

6th December, 2024
(D/L No.12)
Ct. No.4
(SKB)

W.P.S.T.162 of 2023

Raja Chakraborty
Versus
The State of West Bengal and others

Mr. Dilip Kumar Maiti,
Mr. Debashis Dey
... for the petitioner.

Mr. Tapan Kumar Mukherjee, Id. AGP
Ms. Sangeeta Roy
... for the State.

1. Heard learned counsel for the parties.
2. The petitioner serving as a Library Assistant is claiming the scale enhancement to which he became entitled by virtue of acquiring the bachelor degree on 21.04.2005. The application was initially made by him on 17.05.2005. The same culminated in the rejection of the petitioner's claim by an order dated 17.10.2006.
3. The petitioner has filed an application before the Tribunal bearing O.A. No.264 of 2021 claiming a direction for payment of the said benefit as it has been granted to another person along with whom the petitioner's claim was recommended by the authorities. The Tribunal found the petitioner's application to be barred by limitation and has rejected the prayer of the petitioner.

4. Learned counsel for the petitioner has submitted that subsequent upon rejection of the petitioner's claim on 17.10.2006, the authorities were considering the claim as is evident from bare perusal of the letter written by the Commissioner in the Technical Education Training and Skill Development Department to the Director-in-Charge of the Department on 4th April, 2016.
5. As per the said communication, it is obvious that the claim of the petitioner was still under consideration by the authorities. The other person whose claim was also been considered and was recommended by the same letter, subsequently got the benefit after moving the State Administrative Tribunal by way of O.A. filed in the year 2017.
6. The final order was passed in the O.A. on 28.06.2019 whereafter it is submitted that she has been given the due scale enhancement along with all consequential benefits. The petitioner is, therefore, also entitled to the same benefit.
7. The learned counsel for the State, on the other hand, referring the Section 20(1)(b) of the Administrative Tribunal's Act submits that the Tribunal has rightly held the petitioner's claim to be barred by limitation. The submission is that

the petitioner is a fence sitter and, therefore, no relief should be granted to him in these proceedings also.

8. We find from the Commissioner's letter dated 4th April, 2016(supra) that the department/ authorities were still considering the grant of scale enhancement to the petitioner as late as in 2016.
9. The other person's case which was also being moved alongwith the petitioner's claim ultimately got the said benefit after approaching the Tribunal. The fact that the petitioner is entitled to the scale enhancement under the Rule is not in dispute between the parties.
10. Considering the above facts and circumstances, we find that the objection raised by the State and consideration thereof contained in the order passed by the Tribunal regarding the claim being barred by limitation in this case is unsustainable.
11. The law in this regard is very clear and now stands settled that where benefit is available in law as per as statute, the same if in the nature of the right in relation to salary the cause of action remains a continuous cause of action arising every month when the salary becomes due to the government employee. In this connection the

judgment relied upon by the learned counsel for the petitioner in ***M. R. Gupta Vs. Union of India and others*** reported in ***AIR 1996 Supreme Court 669*** is required to be considered.

Paragraphs 5 and 6 are reads as follows:

“5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and over-looked the crux of the matter. 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 since it is based on a recurring cause of action.

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 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. (See Thota China Subba Rao v. Mattapalli Raju. AIR 1950 Federal Court 1).

12. Viewed thus, the fact that the Tribunal has refused to grant the relief only on the ground of limitation is found to be unsustainable.

13. The respondents are directed to grant the benefit of the enhanced pay scale to the petitioner as Library Assistant with bachelor degree. It is expected that while granting such benefit, the petitioner would be granted the due considering his claim raised at par with the other beneficiary whose case was also being moved along with the petitioner by the authorities themselves.

14. The writ petition is allowed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)