

Court No. - 18

Case :- WRIT - A No. - 2029 of 2024

Petitioner :- Sidh Narayan Pandey And 2 Others

Respondent :- Union Of India Ministry Of Railways Thru.
Secy. Railway Board New Delhi And 7 Others

Counsel for Petitioner :- Dinesh Kumar Shukla

Counsel for Respondent :- A.S.G.I.

Hon'ble Manish Kumar,J.

1. Heard learned counsel for the petitioner and learned Deputy Solicitor General of India assisted by Shri Varun Pandey.

2. The present writ petition has been preferred for issuing direction to the respondent nos. 1 to 8 to grant the petitioners one notional increment for the year 2019-2020 to the petitioner no. 1 and for the year 2011-2012 to the petitioner nos. 2 and 3 and consequential arrears of retiral benefits in the light of the law laid down by Hon'ble Supreme Court in the case of ***The Director (Admn. and HR) KPTCL & others versus C.P. Mundinamani and others [2023 SCC Online SC 401]*** and the law laid down by this Court in Writ A No. 13299 of 2020 (In Re: ***Nand Vijay Singh vs. Union of India***) and Writ A No. 5311 of 2021 (In Re: Deputy Superintendent of Police Chandra Pal Singh Retired and 5 Ors. vs. State of U.P. and 2 Ors.) and with a further prayer to direct the respondents to take an appropriate decision on representation of the petitioner dated 25.02.2024 as per the law settled, as mentioned above.

3. Learned counsel for the petitioner has submitted that the petitioner no. 1 has retired on 30.06.2020 and petitioner nos. 2 and 3 have retired on 30.06.2012, but the increment as on 1st of July of the respective year of retirement was not paid to them. It is further submitted that similar controversy has attained finality by the judgment of Hon'ble Supreme Court in the case of ***The Director (Admn. and HR) KPTCL & others (supra)*** followed by this Court in various cases. One of the judgment/order passed by this Court is in Writ A No. 637 of 2024 (In Re: Vishwanath and 25 Others vs. State of U.P. and Anr.) dated 30.01.2024, which is quoted hereinbelow:-

"1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.

2. Petition has been filed seeking a direction to opposite parties to consider case of petitioner for granting of one annual increment on his being retiring on 30th June.

3. Learned counsel for the petitioner submits that petitioners were retired on 30th of June in different years between 2010 to 2023 and they have denied one year satisfactory increment, which is due on 1st of July after the retirement of petitioners.

4. Learned counsel has placed reliance on judgment rendered by this court in the case of P.P. Pandey versus State of U.P. and others, writ petition No. 18375 (S/S) of 2020 which has been followed by another coordinate Bench of this Court in the case of Nand Vijay Singh and others versus Union of India and other, Writ A No. 13299 of 2020 which has been quoted with approval by the Supreme Court in the case of The Director (Admn. and HR) KPTCL & others versus C.P. Mundinamani and others reported in 2023 Live Law (SC) 296.

5. Learned State Counsel also does not dispute the fact that petitioner is squarely covered by the aforesaid judgment.

6. Considering the said factors, a writ in the nature of Mandamus is issued commanding the opposite parties to grant benefit of judgment rendered by this Court in the case of P.P. Pandey (supra) with regard to grant of one annual increment to which he had become admissible on 1st July of respective year of retirement.

7. Resultantly, the petition succeeds and is allowed at the admission stage itself. Parties to bear their own cost."

4. It is further submitted that the case of the petitioners is squarely covered by the same thus they are entitled for the parity of the judgments passed by the Hon'ble Supreme Court as well as this Court.

5. On the other hand, Senior Advocate and Deputy Solicitor General of India have raised a preliminary objection on the maintainability of the present writ petition on the ground of laches that the petitioner no. 1 had retired in the year 2020 and petitioner nos. 2 & 3 had retired in the year 2012 and approaching this Court after a delay of about 4 years and 12 years respectively, so it is a stale claim.

