6, 1998 and the order dated March 9, 1994 was set aside. The matter was remanded to the central government for taking decision.

5. Learned senior advocate appearing for the appellants has submitted that on January 12, 1999, the central government decided the issue of grant of pay scale, giving prospective effect thereto. A section of the library staff of the appellant No. 1, excluding the private respondents herein, had filed a writ petition which was allowed by an order dated September 17, 2003. Such order had directed conferment of the pay scale of the University to the writ petitioners therein.

6. Learned senior advocate appearing for the appellants has submitted that, the central government preferred an appeal against the order dated September 17, 2003 which was dismissed on June 3, 2008. The central government had preferred a special petition being Civil Appeal No. 8467 of 2012 directed against the order dated June 3, 2008 of the

Division Bench. Such civil appeal No. 8467 of 2012 was dismissed by the Supreme Court on December 9, 2020. Thereafter, the private respondents herein had filed a writ petition which has resulted in the impugned judgement and order.

7. Learned senior advocate appearing for the appellants has contended that, the private respondents are not entitled to any relief in the writ petition by reason of delay, waiver, acquiescence and laches. He has pointed out that, there was no explanation offered by the private respondents with regard to the delay. In support of such contention, he has relied upon **2008 Volume 8 Supreme Court Cases 648 (Union of India and Others vs. Tarsem Singh)**, and **2010 Volume 12 Supreme Court Cases 538 (State of Madhya Pradesh and Others vs. Yogendra Shrivastava)**.

8. Relying upon **2014 Volume 4 Supreme Court Cases 108 (Chennai Metropolitan Water Supply and Sewerage Board and Others vs. T.T. Murali Babu)**, learned senior advocate appearing for the appellants has contended that, since the private respondents are fence sitters, they are not entitled to any relief in the writ petition.

9. Learned senior advocate appearing for the appellants has submitted that, out of the 9 private respondents, two are heirs of the deceased library staff. The seven library staffs and the two deceased library staffs represented by the heirs as the private respondents had superannuated commencing from October 31, 1993 till December 31, 2017. At no point of time, during their tenure as library staff, did they approach any court to ventilate their alleged grievances with regard to the pay scale. They should therefore not be allowed to raise such issues subsequent to their superannuation.

10. Learned advocate appearing for the private respondents has contended that, appellant No. 1 had espoused the cause of the private respondents and therefore, cannot be allowed to submit to the contrary. He has pointed out that, it was a policy decision of the appellant No. 1 to make the pay of library staff at par with the University. Consequently, same pay scale should be given to all library staffs at the relevant point of time.

11. Learned advocate appearing for the private respondents has submitted that, the parties are governed by the judgement and order dated June 3, 2008 of the Division Bench. According to him, such judgement and order was

passed in a proceeding which was in rem and therefore binding upon the appellants as also. He has contended that, point of delay was not taken before the learned Single Judge. Moreover, on the request being made for grant of similar treatment as that of the other library staffs, who were given such benefit pursuant to the judgement and order dated June 3, 2008 passed by the Division Bench, the response of the appellant No. 1 was not one of delay.

12. Learned advocate appearing for the private respondent has drawn the attention of the court to the orders passed by the learned Single Judge in the two earlier writ petitions and the order dated June 3, 2008 of the Division Bench. He has contended that, all library staffs are entitled to one pay scale in terms of the judgement and order dated June 3, 2008. The private respondents as library staffs are therefore entitled to the same pay scale as that of their colleagues who have been extended the benefits in terms of the judgement and order dated June 3, 2008.

13. In support of his contentions, learned advocate appearing for the private respondent has relied upon **2015 Volume 1 Supreme Court Cases 347 (State of Uttar Pradesh and Others vs. Arvind Kumar Srivastava and**

Others)* and *2006 Volume 2 Supreme Court Cases 747 (State of Karnataka and Others vs. C. Lalitha).

14. Private respondents as retired library staffs had filed a writ petition which resulted in the impugned judgement and order. Private respondents in such writ petition had traced their right to the revised scale of pay introduced for librarians in engineering colleges and other degree level technical institutes including management institutes by the government order dated February 28, 1989.

15. Private respondents have claimed that although the appellant No. 1 extended the revised scale introduced by the government order dated February 28, 1989 for the teaching faculty, library staff had been unjustly deprived of such benefit. Private respondents have referred to the writ petitions filed by a section of the library staffs and the orders passed therein including the orders passed in appeal. None of the private respondents had joined such writ petition or the appeals at any point of time. Nothing has been placed on record to suggest, let alone establish that, the private respondents had ever ventilated their grievances with regard to pay revision in terms of the government order dated February 28, 1989 during their service period.

