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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 10th January, 2024**
+ W.P.(C) 2456/2017
O.P. SAHNI Petitioner

Through: Mr.____, Advocate (Appearance not given)

versus

NATIONAL TEXTILE CORPORATION Respondent

Through: Mr.Ajit Pudussery, Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226/227 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs:-

*“i) issue writ of Mandamus thereby directing to the Respondents to grant parity in pay scales according to its corporate employees as per the award dated 20.07.2001 passed by Industrial Tribunal at Bangalore at ID case No. 31 of 1995 Titled 'The General Secretary, National Textile Corporation Vs. Messrs.National Textile Corporation'; and
iii) issue such other orders/directions as this Hon'ble Court deem fit under the circumstances of the case.”*

2. The petitioner joined the services with the respondent department as a



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Cashier-cum-Accounts clerk on 2nd February, 1975 and was posted at Super Bazar, Connaught Place, New Delhi. The petitioner continued to serve at various show rooms of the respondent department since 2nd February, 1975 till 25th May, 1996, i.e., also the date of petitioner's voluntary retirement (hereinafter "VRS").

3. It has been stated by the petitioner that there was a longstanding dispute between the federation of Unions and the respondent with regard to the pay parity among the employees working Division Offices, Mills and the employees working in the showrooms owned and controlled by the National Textile Corporation, i.e., the respondent herein. Furthermore, in case of another employee situated in the state of Karnataka, vide the Award dated 20th July, 2001, the Industrial Tribunal therein, held that the showroom employees in ID No. 31/95 are entitled for wages at par with the employees of divisional office. The said Award has been upheld by the Hon'ble Supreme Court vide order dated 24th September, 2014 in Civil Appeal bearing no. 6036-6037/2009.

4. Thereafter, the present petitioner in view of the above said Award passed by the Industrial Tribunal, Bangalore and order of the Hon'ble Supreme Court, submitted a representation dated 13th January, 2016 to the respondent requesting therein to extend the benefits to the respondents' employees. The request of the petitioner in the representation was rejected by the respondent vide its reply dated 6th April, 2016 stating therein that the respondent are unable to apply the parity criteria with regard to the petitioner as he was not a party to the proceeding in ID No. 31/95.



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5. Being aggrieved by the same, the petitioner herein, by way of the present petition is seeking parity in terms of Award dated 20th July, 2001, passed by the Industrial Tribunal, Bangalore, and order dated 24th September, 2014 passed by the Hon'ble Supreme Court in Civil Appeal bearing no. 6036-6037/2009. The petitioner has prayed that the respondent be directed to give payment benefits at par with the employees at the divisional office of the respondent.

6. Learned counsel appearing on behalf of the petitioner submitted that the conduct of the respondent is arbitrary and violative of principles of natural justice and it shall allow the request of the petitioner in terms of Award dated 20th July, 2001, passed by the Industrial Tribunal, Bangalore, and order dated 24th September, 2014 passed by the Hon'ble Supreme Court in Civil Appeal bearing no. 6036-6037/2009.

7. It is submitted that based on the above said award passed by the Industrial Tribunal in Bangalore, the claim was decided in favour of the showroom employees. This decision granted benefits to showroom employees that are equal to those provided to employees in the marketing division.

8. It is submitted that the respondent does not have any right or valid reasons to treat showroom employees differently from those in the marketing division because of the fact that both groups engage in similar activities.

9. It is submitted that the employees in the showrooms have been receiving extremely low wages and minimal benefits for many years. These



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payments are well below what can be considered a subsistence salary and are also significantly lower than the salaries paid to employees in the marketing division of the respondent.

10. It is submitted that the respondent has violated several labour laws by adopting discriminatory practices in the payment of salaries and other benefits among its employees, which is contrary to the principle of equal pay for equal work.

11. It is submitted that all the tasks performed by the showroom employees were supervised, controlled, maintained, and managed by the respondent.

12. It is further submitted that the employees in the showrooms have greater responsibilities, face higher risks, and work for longer hours compared to those in the marketing divisional office of the respondent. However, the respondent has provided fewer benefits to its showroom employees and more salary and benefits to the employees in marketing divisional office, which is differential treatment amounting to discrimination.

13. Therefore, in view of the foregoing submissions, it is submitted that the present petition may be allowed and the reliefs be granted as prayed for.