6. In reply, learned counsel for the petitioner has submitted that it is a continuous wrong on the part of the respondents, hence the laches will not come in the way of granting the increment to the petitioner for which he is legally entitled. It is further submitted that in the service matters, 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 but in the present case, the principle of successive/recurring wrongs will apply so the petitioner is entitled to arrears normally to a period of three years prior to the date of filing of the writ petition. In support of his

submission, learned counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court in the case of **Union of India and Others vs. Tarsem Singh [(2008) 8 SCC 648]**. The relevant paragraphs of the judgment is quoted hereinbelow:-

"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 re-opening 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 re-fixation 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, 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.

8. In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances. "

7. It is further submitted by learned counsel for the petitioner that the judgment of **Tarsem Singh (supra)** has been followed by the Hon'ble Supreme Court in the case of **Rushibhai Jagdishbhai Pathak vs. Bhavnagar Municipal Corporation [2022 SCC Online SC 641]** in its judgment dated 18.05.2022 passed in Civil Appeal No. 4134 of 2022. The relevant paragraph of the said judgment is quoted hereinbelow:-

"10. At the same time, the law recognises a continuing cause of action which may give rise to a recurring cause of action as in the case of salary or pension. This Court in

M.R. Gupta v. Union of India has held that so long as the employee is in service, a fresh cause of action would arise every month when they are paid their salary on the basis of a wrong computation made contrary to the rules. If the employees claim is found to be correct on merits, they would be entitled to be paid according to the properly fixed pay-scale in future and the question of limitation would arise for recovery of the arrears for the past period. The 10 (1995) 5 SCC 628 Court held that the arrears should be calculated and paid as long as they have not become time-barred. The entire claim for the past period should not be rejected.

11. Relying upon the aforesaid ratio, this Court in the case of *Union of India and Others v. Tarsem Singh* while referring to the decision in *Shiv Dass v. Union of India* quoted the following passages from the latter decision:

"8...The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years."

12. In *Tarsem Singh (supra)*, reference was also made to Section 22 of the Limitation Act, 1963, and the following passage from *Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj* (2008) 8 SCC 648 12 (2007) 9 SCC 274 *Shree Dhyaneshwar Maharaj Sansthan* which had explained the concept of continuing wrong in the context of Section 23 of the Limitation Act, 1908, corresponding to Section 22 of the Limitation Act, 1963, observing that:

"31...It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is

necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."

13. Accordingly, in *Tarsem Singh (supra)* it has been held that principles underlying 'continuing wrongs' and 'recurring/successive wrongs' have been applied to service law disputes. A 'continuing wrong' refers to a single wrongful act which causes a continuing injury. 'Recurring/successive wrongs' are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. Having held so, this Court in *Tarsem Singh (supra)* had further elucidated some exceptions to the aforesaid rule in the following words:

"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 13 AIR 1959 SC 798 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."

17. We are also inclined to grant interest to the appellants on the arrears at the rate of 7% per annum, which would be payable with effect from 1st September 2017. We have fixed the said date for grant of interest as the respondent-Corporation has accepted the interpretation of the Scheme rendered on 16th August 2016 in the Writ Petition preferred by Mukeshbhai Jaswantrao Joshi. Normally, and as a model employer, on accepting the said decision, the respondent-Corporation should have uniformly applied and granted the benefit to all its similarly situated employees affected by the order dated 28th October 2010. This would have avoided unnecessary litigation before the courts, as

was held in *State of Uttar Pradesh and Others v. Arvind Kumar Srivastava and Ors.*

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 16 (2015) 1 SCC 347 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*). 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."

8. The petitioners, as per the law settled by the Hon'ble Supreme Court are entitled for the increment and arrears for a period of three years prior to the date of filing of the writ petition but not for the entire period which is claimed in this case for about a period of 12 years as in the case of petitioner no.s 2 and 3.

9. Resultantly, the petition succeeds and is **allowed** in

terms of preceding paragraph- 8 above at the admission stage itself. Parties to bear their own cost.

Order Date :- 14.3.2024
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