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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 15.01.2024

+ W.P.(C) 10694/2017
RAM PRASAD

..... Petitioner

Through: Ms. Anu Mehta, Mr. Rohan Malik,
Advvs.

versus

UNION OF INDIA & ANR

..... Respondent

Through: Ms. Archana Gaur, Ms. Ridhi Gaur,
Advvs. for R-1.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

REKHA PALLI, J (ORAL)

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 26.05.2017 passed by the learned Central Administrative Tribunal in O.A. No. 2397/2014. Vide the impugned order, the learned Tribunal has rejected the petitioner's prayer for being covered under the CCS (CCA) Pension Act & Rules 1972 (commonly known as "the Old Pension Scheme") and held that the respondent was rightly covered under the contributory pension scheme as notified on 22.12.2003 i.e the National Pension System (commonly known as the New Pension Scheme).
2. Learned counsel for the petitioner submits that the impugned order is



wholly perverse as the learned Tribunal has failed to appreciate the fact that the claim of the petitioner was covered by various decisions of this Court, including the decision in ***Inspector Rajendra Singh and Ors vs. Union of India and Ors*** 2017 SCCOnLine Del 7879. She submits that the tribunal has failed to appreciate that even though the petitioner was appointed on the post of Stone Cutter on 11.05.2004, the selection process had commenced way back on 02.05.2001, when the petitioner was called to appear in the interview for his appointment to the regular post of stone cutter.

3. She further submits that this interview was deferred from time to time by the respondents themselves and was finally held on 17.06.2003, for which a call letter for the interview was issued to the petitioner only on 28.05.2003. The selection process having been completed way before 01.01.2004, when the New Pension Scheme became applicable, the petitioner could not be denied the benefits of the Old Pension Scheme, which was in force not only on 17.06.2003 but till as late as 31.12.2003. The respondents having themselves delayed the issuance of the appointment letter to the petitioner cannot be permitted to deny the benefit of the old pension scheme to the petitioner. She, therefore, prays that the impugned order be set aside by holding the petitioner as being eligible under the Old Pension Scheme.
4. In response, learned counsel for the respondent no.1 seeks to support the impugned order and contends that the appointment letter having been issued to the petitioner on 11.05.2004, the respondents were correct in applying the New Pension Scheme to him. She submits that



the New Pension Scheme is applicable to all employees who have entered service after 01.01.2004. Furthermore, the petitioner had approached the Tribunal after a period of ten years from his joining service and therefore his O.A was even otherwise liable to be rejected on the ground of delay and laches. She, therefore, prays that the writ petition be dismissed.

5. Having considered the submissions of the learned counsel for the parties and perused the record, we find merit in the petitioner's plea that the selection process for his appointment as a Stone Cutter was not only initiated but, except for the issuance of the appointment letter, was also completed way before 01.01.2004, when the New Pension Scheme came into effect. Had the respondent taken expeditious steps after conducting the petitioner's interview on 17.06.2003, he would have been surely appointed by 01.01.2004. Merely because the respondent, without any reason, chose to delay the issuance of appointment letter to the petitioner, he cannot be made to suffer. In this regard, we may refer to the following observations as contained in paragraph 30 of the decision of a Co-ordinate Bench in ***Inspector Rajendra Singh (Supra)***. The same read as under-

“The respondents have contended that the final results of the petitioners had been declared by the Staff Selection Commission in November, 2004 long after the New Pension Scheme was given effect. If there was delay in declaration of the results and issuance of letters of appointment, the incumbents are not to suffer. May be, as contended by the respondents, the petitioners had been declared unfit. However, in the Review Medical



Examination by Review Medical Board, they were found fit. It is not the case of the respondents that they were unfit earlier by reason of any ailment or disorder, of which they were cured later. Even otherwise, there was no reason for delaying the Review Medical Examination and the Interview. In any case, as observed above, the issues are covered in favour of the petitioners, by the judgment of the Supreme Court in Shoorvir Singh Negi”

6. We have also considered the plea of the respondent that the petitioner having approached the Court, ten years after his appointment, his claim is liable to be rejected on the ground of delay and laches itself. We are, however, of the considered view that taking into account that the petitioner had approached the Tribunal immediately upon learning about the benefits of the Old Pension Scheme being extended to similarly situated persons and in any event much before his retirement, it is not a case where his claim ought to be rejected on the ground of delay. In this regard, reference may also be made to paragraph nos. 38 and 39 of the decision in ***Inspector Rajendra Singh (Supra)***, wherein the Coordinate Bench had rejected a similar plea regarding delay and laches by holding as under-

“38. In this case, the petitioners have not retired from service. After persons similarly circumstanced, if not identically circumstanced, as the petitioners were, given the benefit of the Old Pension Scheme, may be, pursuant to orders of this Court, the petitioners approached this Court for relief. Rejection of the writ petition only on the ground of delay, would perpetrate discrimination between persons similarly circumstanced.

39. It is well settled that relief under Article 226 of the Constitution of India is discretionary. When there is acquiescence and laches and delay in approaching this Court, discretionary relief might be declined. However, delay is no bar to entertaining a writ petition. If entertaining a delayed writ petition entails the consequence of



unsettling things already settled, relief may be declined. However, flagrant discrimination cannot be allowed to continue, only because of delay. Illegality must be redressed. In this case grant of relief would not result in unsettling things already settled. We are not inclined to reject the writ petition on the ground of delay.”

7. Before we conclude, we may also note that as recently as on 03.03.2023, the Ministry of Personnel, Public Grievances and Pensions has itself issued an OM on 03.03.2023, extending the benefit of the Old Pension Scheme to all Central Government employees who had been appointed against a post or a vacancy notified prior to the date of notification of the New Pension Scheme. Paragraph no. 4 thereof, reads as under-

“4. The matter has been examined in consultation with the Department of Financial Services, Department of Personnel & Training, Department of Expenditure and Department of Legal Affairs in the light of the various representations/references and decisions of the Courts in this regard. It has now been decided that, in all cases where the Central Government civil employee has been appointed against a post or vacancy which was advertised/notified for recruitment/appointment, prior to the date of notification for National Pension System i.e. 22.12.2003 and is covered under the National Pension System on joining service on or after 01.01.2004, may be given a one-time option to be covered under the CCS(Pension) Rules, 1972 (now 2021). This option may be exercised by the concerned Government servants latest by 31.08.2023.”

8. In the light of the aforesaid, we have no hesitation in setting aside the impugned order and allowing the petitioner’s prayer for extending the benefits of the CCS (CCA) Pension Act & Rules 1972 (commonly



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known as “the Old Pension Scheme”) to him.

9. Accordingly, the necessary exercise for releasing the arrears of pension to the petitioner, in terms of this order after making necessary adjustments for the amount if any already released to him, be carried out within a period of twelve weeks.

10. The petition stands disposed of in the aforesaid terms.

**REKHA PALLI
(JUDGE)**

**TUSHAR RAO GEDELA
(JUDGE)**

JANUARY 15, 2024
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