



2025:DHC:1409



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IN THE HIGH COURT OF DELHI AT NEW DELHI***Decided on: 03.03.2025***

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W.P.(C) 2588/2025

JOYDEB DAS

.....Petitioner

Through: Mr. H.P. Chakravati, Advocate.

versus

UNION OF INDIA THROUGH THE SECRETARY
AND ORS

.....Respondents

Through: Mr. Syed Abdul Haseeb, CGSC for
R-1.
Mr. L.R. Khatana, Advocate for R-
2 and 3.**CORAM:****HON'BLE MR. JUSTICE PRATEEK JALAN****PRATEEK JALAN, J. (ORAL)****W.P.(C) 2588/2025 & CM APPL. 12306/2025 (for directions)**

1. The petitioner has filed this writ petition under Article 226 of the Constitution seeking the following relief:

“to issue an order or direction or writ in the nature of certiorari whereby quashing and setting aside the impugned order dated 07.11.2023 (Ann. P-1) coupled with Order dated 12.08.2008 (Ann. P-2) and writ in the nature of mandamus whereby commanding the Respondents to grant annual increments and count the period of court leave from 07.08.1991 to 13.11.1998 with incremental benefits of this period notionally and calculate the pension based on such last pay drawn by the petitioner after adding such benefit notionally then calculation of counting of service with difference of arrears, besides the grant of pension in terms of CCS (Revised Pay) Rules, 2008 and various DOPT's OMs and revision of pension on the basis of 7th CPC w.e.f. 01.01.2016 and the restoration of full pension on and from 01.01.2021 on completion of 15 years of commutation of pension (from 01.01.2006) on the for the purpose of grant of pension and other retirement benefits and revise the pension/retirement benefits accordingly, and restore the full pension w.e.f. 01.01.2021 and to release petitioner's retirement benefits under CCS (Pension) Rules, 1972 with interest @ 18% p.a. compounded annually on the above difference of arrears to be reckoned from 01.01.2006 and issue an order or direction or writ of appropriate nature by directing the



respondents to pay the cost of present litigation to the extent Rs.1.5 lac to petitioner.”

2. The petitioner retired from the services of the Export Inspection Council [“EIC”], a statutory body under the Ministry of Commerce and Industry, Government of India, on 31.12.2005.
3. During the petitioner’s service, he and several other employees of the EIC had approached the Calcutta High Court by way of C.O. No. 11302 (W) of 1991, in view of a decision of the respondents to retrench, transfer, or revert the petitioners on the ground of shrinking work in the Jute Scheme undertaken by them. The writ petition was disposed of on 28.09.1998, and an appeal against the said judgment [FMA No. 266 of 1999] was decided by the Division Bench of the Calcutta High Court on 25.09.2006.
4. The aforesaid judgments were implemented by the EIC. A letter dated 20.11.2006 was issued to the petitioner, stating that he would be treated as having continued in the service of the concerned Export Inspection Agency, but would not be entitled to get actual financial benefits for the seven-year period during which he was on leave. The benefit of notional increments, with corresponding benefits, were extended.
5. The petitioner made a representation on 09.05.2008, seeking the benefit of the aforesaid seven-year period, during which he was on leave, for the purpose of computation of pension. The said representation was rejected by an order dated 12.08.2008. Against this order, the petitioner issued a legal notice on 14.10.2020, and made a further representation on 04.01.2021.



6. The petitioner then filed a writ petition before this Court being W.P.(C) 12399/2021, which was dismissed in default on 02.03.2022. By order dated 12.07.2023, the writ petition was restored and disposed of, with the following directions:

“CM APPL. No. 19072/2022(restoration)

1. *The present application has been filed by the petitioner seeking restoration of the W.P.(C) No. 12399/2021 submitting to the effect that due to some technical glitch, the counsel for the petitioner could not attend the hearing of the case through Video Conferencing on 29th October, 2021 and 2nd March, 2022 due to which the matter came to be dismissed in default vide order dated 2nd March, 2022.*
2. *Heard the learned counsel appearing on behalf of the applicant/petitioner.*
3. *In view of the averments made in the application is the application is allowed and the W.P.(C) No. 12399/2021 is restored to its original stage and number.*
4. *The application stands disposed of.*