16. Two writ petitions had been filed with regard to the pay revision introduced by the government order dated February 28, 1989. The first writ petition was disposed of on March 20, 1989. Appeal therefrom being FMAT No. 2306 of 1994 was disposed of on April 6, 1998 remanding the matter to the central government for taking a decision. Central government had taken a decision on January 12, 1999. Central government had allowed prospective upgradation of the post of librarian, deputy librarian, senior assistant librarian, assistant librarian and library assistant in the appellant No. 1, the institution.

17. A section of the library staffs of the appellant No. 1 had challenged the decision of the central government dated January 12, 1999 by way of a writ petition being WP No. 4239 (W) of 2000. Such writ petition had been disposed of by an order dated September 17, 2003. By the order dated September 17, 2003, the learned Single Judge had set aside the decision of the central government dated January 12, 1999 and directed the authorities to confer the scale of pay given to the library staff of the universities, to the petitioners therein, as the authorities failed to assign any special reason

for not granting such scales as per the earlier direction of the Division Bench.

18. Central government had preferred an appeal against the order dated September 17, 2003 passed in the writ petition. Such appeal being FMA No. 583 of 2005 had been dismissed by a judgement and order dated June 3, 2008. Special Leave Petition directed against the judgement and order dated June 3, 2008 was dismissed on December 9, 2020.

19. It is in 2022 that the private respondents had filed the writ petition which has resulted in the impugned judgement and order.

20. *Tarsem Singh (supra)* has held that, unless recurring/successive wrong is established, relief relating to arrears should be limited to 3 years before the date of filing of the writ petition, or from the date of demand to date of writ petition, whichever was lesser. It has explained the difference between a continuing wrong and a recurring/successive wrong.

21. *Yogendra Shrivastava (supra)* has held that, in respect of grant of relief of recovery of arrears for the past period, the principle relating to recurring and successive

wrongs would apply. Therefore, the relief of payment of arrears will have to be restricted to a period of 3 years prior to the date of the original application. It has followed **Tarsem Singh (supra)**.

22. T.T Murali Babu (supra) has observed that the doctrine of delay and laches should not be lightly brushed aside. It has observed as follows: –

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. In the case at hand, though there has been four years' delay in approaching the court, yet the writ

court chose not to address the same. It is the duty of the court to scrutinise whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons — who compete with “Kumbhakarna” or for that matter “Rip Van Winkle”. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.”

23. C. Lalitha (supra) has held that, all persons similarly situated should be treated similarly in service jurisprudence. It has also observed that, only because one person has approached the court would not mean that the persons similarly situated should be treated differently. The observations made in **C. Lalitha (supra)** has been rendered in the context of ranking amongst successful candidates.

24. Arvind Kumar Srivastava (supra) has dwelt upon the relief of parity and exception to delay/laches/acquiescence in relation to entitlement of benefit of judgement in rem with intention to benefit all similarly situated persons irrespective of whether they approached the court or not. It has summarised the legal principles after considering the authorities cited before it as follows –

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The 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.

22.2. However, this principle is subject to well-recognised 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.

22.3. 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 persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India [K.C. Sharma v. Union of India, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). 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.”

25. The private respondents herein have fallen within the purview of paragraph 22.2 of **Arvind Kumar Srivastava (supra)**. Private respondents have not been able to establish that they are governed by the exception noted in paragraph

22.3 thereof. The last judgement and order of the High Court on the issue of entitlement of pay as library staff had been rendered by the Division Bench on June 3, 2008. Division bench on June 2008 had upheld the order of the learned Single Judge dated September 17, 2003 passed in the writ petition filed by a section of the library staffs. The private respondents were not parties in such writ petition or in the appeal preferred therefrom. Neither the order dated September 17, 2003 nor the order of the appeal court dated June 3, 2008 directed grant of pay revision benefits to all library staffs of the appellant No. 1. Neither of these 2 orders can be construed to be orders that have been passed in rem. Neither the writ petition nor the appeal had been filed in representative character. No steps akin to Order I Rule 8 of the Code of Civil Procedure, 1908 had been taken therein. All parties affected thereby have not been made parties therein.

26. Private respondents had delayed approaching the Court in respect of a cause of action which arose on February 28, 1989 till 2022 when they filed the writ petition which resulted in the impugned judgement and order. Private respondents have not explained the delay in approaching the writ court.

27. In such circumstances, we set aside the impugned judgement and order dated March 11, 2024 passed in WPA No. 15757 of 2022. WPA No. 15757 of 2022 is dismissed.

28. MAT No. 834 of 2024 along with all connected applications are disposed of without any order as to costs.

[DEBANGSU BASAK, J.]

29. I agree.

[MD. SHABBAR RASHIDI, J.]