14. *Per Contra* learned counsel appearing on behalf of the respondent vehemently opposed the instant petition submitting to the effect that same is liable to be dismissed being devoid of any merits.

15. It is submitted the present petition is liable to be dismissed on the ground that it is barred by limitation. The petitioner voluntarily retired vide



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letter dated 23rd March, 1996, and the acceptance of this retirement was confirmed on 25th May, 1996. The Industrial Tribunal's (Bangalore) order, which the petitioner is seeking benefits from through this petition, even though he was not a party to the reference, was issued on 20th July, 2001, hence, after the petitioner had voluntarily left the service. The petitioner has not explained the reason for the delay in approaching the Court, claiming benefits from an award made 16 years earlier.

16. It is further submitted the petitioner had requested benefits through a representation on 13th January, 2016 which was replied to by the respondent vide the letter dated 6th April, 2016, however the said representation does not entitle the petitioner to raise his claim before this Court after a considerable amount of delay. It is submitted that a cause of action does not accrue in favour of the petitioner by merely filing a representation at a belated stage.

17. It is submitted that the petitioner deliberately concealed a crucial fact that the award in question only grants parity benefits to 26 employees of the showrooms. This information is evident from the Hon'ble Supreme Court's order dated 24th September, 2014, in Civil Appeal bearing no. 6036-37/2009. The Hon'ble Court clearly stated in that order that the benefit from the award is limited to these 26 employees. In order to strengthen his arguments, the learned counsel for the respondent has placed his reliance upon the judgment passed by the Hon'ble Supreme Court in the matter of *State of Uttar Pradesh & Ors. V. Arvind Kumar Srivastava & Ors.*, (2015) 1 SCC 347

18. It is submitted that the respondent has not infringed upon any of the



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fundamental or legal rights of the petitioner and no principles of natural justice have been violated by the respondent.

19. Therefore, in view of the foregoing submissions, it is submitted that the present petition may be dismissed.

20. Heard the learned counsel appearing on behalf of the parties and perused the record.

21. It is the case of the petitioner that the Industrial Tribunal at Bangalore in ID no. 31/95 had passed an Award dated 20th July, 2001, whereby it granted parity in terms of the pay scale to the employees (claimant therein) with respect to the employees of divisional office of the respondent. The said Award has been upheld by the Hon'ble Supreme Court vide order dated 24th September, 2014, in Civil Appeal bearing no. 6036-37/2009. The petitioner by way of the present petition is seeking directions against the respondent in terms of the above said Award and order passed by the Hon'ble Supreme Court which had upheld the said award.

22. In rival submissions, the respondent had opposed the arguments advanced by the petitioner and prayed that the present petition may be dismissed since the petitioner has approached this Court after a considerable delay of 16 years from the date of passing of the award by the Industrial Tribunal (Bangalore). It has been submitted that the petitioner's request made by way of his representation dated 13th January, 2016 has also been rejected by the respondent and the petitioner's contention that he ought to be granted benefits in terms of the order passed by the Hon'ble Supreme Court is misconceived since the petitioner was not a party to the dispute before the



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Industrial Tribunal Bangalore. Learned counsel for the respondent has placed his reliance upon the judgment passed by the Hon'ble Supreme Court in the matter of *State of Uttar Pradesh & Ors. V. Arvind Kumar Srivastava & Ors. (2015) 1 SCC 347*. It has been submitted that in the said judgment, the Hon'ble Court has held that even though in service jurisprudence the employees are not to be treated differently but the said principle is subject to exception in the form of laches and delay. Those persons who did not challenge the wrongful action in their cases and acquiesced to the same and after a significant delay approached the Court because their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim the benefit of the said judgment.

23. This Court is of the view High Courts do not ordinarily permit a belated resort to the extraordinary remedy, i.e., the writ jurisdiction under Article 226 of the Constitution of India. Unless there is a reasonable explanation to the delay in filing of the writ petition, allowing the petitioner to approach the writ Court after a considerable delay is likely to cause confusion, public inconvenience and injustice. Further, in the event a writ jurisdiction is exercised, it may have the effect of causing, not only hardship and inconvenience, but also injustice to a third party. This principle has also been upheld by the Hon'ble Supreme Court in *Union of India v. Tarsem Singh, (2008) 8 SCC 648*, and it was observed as under:

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative



Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

24. Upon perusal of the above cited judgment it can be inferred that the law *qua* the adjudication of service claims in the event of delay and laches is settled. The law as laid down by the Hon’ble Supreme Court states that only where a service – related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced if such continuing wrong creates a continuing source of injury. However, there is an exception to the said exception which is, if the grievance is in respect of any order or



administrative decision which relates to or affects several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained.

