

**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

R.V.W. 241 of 2023

With

CAN No. 1 of 2023

In

WP.ST 149 of 2019

Renuka Mali

VS.

The State of West Bengal & Ors.

For the Applicant : Mr. Biswanath Chakraborty
Mr. Krishnendu Bera
Ms. Debolina Chakraborty

For the State : Mr. Tapan Kumar Mukherjee, Sr. Adv.,
Mr. Pinaki Dhole
Mr. Somnath Naskar

Heard on : February 27, 2024

Judgment on : February 27, 2024

DEBANGSU BASAK, J.:-

01. Review applicant seeks review of the order dated August 25, 2023 by which WP.ST 149 of 2019 was disposed of.

02. Learned advocate appearing for the review applicant submits that, the review applicant was granted compassionate appointment on October 1, 1999. Review applicant superannuated in 2007. Review

applicant was entitled to compassionate appointment much prior to 1999 and, therefore, review applicant was entitled to notional benefit at least from 1995. On grant such notional benefit, review applicant will come within the zone of consideration for pension, which she was denied due to her inadequate period of service, counting the period of her service from October 1999 till her superannuation in 2007.

03. Learned advocate appearing for the review applicant submits that, the learned Tribunal erred in not considering the fact, that non-grant of the pension was a continuing wrong and that the original application before the Tribunal was not barred by limitation. He relies upon **(1995) 5 SCC 628 (M.R. Gupta vs. Union of India & Ors.)**, **(2008) 8 SCC 648 (Union of India & Ors. vs. Tarsem Singh)** and **(1996) 8 SCC 637 (Pilla Sitaram Patrudu & Ors. vs. Union of India & Ors.)** in support of his contention that when there is continuing wrong, there is no question of limitation.
04. Learned advocate appearing for the review applicant draws the attention of the Court to two orders of the Co-ordinate Bench passed while admitting the writ petition. He submits that, the Co-ordinate Bench returned their *prima facie* finding that the Tribunal erred in deciding the issue of limitation as against the review applicant. According to him, the order dated August 25, 2023 disposing of the writ petition directed against the erroneous order of the Tribunal contained an error on the face of the record as it did not decide the

issue of limitation correctly. He submits, therefore, that the authorities be directed to grant pension to the petitioner.

05. Learned Senior Advocate appearing for the State submits that, there is no error apparent on the face of the record so far as the order dated August 25, 2023 is concerned. Orders of the Co-ordinate Bench while admitting the writ petition were interim orders and specifically stated to be passed on the basis of *prima facie* finding. In any event, according to him, a Court is entitled to reassess the entire evidence at the final hearing and be not bound by the *prima facie* finding returned at the interim stage.

06. Adverting to the facts of the present case, learned Senior Advocate appearing for the State submits that, the review applicant superannuated from service in 2007. Her request for pensionary benefit was rejected by the authorities in writing by a letter dated August 22, 2007. The review applicant never assailed such order of rejection dated August 22, 2007. He draws the attention of the Court to the provisions of Sections 20 and 21 of the Administrative Tribunal Act, 1985. He submits that, once a final order was passed, the rights *inter se* between the parties stood crystallised. In the facts of the present case, right to receive pension was decided as against the review applicant on August 22, 2007. Subsequent to August 22, 2007, it cannot be contended on behalf of the review applicant that, there was a continuing wrong occurring with regard to non-payment of pension. Review applicant did not approach the Tribunal within

the time period prescribed under Section 21 of the Act of 1985 and consequently, the learned Tribunal was right in rejecting the original application.

07. Relying upon **(2019) 16 SCC 348 (State of West Bengal & Ors. vs.**

Dr. Tanmoy Mondal), learned Senior Advocate appearing for the State submits that in order to assume jurisdiction, a Court considering a review application must return a finding that there was an error apparent on the face of the record requiring review. In the facts of the present case, he submits that, there is no error apparent on the fact of the record. The order under review records the rival contentions of the parties and returned a definite finding as to the right of the review applicant. According to him, essentially, the review applicant is seeking to re-argue the entire appeal in the garb of a review application, which is not permissible. He, therefore, submits that the review application should be dismissed.

