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(2018) 04 OHC CK 0015

In the Orissa High Court

Case No : W.P.(C) No.14492 of 2017

Banalata Mohapatra — APPELLANT

Vs

State of Odisha and others — RESPONDENT

Date of Decision : 05-04-2018

Acts Referred:
Orissa Education Act, 1969 — Section 7(C)
Constitution of India, 1950 — Article 14, 16

Citation : (2018) 04 OHC CK 0015

Hon'ble Judges : Dr.D.P.CHOUDHURY

Bench : Single Bench

Advocate : B.S. Tripathy, P.C. Panda

Final Decision : Disposed of

Judgement

,,,,,

Dr. D.P. Choudhury, J.",,,,,

1. Challenge has been made to the inaction of the opposite parties for not granting arrear grant-in-aid salary to the petitioner for the period from,,,,,

1.6.1982 to 30.11.2012 against the 2nd post of Lecturer in Economics in Kamala Nehru Womenâ??s College, Bhubaneswar.",,,,,

FACTS,,,,,

2. The conspectus of the case leading to the writ petition is that petitioner was appointed as a Lecturer in Economics in Kamala Nehru Womenâ??s,,,,,

College, Bhubaneswar on 16.7.1979 and joined the post on 27.7.1979. There was seniority dispute between the petitioner and one Sabita Acharya",,,,,

relating to the 1st post of Lecturer in Economics in the said College and that was decided against the petitioner in O.J.C. No.867 of 1990. Against that,,,,,

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order, she went to the Honâ??ble Supreme Court vide Civil Appeal No.3472 of 1998. That was disposed of on 11.5.1999 by upholding the decision of",,,,,

this Court but there was observation of the Honâ??ble Supreme Court that the appellant is entitled to get the benefit for the second post provided if,,,,,

she is otherwise qualified. Said judgment has also reported in AIR 1999 SC 1739.,,,,,

3. The Governing Body of the College purportedly recommended to release grant-in-aid in favour of the petitioner in respect of the second post of,,,,,

Lecturer in Economics by observing that she is entitled to get grant-in-aid with effect from 1.6.1982. Since the grant-in-aid was not released, the",,,,,

petitioner approached this Court vide O.J.C. No.7813 of 2001 which was disposed of on 26.7.2001 directing the Opposite Party No.2 to dispose of the,,,,,

recommendation of the Principal in favour of the petitioner within a period of two months as there no result came out, the petitioner filed a fresh writ",,,,,

petition vide W.P.(C) No.5302 of 2002 which was disposed of on 30.8.207 permitting the petitioner to withdraw the writ petition with liberty to move,,,,,

the State Education Tribunal. So, the petitioner filed G.I.A. Case No.208 of 2007 before the learned State Education Tribunal (hereinafter called",,,,,

â??the Tribunalâ?). The learned Tribunal by order dated 22.3.2010 declared that the petitioner is entitled to grantin-aid with effect from 1.6.1982,,,,,

against the second post of Lecturer in Economics and accordingly direction was issued to the opposite parties to release grant-in-aid in favour of the,,,,,

petitioner within three months.,,,,,

4. As the order passed by the learned Tribunal was not complied, the petitioner approached this Court in W.P.(C) No.17706 of 2010 and at the same",,,,,

time filed Execution Case No.67 of 2011 before the Tribunal for implementation of the order. While the matter stood thus, the opposite parties had",,,,,

filed F.A.O. No.195 of 2012 against the order of the learned Tribunal before this Court. Since the F.A.O. was pending, the learned Tribunal in the",,,,,

Execution Case directed to execute the order dated 22.3.2010 subject to result of F.A.O. No.195 of 2012. The F.A.O. No.195 of 2012 was dismissed,,,,,

by this Court on 2.7.2013 on the ground of delay. So, the petitioner submitted the certified copy of the order of this Court passed in F.A.O. No.195 of",,,,,

2012 with her representation to the Opposite Party No.1 to release her dues in terms of the order dated 22.3.2010 passed in G.I.A. Case No.208 of,,,,,

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2007. As there was no action taken in her representation, the petitioner filed Contempt Petition vide CONTC No.1374 of 2013 before this Court. But",,,,,

said Contempt Petition was allowed to be withdrawn granting liberty to the petitioner to file a writ petition assailing the inaction of the opposite parties,,,,,

for not releasing grant-in-aid in terms of the order passed by the Tribunal. In terms of the liberty given, the petitioner filed W.P.(C) No.4880 of 2014",,,,,

seeking release of arrear salary and other dues including retiral dues as in the meantime she has retired on 30.11.2012.,,,,,

5. The above writ petition was disposed of on 10.4.2014 by this Court with a direction to the State Government as well as to the opposite party No.2 to,,,,,

comply the order of the learned Tribunal in releasing grant-in-aid in her favour within a period of two months. That order was not complied. While,,,,,