25. Further, the Hon'ble Supreme Court in *State of U.P. v. Arvind Kumar Srivastava*, (2015) 1 SCC 347, held as under:

“22. 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.

22.1. The 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.

22.2. 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.



22.3. 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 persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India [K.C. Sharma v. Union of India, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). 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.”

26. A perusal of the afore quoted judgment enunciates that the right of a party being entitled to certain relief upon delay and laches in pursuing the claim, disentitles a party to the relief under Article 226. As per the principle of acquiescence, it will be unjust to grant relief to a party where his conduct is negligent. Whilst it is true that limitation does not strictly apply to proceedings under Article 226 of the Constitution, nevertheless, such rights cannot be enforced after an unreasonable lapse of time and without a reason attached to the delay in filing of the petition. The above mentioned judgment further states that a party cannot seek relief just because a judgment has been pronounced by a Court *in rem* with the intention to give benefit to all



similarly situated persons, whether they approached the Court or not. Such a pronouncement cases an obligation upon the concerned authority to extend the benefit to all the similarly situated persons and such a situation occurs when the subject matter deals with policy matters. On multiple occasions, it has been stated that there are implicit limitations of time within which writ remedies can be granted. In ***S.S. Balu v. State of Kerala*** (2009) 2 SCC 479, the Hon'ble Supreme Court observed thus as under:

“17. It is also well-settled principle of law that “delay defeats equity”. ... It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.”

27. Adverting to the facts of the instant case, this Court is of the view that the petitioner made a representation dated 13th January, 2016 to the respondent and in its reply dated 6th April, 2016, the respondent rejected the petitioner's request. The relevant portion is as under:

“...This has reference to your letter dated 13.01.2016 regarding subject cited above. You are hereby informed that the issue regarding pay pattern as decided in the award passed by the Industrial Tribunal, Bangalore dated 20.07.2001 and later dealt within the writ petition and write appeal and also in the order passed by the Hon'ble Supreme Court dated 24.09.2014 in Civil Appeal Nos. 6036, 6037 of 2009 confines only to 26 employees who are the members of original claimant of National Textile Corporation Showroom Employees Association, Bangalore at the relevant point of time.

Therefore no other persons are entitled to lay any claim for



parity on the basis of Hon'ble Supreme Court's order dated 24.09.2014. Further, in the list of 26 persons furnished by the claimant union, your name is not found.

In view of the above, your requested is hereby rejected..."

28. It is observed that the petitioner herein has not challenged the reply dated 6th April, 2016 sent by the respondent whereby the petitioner's request has not been entertained by the respondent and it has decided the same against the petitioner. In this regard, this Court is of the view that merely making representation cannot be held to be a satisfactory explanation of delay. The same has been also observed by the Hon'ble Supreme Court in the judgment of ***State of T.N. v. Seshachalam, (2007) 10 SCC 137***. The relevant portion of the same has been reproduced as under:

"..16. Some of the respondents might have filed representations but filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant. Opinion of the High Court that GOMs No.126 dated 29-5-1998 gave a fresh lease of life having regard to the legitimate expectation, in our opinion, is based on a wrong premise. Legitimate expectation is a part of the principles of natural justice. No fresh right can be created by invoking the doctrine of legitimate expectation. By reason thereof only the existing right is saved subject, of course, to the provisions of the statute.(See State of H.P. v. Kailash Chand Mahajan [1992



Supp (2) SCC 351:1992 SCC (L&S) 874:(1992) 21 ATC 528J)..”

