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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision:- 13.08.2024***

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W.P.(C) 3722/2022**INSPR (MIN) VIJAY KUMAR SHARMA AND ORS.****.....Petitioners****Through: Mr.Arvind Kr Shukla, Ms.Neena Shukla, Mr.Siddharth Sarup & Ms.Surbhi Khanna, Advs.****versus****UNION OF INDIA & ORS.****.....Respondents****Through: Mr.Vivekanand Mishra, Adv.****CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MS. JUSTICE SHALINDER KAUR****REKHA PALLI, J(ORAL)**

1. The petitioners, who had joined the Border Security Force (BSF) as Assistant Sub Inspectors (Clerk) on 29.09.1997, have approached this Court seeking the following reliefs:-

“a) Issue an appropriate writ, order or direction to the respondent for fixation of seniority positions and the pay of the petitioners at par with the juniors i.e. from 15.06.1996; and/or

b) Issue an appropriate writ, order or direction to the respondent for payment of arrears of difference of pay, deputation allowance and other remunerations at par with the selectees who their juniors from 15.06.1996



along with interest; and/or

c) Pass any other order(s) as this Hon'ble Court may deem fit, in the facts and circumstances of the case, in the interest of justice.”

2. Before dealing with the rival submissions of the parties, it may be apposite to note the brief factual matrix as emerging from the record.
3. Upon the respondents inviting applications for the post of Assistant Sub-Inspector (Clerks) by way of direct recruitment, the petitioners applied and were found successful in the selection process conducted between 18.12.1994 to 22.12.1994. This selection process was however, cancelled by the respondents leading to several writ petitions being filed before this Court including C.W.No.3334/1995. During the pendency of these writ petitions, the respondents conducted a fresh selection process between December 1995 to January 1996, in which the petitioners were successful. Despite being declared successful in the said selection process, they were not issued any joining letters on account of pendency of the aforesaid batch of writ petitions.
4. However, during this period, when the petitioners, were awaiting their offer of appointments, the respondents on 15.06.1996, proceeded to appoint candidates through the Limited Departmental Competitive Examination (LDCE) to the post of ASI (Clerk). After the writ petitions were disposed of on 30.05.1997, the petitioners were vide order dated 01.09.1997 appointed as ASI (Clerk) which post they joined on 27.09.1997.



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Taking into account that the petitioners had been selected prior to 15.06.1996 when the candidates appointed by way of LDCE were appointed, the respondents granted the petitioners their due seniority as ASI (Clerk) w.e.f. 15.06.1996. As the petitioners joined service only on 27.09.1997, their pay was fixed from the said date and as a consequence, even though they have been placed as senior to the ASI (Clerks) appointed by way of LDCE on 15.06.1996, they are receiving one increment lesser than those who were appointed through LDCE. As a result, the petitioners are drawing lesser salary than those persons who are working on the same posts and are junior to them.

5. Learned counsel for the petitioner submits that the petitioners cannot be faulted for the delay in their appointment and therefore, the respondents themselves have granted them retrospective seniority with effect from 15.06.1996. He contends that the respondents ought to have also simultaneously granted pay protection to the petitioners so that their pay was fixed at par with their juniors appointed as ASI (Clerks) by way of LDCE. He, therefore, prays that the writ petition be allowed and the respondents be directed to appropriately upgrade their pay with effect from 27.09.1997 alongwith all consequential benefits.
6. On the other hand, learned counsel for the respondents seeks dismissal of the writ petition by urging that the mere grant of retrospective seniority does not entitle the petitioners to claim pay fixation to the post of ASI (Clerk) from 15.06.1996. He submits that while the candidates appointed through LDCE had



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joined service w.e.f. 15.06.1996, their pay was fixed from the said date, the petitioners had joined on 27.09.1997 and were therefore entitled to claim pay fixation from the said date. He further submits that even otherwise, in any event, there has been a gross delay of 25 years on the part of the petitioners in approaching this Court even though the petitioners were, while joining service in September 1997, made aware that their pay fixation would be done only w.e.f. the date of their joining service. He, therefore, prays that the writ petition be dismissed.

7. Having considered the submissions of learned counsel for the parties and perused the record, we are of the view that the respondents are correct in urging that the petitioners have approached this Court after a significant delay of almost 25 years. The petitioners were, while joining service in September 1997, made aware that their pay fixation would be done only w.e.f. the date of their joining service and therefore could have raised a grievance in this regard at that stage itself. Having said so, we cannot lose sight of the fact that the petitioners have been all along treated as senior to those appointed as ASI (Clerks) on 15.06.1996 but are being paid lesser salary than them. We may note that since the seniority of the petitioners has already been protected, their claim for upgradation of their pay so as to bring the same at par with their juniors, would not affect any third party.
8. No doubt, delay in approaching the Court by way of a petition under Article 226 of the Constitution of India, is a relevant



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factor, but mere delay in approaching the Court cannot be a bar in entertaining a writ petition. It has been consistently held by the Apex Court that where entertaining a delayed writ petition results in unsettling the position already settled, or affects the rights of third parties, the claim must be rejected. In the present case, the grant of any relief to the petitioners will not affect any third party. We, therefore, find no reason to reject the writ petition on the ground of delay.

9. On the other hand, if we were to reject the petitioners' prayer for correct fixation of their pay, they will continue to draw lesser salary than their juniors who are working on the same post as the petitioners but are junior to them in the same seniority list. We are therefore, of the considered opinion that the writ petition deserves to be allowed by directing the respondents to notionally re-fix the pay of the petitioners at par with their juniors from the date they joined service. However, taking into account the delay on their part in approaching the Court, the arrears payable to the petitioners must be restricted.
10. For the aforesaid reasons, we allow the writ petition by directing the respondents to grant notional fixation of pay to the petitioners at par with those LDCEs who joined as ASI (Clerks) on 15.06.1996. This pay fixation will be granted on notional basis with effect from 27.09.1997, but arrears if any, payable on this account will be restricted to a period of three years prior to the date of filing of the present writ petition. The exercise in terms of this order be carried out within six months.



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11.The writ petition is, accordingly, disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

AUGUST 13, 2024
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