

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(108)

CWP No. 9970 of 2024
Date of Decision : 02.05.2024

Shri Mam Chand Jast

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Sangita Dhanda, Advocate for the petitioner.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the grievance being raised by the petitioner is that while fixing the pay of the petitioner w.e.f. 01.01.1986, he was not allowed to exercise the fresh option so as to opt for the scale w.e.f. 01.02.1987, due to which, the petitioner has been getting lesser pay as compared to the other similarly situated employees, hence respondents be directed to allow the petitioner to re-opt for new pay scales from 01.02.1987.

2. It may be noticed that the petitioner had approached this Court by filing CWP No. 27611 of 2023 dated 08.12.2023 (Annexure P-13) wherein, a direction was given to the respondents to examine the claim of the petitioner and pass an appropriate order and in the speaking order passed on 26.02.2024 (Annexure P-14), which order has been

impugned in the present petition, the respondents have stated that the said claim of the petitioner was rejected for the first time on 18.11.2009, thereafter on 25.11.2011 and then again on 09.12.2013 and then again in the year 2018. Again, impugned order has been rejected by the respondents by the impugned order dated 06.02.2024 (Annexure P-14).

3. Learned counsel for the petitioner submits that the rejections of the representations were never conveyed to the petitioner, hence, any order rejecting the claim prior to the impugned order, has no relevance.

4. Notice of motion.

5. On the asking of the Court, Mr. Harish Nain, learned Assistant Advocate General, Haryana, who is present in Court, accepts notice on behalf of the respondent-State

6. Learned counsel for the respondents submits that the claim of the petitioner is that though, he had initially given an option to opt for the revised pay scale from 01.01.1986 but he wanted to revise the said option to opt for the pay scale from 01.02.1987, which opportunity has not been given to the petitioner. Learned counsel for the respondents further submits that the petitioner remained in service till the year 2013 i.e. for a period of 26 years after exercising option for pay scale from 01.01.1986 but no grievance was raised until his representation was received in the year 2009, which was rejected by the department concerned. Learned counsel further submits that the petitioner kept on filing the representation, which was rejected by the respondents as not

maintainable, hence, in the present petition, the grievance is being raised qua a benefit, which is 40 years old and now after a period of ten years of the retirement of the petitioner, the said grievance cannot be agitated.

7. Learned counsel for the petitioner rebuts that none of the orders rejecting his representation was ever conveyed to him and further submits that non grant of the second option to revise his option to opt for the pay scale w.e.f. 01.02.1987 is a recurring cause of action, hence, the present petition is maintainable even after lapse of 37 years.

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

9. The grievance of the petitioner is that when the pay scales were revised w.e.f. 01.01.1986, the options were given to the employees to opt for the pay scales from a particular date as per the choice of the employee concerned. It is not disputed that the petitioner opted for the pay scale w.e.f. 01.01.1986. Thereafter, the petitioner intended to revise the said option from 01.02.1987 so that petitioner could get the increments in the old pay scale so as to enhance the pay scale in the revised pay scale, which benefit was never allowed to the petitioner. The cause of action accrued to the petitioner in the year 1987 only. For a period of 26 years thereafter when the petitioner remained in service, he raised no grievance. Now, after a period of 10 years of the retirement, the petitioner cannot be allowed to agitate a service dispute and that too after a period of 37 years of accruing of cause of action, if any.

10. Further, as per the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 5027 of 2024 titled as ***Mrinmoy Maity Vs. Chhanda Koley and others***, decided on 18.04.2024, the delay has to be kept in mind while entertaining the writ petition. The relevant paragraph of the said judgment is as under :-

“11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in 512 [2024] 4 S.C.R. Digital Supreme Court Reports approaching a writ court. This Court in the case of Tridip Kumar Dingal and others v. State of W.B and others., (2009) 1 SCC 768 has held to the following effect: “56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles

32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches. 57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide *State of M.P. v. Bhailal Bhai* [AIR 1964 SC 1006 : (1964) 6 SCR 261], *Moon Mills Ltd. v. Industrial Court* [AIR 1967 SC 1450] and *Bhoop Singh v. Union of India* [(1992) 3 SCC 136 : (1992) 21 ATC 675 : (1992) 2 SCR 969]). This principle applies even in case of an infringement of fundamental right (vide *Tilokchand Motichand v. H.B. Munshi* [(1969) 1 SCC 110] , *Durga Prashad v. Chief Controller of Imports & Exports* [(1969) 1 SCC 185] and *Rabindranath Bose v. Union of India* [(1970) 1 SCC 84]). 58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose.”

11. Learned counsel for the petitioner has not been able to rebut the said judgment or the fact that cause of action accrued to the petitioner in the year 1987 i.e. 37 years ago.

12. Further, the claim of the petitioner that non-grant of second option is a recurring cause. It may be noticed that the service dispute is not a recurring cause in all circumstances. Here, the petitioner, who was given an option to opt for the pay scale from 01.01.1986, which option was sought to be revised without there being any Rule allowing the same. The reliance is being placed upon the Rule regarding the relaxation to be granted to the petitioner to exercise the second option. Relaxation cannot be claimed as a matter of right, which is a settled principle of law.

13. Further, in the present case, non allowance of the exemption so as to exercise the second option to opt for the pay scale cannot be treated as a recurring cause and that too after a period of 37 years, especially when the present petition has been filed after 10 years of the retirement of the petitioner, when there is no master and servant relationship between the parties.

14. No ground is made out for any interference by this Court in the present petition.

15. Dismissed.

May 02, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No