29. Furthermore, the petitioner has sought reliance upon the Hon’ble Supreme Court’s judgment dated 14th September, 2014 passed in Civil Appeal nos. 6036-6037/2009. It is prudent to note herein that in the said judgment it was submitted before the Hon’ble Supreme Court that the persons situated similarly would seek parity on the strength of the Award and the judgment. In response to the said submission, the Hon’ble Court had held that in case such a claim is raised by other showroom employees the same would be open to the National Textile Corporation Ltd. to establish on the basis of cogent evidence, that such persons are not similarly situated as the employees posted in Head Office/Corporate Office. Relevant portion of the same is as under:

“.....Moreover, since there are only 26 employees who draw financial benefits from the award dated 20.07.2001 and the impugned judgments rendered by the High COUli, we find no justification whatsoever to interfere with the orders impugned before this Court. Learned Additional Solicitor General however expressed a serious apprehension, namely, that persons similarly situated as the members of the respondent-association, would seek parity on the strength of the award dated 20.07.2001, and likewise, claim wages at par with the wages paid to employees of the Head Office/Corporate Office. The issue of parity is undisputedly an issue of fact. In case such a claim is raised by other Showroom employees of the National Textile Corporation, it would be open to the appellant to establish on the basis of cogent evidence, that they are not similarly situated as the employees posted in Head Office/Corporate Office. The above apprehension, therefore,



stands taken care of. The appeals are disposed of in the above terms....”

30. In view of the above, it is crystallized that the present case of the petitioner does not hold any merit in light of the judgment dated 24th September, 2014. It is observed that as per the above said judgment, the issue of parity is undisputedly an issue of fact and the same has to be dealt with on the basis of cogent evidence by the respondent authority.

31. This Court is of the considered view that the petitioner has not approached this Court *bonafidely* since he only made his case before the respondent in the year 2014 when the Hon’ble Supreme Court disposed of the above said civil appeal. Considering the same, this Court is of the view that parity in the present case cannot be claimed as a matter of right by the petitioner and in regard to the facts and circumstances of the present case which includes the unreasonable and unexplained delay on the part of the petitioner in approaching the Court, it cannot be said that the petitioner is claiming benefits of parity with *bona fide* intentions rather the petitioner, by of the present petition, is making an attempt to take undue advantage of the pronouncement of the Hon’ble Supreme Court.

32. The petitioner has submitted before this Court that he had kept close watch on the similar proceedings pending at various judicial forums and if such contentions were to be accepted by this Court it would amount to be an error palpable on the face of it as the Award by the Industrial Tribunal, Bangalore was passed on 20th July, 2001 and the petitioner had not approached the respondent till the year 2016. It is only after the petitioner



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got aware, that other parties who were employed on similar positions to that of the petitioner have received the relief of parity in terms of pay, that he approached this Court. Delay or laches is a relevant factor for a Court of law to determine the question as to whether the claim made by a person deserves consideration. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.

33. The above said principle that ascribes limitation on the exercise of power of the High Court in the event of an unreasonable delay, can be supported by the judgment of the Privy Council in ***Lindsay Petroleum Co. v. Proper Armstrong Hurd*, 1874 LR 5 PC 221**. It was held by the Court therein, that the doctrine of laches in Courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has by its conduct done something which might fairly be regarded as neglect, in such cases, lapse of time and delay is an important factor in the adjudication of the matter. The said principles of English Law have been accepted by the Hon'ble Supreme Court in its judgments passed in ***Tilokchand Motichand v. H.B. Munshi*, (1969) 1 SCC 110**, ***Rabindranath Bose v. Union of India*, (1970) 1 SCC 84** and further in ***Eastern Coalfields Ltd. v. Dugal Kumar*, (2008) 14 SCC 295**.

34. It is a settled legal proposition that this Court should exercise its power under Article 226 very cautiously and sparingly, and in exceptional circumstances, only in a given case where it is demonstrated that there is something palpably erroneous. The present petitioner has no vested right to



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claim parity due to the reasons stated in the judgment dated 24th September, 2014 and in the foregoing paragraphs. That being so, the petitioner has been unable to show any statutory or other right, in his favour.

35. In view of the discussions of facts and law, this Court finds no force in the propositions put forth by the petitioner. It is held that the present writ petition is not a fit case for interference under the extraordinary writ jurisdiction of this Court, and therefore, the present writ petition is liable to be dismissed since the same is bereft of any merits.

36. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stand dismissed.

37. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JANUARY 10, 2024

dy/ryp

Click here to check corrigendum, if any