08. Learned Advocate appearing for the review applicant in reply refers to a letter dated July 8, 2016 issued on behalf of the review applicant and submits that, request for pensionary benefit was made in such letter and that, such letter remained un-replied to and the request made therein remained undecided. Therefore, the demand for pensionary benefit remained undecided till the review applicant approached the Tribunal in 2016.

09. The husband of the review applicant was working in the Settlement Office when he died-in-harness on September 14, 1983. Consequent

to his death, review applicant applied for compassionate appointment on October 7, 1983. Review applicant filed a writ petition being C.O. No. 619(W) of 1986 for disbursement of dues of her deceased husband. An appeal was carried by the review applicant against the order passed by the learned Single Judge in such writ petition. The appeal was disposed of by an order dated February 10, 1986 by directing the authorities to consider the application of the review applicant for compassionate appointment. Review applicant filed a contempt petition in respect of the order dated February 10, 1986 of the appeal Court. A letter of appointment was issued to the younger brother of the deceased husband. Review application, thereafter, approached the High Court by way of a writ petition being C.O. No.8167(W) of 1995 challenging the appointment of compassionate appointment of the younger brother of her deceased husband. During the pendency of such writ petition, the appointment of the younger brother of the deceased husband was cancelled and the review applicant was granted the compassionate appointment. In such view, the writ petition was dismissed as infructuous on May 18, 1995.

10. Apparently, despite the order dated May 18, 1995, the review applicant was granted compassionate appointment only on September 22, 1999. Review applicant superannuated from service on June 30, 2007. Review applicant made an application for pension which was rejected by a writing dated August 22, 2007, in view of the

inadequacy of the period of service of the review applicant. Admittedly, the review applicant does not possess qualifying period of service to be entitled to pension.

11. Review applicant cannot be said to be a person who is not aware of her rights. She approached the High Court twice by way of two writ petitions. She carried an appeal against one order passed in the first writ petition. She was canvassing her rights for receipt of the death-cum-retirement benefits of her deceased husband until she received the same to her satisfaction. She was also aware of the order of rejection of her claim for pension contained in a letter dated August 22, 2007.
12. It can be inferred from the conduct of the review applicant prior to her approaching the Tribunal in 2016 with regard to non-receipt of the pensionary benefit that, she was aware of her rights as the spouse of the deceased employee. As noted above, she approached the High Court twice by way of writ petitions and carried an appeal in one of the writ petitions. She also approached the Tribunal once in respect of her claim with regard to the retirement benefits.
13. Review applicant was represented by Advocates all throughout including the present proceedings. At the very least, it can be inferred that, the review applicant was well aware of her rights and that, she was adequately advised, legally.
14. When the review applicant joined her service in 1999, she was well aware that she would not be possessing the requisite qualifying

period of service to be entitled to pensionary benefits. She did not initiate any proceedings claiming that she be given notional benefit of the period from 1995 till her actual appointment.

15. Review applicant, as noted above, superannuated from service on June 30, 2007. She applied for pensionary benefit which was rejected by the authorities by their letter dated August 22, 2007. Review applicant was aware of the letter of rejection dated August 22, 2007. She did not challenge such letter at any stage.
16. Subsequently, after a hiatus of about nine years, on July 8, 2016, she caused her Advocate to issue a letter requesting for pensionary benefit. The letter dated July 8, 2016 does not allude to the letter of rejection dated August 22, 2007 at all. Thereafter, she filed the original application being OA 912 of 2016 before the Tribunal seeking pensionary benefit. In the original application, in one of the paragraphs, the review applicant alludes to the letter of rejection dated August 22, 2007. However, in the prayer portion she does not seek setting aside of such letter. She does not assail such letter of rejection at all.
17. Tribunal rejected the original application by its order dated January 14, 2019 which was assailed in WP.ST 149 of 2019. Two orders were passed by the Coordinate Bench while dealing with the writ petition filed at the behest of the review applicant, assailing the order dated January 14, 2019 passed by the Tribunal. Both orders are of interim

nature and in any event, specifically states that, the view expressed was prima facie in nature.

