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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-17869-2022
Date of Decision: 24.04.2024

Dai Ram Petitioner
Versus

Haryana Vidyut Prasaran Nigam Ltd. and another Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. V.D. Sharma, Advocate,
for the petitioner.

Ms. Nisha Kanojia, Advocate for
Mr. Satyam Tandon, Advocate,
for the respondents.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for setting aside the impugned order dated 02.08.2022 (Annexure P-7) vide which the claim of the petitioner for counting the Military Service rendered during the period of proclamation of National Emergency from 15.04.1961 to 30.06.1970 towards increments, seniority and pension in terms of Rule 4 of the Punjab Government National Emergency (Concession) Rules, 1965 dated 20.07.1965 (Annexure P-3) as applicable by respondent No.2 being absolutely illegal, arbitrary and against the policy for promotion of the persons.

2. Learned counsel for the petitioner submitted that vide order dated 20.09.2022, the petitioner had restricted his claim only to the extent of grant of benefit of military service benefits towards the pension only and

therefore, he may be granted the benefit of counting of military service for grant of pension only and therefore, a direction may be issued for recomputation of his pensionary benefits. He further submitted that the petitioner after rendering his services in military, joined the respondent-Nigam and thereafter, retired on 30.06.1999. He also submitted that the aforesaid benefit for counting of military service in view of the period of National Emergency from 1961-1970 was his statutory right and the mere fact that there has been a delay in filing of the present petition cannot become a ground for denial of the benefit which are the benefits pertaining to the pension and which are statutorily available. He further submitted that rather it was the duty of the respondent-Nigam to have considered his claim, since it was within the knowledge of the Nigam that the petitioner had rendered services during the National Emergency and he was entitled for the same.

3. Learned counsel for the petitioner further submitted that it is not a case of the respondent nor it has been so stated in the reply that the petitioner was not entitled for the claim but only objection which has been raised by the respondent-Nigam is that the claim of the petitioner is hit by the doctrine of delay and laches because he has taken about 23 years to approach this Court by filing the present writ petition.

4. On the other hand, Ms. Nisha Kanojia, Advocate appearing on behalf of Mr. Satyam Tandon, learned counsel for the respondents submitted that it is correct that the Nigam is not disputing the entitlement of the petitioner but he could not have approached this Court after a lapse of about 23 years and his petition is hit by the doctrine of delay and laches. She

further submitted that the impugned order 02.08.2022 (Annexure P-7) has also been passed only on the ground of delay.

5. I have heard the learned counsels for the parties.

6. The entitlement of the petitioner for his service rendered during the National Emergency is not in dispute. The petitioner has restricted his claim only to the extent of counting of his military service for grant of pensionary benefits. During the course of arguments, the learned counsel for the petitioner has also stated that the petitioner would restrict his arrears only for the preceeding 38 months.

7. This Court is of the considered view that the entitlement of the petitioner is not in dispute in the present case and the only ground which has been taken by the petitioner was of delay which has to be seen in the light of the prayer which has been made by the petitioner. The prayer of the petitioner is for refixation of his pension. It is a settled law that for grant of pension and pensionary benefits, the cause of action would always be recurring and continuous on the principles of *de die in diem*. During the course of arguments, learned counsel for the petitioner also made a reference to a judgment of Division Bench of this Court in “**Hoshiar Singh Vs. UOI and others**” 2006(4) RSJ 166 to contend that the delay and laches is not a rule of law but it is a rule of prudence, which may not be used in the cases like payment of pension especially to the Army Personnel. He referred to another judgment of this Court in “**Chaman Lal Vs. Union of India**” 2021(2) SCT 278, again to contend that delay would not be a ground for non-suiting the petitioner.

8. The petitioner is claiming his service to be considered at the

time when he served the nation in the National Emergency. Therefore, on this ground only, the petitioner cannot be non-suited on the ground of delay and laches. At the most, he will not be entitled for the arrears because he has approached this Court by filing a present petition after a lapse of 23 years.

9. In view of the above, the present petition is allowed. The respondents are directed to recompute the pension of the petitioner after counting his service which he rendered during the National Emergency and after fixing the pension, he shall be paid the pension accordingly. However, so far as the arrears which the learned counsel for the petitioner submitted that it may be restricted only to the extent of 38 months is concerned, he will not be entitled for the same in view of the aforesaid delay and the aforesaid direction will be only prospective in nature.

24.04.2024
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |