

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

218 (3)

Decided on :27.02.2024

CWP-560-2019 (O&M)

ANIRUDH AND OTHERS . . . PETITIONERS

Versus

STATE OF HARYANA AND OTHERS . . . RESPONDENTS

CWP-5542-2019 (O&M)

MANGAT RAM AND OTHERS . . . PETITIONERS

Versus

STATE OF HARYANA AND OTHERS . . . RESPONDENTS

CWP-9867-2019 (O&M)

MANN SINGH AND OTHERS . . . PETITIONERS

Versus

STATE OF HARYANA AND OTHERS . . . RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Amit Kaith, Advocate for the petitioners.

Mr. Saurabh Mohunta, DAG, Haryana.

HARSIMRAN SINGH SETHI , J. (Oral)

1. By this common order, above mentioned writ petitions are being disposed of as all the writ petitions involve the same question of law on similar facts.
2. In the present bunch of petitions, the grievance being raised by the petitioners is that the petitioners were entitled for re-fixation of their pay by restoring the benefit of Ad-hoc relief which was granted to them in the

year 1972 keeping in view the judgment of this Court passed in **CWP No. 16084 of 1997 titled as “Dharam Pal Singh V/S State of Haryana” decided on 27.07.2000** which was implemented by the respondents vide letter dated 16.03.2017 and the denial of the said benefit by the impugned order dated 27.09.2018 (Annexure P-12) is bad.

3. It may be noticed that keeping in view the details of service career of the petitioners given in paragraph No. 2 of the present petitions, the petitioners have retired from service much before the filing of the present petitions or before raising a claim for the grant of benefit of Ad-hoc relief, which was granted to the petitioners by the Government in the year 1972 and was subsequently withdrawn immediately thereafter.

4. Learned counsel for the petitioners argues that the writ petition being **CWP No. 4518 of 2000 titled as ‘RK Gupta V/S State of HYE.TC.’ decided on 11.08.2003** was filed for the refixation of the pay by restoring the deduction/cost in respect to the ad-hoc relief granted to them. The said writ petition was allowed on the basis of the earlier order passed by the Division Bench in CWP No. 16084 of 1997.

5. The petitioners also claimed the said benefit of ad-hoc relief by filing a legal notice and thereafter, by filing writ petitions before this Court, which writ petitions were disposed of with the direction to the State to take appropriate decision as to whether the petitioners are also entitled for the said relief as extended by this Court in CWP No. 16084 of 1997 or not. The said claim was rejected by the respondents vide impugned order dated 27.09.2018 (Annexure P-12) which has been impugned in the present petition.

6. Learned counsel for the petitioners argues that the petitioners are similarly situated employees as the petitioners in CWP No. 16084 of 1997 and hence, their pay should also be revised by restoring the benefit of ad-hoc relief which was withdrawn from them in the decade of seventies and the rejection of their claim by the impugned order dated 27.09.2018 (Annexure P-12) is bad.

7. After notice of motion, the respondents have filed the reply wherein they have stated that the petitioners have retired since long and they are not in the service of the department concerned.

8. Learned counsel for the respondents further submits that the said ad-hoc relief was withdrawn from the petitioners by the Government in the decade of seventies which was never challenged by them at any given point of time during their service career and now claiming the said relief after a period of four decades, the claim of the petitioners has rightly been rejected by the respondents vide impugned order dated 27.09.2018 (Annexure P-12) being not maintainable.

9. I have heard learned counsel for the parties and have gone through the record with their able assistance.

10. It may be noticed that the ad-hoc relief which was granted to the petitioner in the year 1972 was withdrawn by the department immediately thereafter, which action was never challenged by the petitioner during their service career. Though, some of the similarly situated employees raised the grievance which was allowed and they were granted the said benefit, but the petitioners now cannot claim that they should also be treated in a similar way so as to restore their ad-hoc relief which was granted to them in the year

1972.

11. Further, the question whether a fence-sitter is to be allowed the benefit, which has been given to the similarly situated persons or not has already been decided by the *Hon'ble Supreme Court of India in Civil Appeal No.9849-2014 titled as State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others decided on 17.10.2014* wherein, it has been held that benefit of the judgment to the similarly situated fence-sitter cannot be given and the delay and laches has to be taken into account and merely that the similarly situated employees, who had approached the Court within time frame prescribed got the relief, a fence-sitter cannot be allowed the said benefit. Relevant paragraphs of the judgment is as under:-

“23. 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:

(1) 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.

(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.

(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 person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma & Ors. v. Union of India (supra). 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.”

12 The Division Bench of this Court also decided the same issue in **LPA No. 740 of 215 titled as Rajesh V. State of Haryana and others’ decided on 15.07.2015**, wherein, it has been held that if the service of a particular employee was terminated which action was not challenged by the

said employee, but the similarly situated employee challenged the action of termination of his service and got the relief from the competent Court of law but the relief was declined to the employee whose services were terminated on the ground that a belated claim cannot be entertained. The Division Bench of this Court further held that a mere representation after a long delay will not revive the claim at belated stage. The relevant paragraph of the said judgment is as under:-

“As the facts would speak for themselves, the cause of action accrued to the appellant on 03.05.2006. The belated representation or legal notice served on his behalf in the year 2012 did not and could not have revived the cause of action. Rejection of that legal notice under the directions of this Court also does not mean that the interregnum period stood overlooked. In these circumstances especially when the fate of other similarly placed Constables has also been sealed upto the highest Court of land, the order passed by learned Single Judge calls for no interference .”

13. In the present case, it is a conceded position that the benefit of ad-hoc relief was withdrawn from the petitioners in the decades of seventies and thereafter, the petitioners kept on working with the department concerned for another three decades without raising any grievance regarding the withdrawal of the ad-hoc relief which was granted to them in the year 1972. It is now when, the other similarly situated candidates who had availed the remedy before this Court and got the ad-hoc relief, the petitioners has raised their claim and that too much after their retirement. Hence, the judgment of the Hon'ble Supreme Court of India in Arvind Kumar Srivastava's case (supra) and the judgment of Division Bench of this Court in Rajesh' case (supra), is squarely covered against the petitioners on the

ground of delay & latches and no relief can be granted in favour of the petitioners in the year 2024 qua the ad-hoc relief, which was granted to them in the year 1972.

14. Keeping in view the facts and circumstances of the present case recorded herein above, no ground is made out for any interference by this Court in the impugned order dated 27.09.2018 (Annexure P-12) by which the claim of the petitioners for the restoration of the ad-hoc relief which was granted to them in the year 1972, has been rejected, hence, the present petitions **stand dismissed**.

15. A photocopy of this order be placed on the files of connected cases.

16.. Pending miscellaneous application, if any, shall also stand disposed of.

27.02.2024
Riya
Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No

(HARSIMRAN SINGH SETHI)
JUDGE