18. We heard the writ petition finally and on merits on August 25, 2023, when we passed an order of dismissed of the writ petition.
19. Point canvassed for review is that the non-payment of pensionary benefit is a continue wrong and, therefore, both the Tribunal and us did not consider the aspect of limitation in the correct perspective and consequently, an error apparent on the face of the record so far as our order dated August 25, 2023 is concerned, occurred.
20. *M.R. Gupta (supra)* was answering the issue as to whether the impugned judgment of the Tribunal dismissing as time-barred the application made by the appellant for proper fixation of his pay was contrary to law or not. In such context, it observed as follows:

“6. The Tribunal misdirected itself when it treated the appellant’s claim as “one time action” meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself

subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind.”

21. In the facts of that case, the appellant was in service and was seeking fixation of pay. Authorities did not fix the pay and therefore, in such factual matrix the Supreme Court held that, the wrong was a continuing one and therefore the question of limitation did not arise.

22. In **Tarsem Singh (Supra)**, Supreme Court considered the issue of continuing wrong and recurring/successive wrong. It observed as follows:-

“4. The principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. A ‘continuing wrong’ refers to a single wrongful act which causes a continuing injury. ‘Recurring/successive wrongs’ are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in *Balakrishna S. P. Waghmare vs. Shree Dhyaneswar Maharaj Sansthan* – [AIR 1959 SC 798], explained the concept of continuing wrong (in the context of section 23 of Limitation Act, 1908 corresponding to section 22 of Limitation Act, 1963):

“It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the

injury caused by the wrongful act and what may be described as the effect of the said injury.”

In *M. R. Gupta vs. Union of India* [1995 (5) SCC 628], the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1.8.1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held:-

“The appellant’s grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant’s claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant’s claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc., would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief

which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation, the application cannot be treated as time barred.....”

In Shiv Dass vs. Union of India –2007 (9) SCC 274, this Court held:

“The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition..... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years.”

5. 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 re-opening 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 re-fixation 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. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, 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.

6. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 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.

7. In view of the above, these appeals are allowed. The order of the Division Bench directing payment of disability pension from the date it fell due, is set aside. As a consequence, the order of the learned Single Judge is restored.”

23. In the facts of **Tarsem Singh (Supra)**, Supreme Court held that there was a delay of 16 years and that, the High Court erred in directing payment of 16 years arrears with interest. It directed payment of arrears of last 3 years before the date of the writ petition or from the date of the demand to date of writ petition whichever is lesser.
24. **Pilla Sitaram Patrudu & ors. (Supra)** was rendered in the context of inter se seniority. Principle laid down therein is not directly applicable to the facts and circumstances of the present case.
25. In the facts of the present case, the review applicant demanded pension which was rejected on August 22, 2007. The order of rejection dated August 22, 2007 can be said to be a final order of rejection. Review applicant did not take any steps with regard

thereto. Even in subsequent letter dated July 8, 2016, she did not refer to the order of rejection dated August 22, 2007.

26. In such circumstances, the claim for pensionary benefits stood finally decided on August 22, 2007 with the review applicant not taking any steps with regard thereto. That apart, the review applicant never possessed qualifying period of service to be entitled to pensionary benefit. The review applicant never agitated her claim of grant of notional benefit from 1995 till 1999 so far as her service period is concerned, at the time of receipt of the employment, during the subsistence of her employment or on her superannuation. The first claim sought to be made was in 2016 when she approached the Tribunal where the order dated January 14, 2019 was passed.
27. **Dr. Tonmoy Mondal (Supra)** requires a Court in seisin of a review petition to arrive at a finding that there was sufficient reason for reviewing the order and that there was valid ground available for setting aside the previous order.
28. In the facts of the present case, we are unable to return a finding that, there is any error apparent on the face of the record in the order dated August 25, 2023 requiring exercise of jurisdiction of review. It is trite law that, under the grab of a review, the entire appeal cannot be reagitated or reargued. Essentially, review applicant is seeking to do so.
29. In such circumstances, we find no merit in the review application.

30. The review application being RVW 241 of 2023 in WP.ST 149 of 2019 along with all connected applications therein are dismissed without any order as to costs.
31. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak,J.)

32. I Agree.

(Md. Shabbar Rashidi, J.)

(SD/AD/CHC)