W.P.(C) No. 12399/2021

1. *At this juncture, learned counsel appearing on behalf of the petitioner submitted that he does not press the petition on merit and made an innocuous prayer that the petitioner may be granted liberty to file an appropriate representation/application before the concerned authority to represent his case before the Competent Authority, i.e., Director, Export Inspection Council of India, Ministry of Commerce & Industry, i.e., the respondents no.1 and 2 and also prayed that the Competent Authority may be directed to decide the representation of the petitioner expeditiously.*
2. *I have perused the record.*
3. *In view of the innocuous prayer made by the petitioner seeking to represent his case before the Competent Authority, I am inclined to grant the prayer.*
4. *Accordingly, the petitioner is granted liberty as prayed with direction to file an appropriate representation/application along with the copy of this order before the Competent Authority of the respondent nos.1 and 2 within two weeks and after receiving the application/representation, the Competent Authority is directed to dispose of the representation of the petitioner and pass a detailed and reasoned order in accordance with law expeditiously i.e. preferably*



within six weeks.

5. Accordingly, the instant petition is disposed of with the aforesaid directions.”

7. Pursuant to the liberty granted in the said order, the petitioner made a further representation on 18.07.2023, which has been rejected on 07.11.2023. In the said communication, the respondents have traced the history of the above litigation, and contended that the orders of the Calcutta High Court were duly implemented and uniformly applied to all similarly situated employees. It was contended that the request of the petitioner was now stale, and incapable of being granted, having been decided against him in the year 2008 itself.

8. Having heard learned counsel for the parties, I am of the view that the relief sought in this writ petition cannot be granted at this belated stage. As noted above, the matter relates to the petitioner's service in the EIC from which he retired on 31.12.2005. The judgment of Division Bench of the Calcutta High Court was passed on 25.09.2006, which was, according to the respondents, implemented by order dated 20.11.2006. The petitioner's representation for inclusion of the period of seven years, for computation of his pensionary benefits was also rejected by the order dated 12.08.2008. This is one of the orders sought to be challenged even in this writ petition, filed more than sixteen years thereafter.

9. In the meanwhile, the petitioner did not agitate his grievances in any manner until the legal notice dated 14.10.2020. The said legal notice, and further representation dated 04.01.2021 were quite evidently submitted only as a prelude to institute legal proceedings in the year 2021.

10. The order passed by this Court on 12.07.2023 can also, in my view,



not afford a fresh cause of action to resurrect the petitioner's claim. It may first be noted that the writ petition had been dismissed in default, which was restored and disposed of on the same day, at which time the respondents were not represented. The Court regarded the prayer of the petitioner as an innocuous one, and granted him liberty to make an appropriate representation/application before the competent authority. The application was duly made, and even that was rejected more than one year ago, on 07.11.2023.

11. In any event, the filing of the representation of this nature, even on an order of the writ Court, cannot have the effect of renewing the petitioner's cause of action. This is clear from the judgments of the Supreme Court in *C. Jacob vs. Director of Geology and Mining and Anr.*¹, and *Union of India and Ors. vs. M.K. Sarkar*². The relevant observations in *C. Jacob*, have been followed in *M.K. Sarkar*, in the following terms:

"14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing the appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob v. Director of Geology and Mining [(2008) 10 SCC 115 : (2008) 2 SCC (L&S) 961] : (SCC pp. 122-23, para 9)

"9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realise the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the

¹ (2008) 10 SCC 115, hereinafter "*C. Jacob*".

² (2010) 2 SCC 59, hereinafter "*M.K. Sarkar*".



direction to ‘consider’. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.”

15. When a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A court or tribunal, before directing “consideration” of a claim or representation should examine whether the claim or representation is with reference to a “live” issue or whether it is with reference to a “dead” or “stale” issue. If it is with reference to a “dead” or “stale” issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct “consideration” without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect.”

12. For the aforesaid reasons, the request of the writ petitioner cannot be entertained at this stage.

13. The writ petition, along with pending application, is consequently dismissed.

PRATEEK JALAN, J

MARCH 3, 2025/“Bhupi”/SD/