W.P.(C) No.4880 of 2014 was pending, the State Government challenged the order dated 2.7.2013 passed by this Court in F.A.O. No.195 of 2012",,,,,

before the Honâ??ble Supreme Court, which was reportedly dismissed. Since the order passed in W.P.(C) No.4880 of 2014 was not complied, the",,,,,

petitioner filed CONTC No.691 of 2014 on 11.7.2014. In that Contempt Petition the Government Advocate produced a letter stating that the order,,,,,

dated 10.4.2014 passed in W.P.(C) No.4880 of 2014 has been complied but this Court giving liberty to the petitioner to move the appropriate forum,,,,,

ventilating her grievance if any further cause of action survives. Accordingly the CONTC was disposed of.,,,,,

6. After going through the letter No.818 dated 16.11.2015 of the opposite parties served on the petitioner, she found the Government has accorded",,,,,

their concurrence for approval of the second post of Lecturer in Economics in favour of the petitioner for payment of grant-in-aid with date of,,,,,

eligibility, i.e., with effect from 1.6.1982 @ 1/3rd, with effect from 1.6.1984 @ 2/3rd and with effect from 1.6.1986 @ full. But in that letter at para-3",,,,,

it has been stipulated that arrear claim as admissible to the petitioner may be calculated restricting to three years prior to the institution of G.I.A. Case,,,,,

No.208 of 2007 as per the ratio decided by the Honâ??ble Apex Court in Union of India v. Tarsem Singh, reported in (2008) 8 SCC 648 and also",,,,,

subject to the provision under Section 7(C) of the Orissa Education Act, 1969. Since para-3 of the said letter stipulates a condition which is not",,,,,

required in the present case and the said decision is also not applicable to the facts and circumstances of the case, the present writ petition was filed to",,,,,

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quash the letter dated 27.6.2015 and to direct the opposite parties to release arrear salary in favour of the petitioner for the period from 1.6.1982 to,,,,,

30.11.2012 against the second post of Lecturer in Economics in Kamala Nehru Womenâ??s College with interest.,,,,,

SUBMISSIONS,,,,,

7. Learned counsel for the petitioner submitted that the litigation is running right from 2001. Even if the petitioner is not entitled to the first post of,,,,,

Lecturer in Economics but for the second post of Lecturer in Economics in Kamala Nehru Womenâ??s College, she is entitled to get the arrear",,,,,

salary as per the decision of the Governing Body.,,,,,

8. Since this Court has directed to approach the Tribunal and the Tribunal has passed the order in favour of the petitioner, there is no reason to deny",,,,,

the entitlement of the petitioner to get the salary of second post of Lecturer in Economics right from 1.6.1982 till her retirement. Apart from this, the",,,,,

Honâ??ble Supreme Court has turned down the Civil Appeal and also the S.L.P. filed by the State Government at different occasions with regard to,,,,,

the same cause of action. Since the matter has already set at rest by the Honâ?? ble Apex Court, any inaction by the opposite parties denying the",,,,,

claim of the petitioner not only amounts to contempt but also violation of Articles 14 and 16 of the Constitution.,,,,,

9. Learned counsel for the petitioner further submitted that the State Government while admitting the claim of the petitioner by releasing the grant-in-,,,,,

aid salary right from 1982 with certain fraction but put a unnecessary clause which actually denies the claim of the petitioner. The decision of the,,,,,

Honâ??ble Supreme Court in Tarsem Singhâ??s case (supra) states that the claim made in the writ petition for any arrear benefit should be limited,,,,,

to three years from the date of filing of the writ petition. In the instant case, as the cause of action arose in 2001 after disposal of the writ application,",,,,,

i.e., O.J.C. No.867 of 1990 claiming the second post of Lecturer in Economics with effect from 1.6.1982 and the matter has been already deferred by",,,,,

the State from time to time by dragging the petitioner into the litigation till 2015, the ratio decidendi in Tarsem Singhâ??s case (supra) does not apply",,,,,

to the present case. Hence, it is submitted by the learned counsel for the petitioner that the letter vide Annexure-7 be modified by deleting para-3",,,,,

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thereof and to allow grant-in-aid arrear salary to the petitioner from 1.6.1982 to 30.11.2012.,,,,,

10. Learned Additional Government Advocate submitted that the State Government has already carried out the order of the Court passed in the,,,,,

aforesaid writ petition and accordingly vide Annexure-7 issued Government order by stating following entitlements:,,,,,

SL. No. Name of the incumbent holding the post with Scale of pay Nature of post Date of eligibility Quantum of grant-in-aid admissible Remarks,,,,,

(1)Â (2) (3) (4) Â (5) (6),,,,,

SL.

No.","Name of the

incumbent

holding the post

with Scale of

pay","Â Nature

Â Â Â Â Â Â Â Â Â Â Â

of post

Â","Date of

eligibility","Quantum

Â Â Â Â Â Â of

grant-in-aid

admissible",Remarks

(2),(2),(3),(4),(5),(6)

1,"Banalata

Mohapatra

Rs.525/- to

1300/-","Lecturer Â Â Â in

Economics

(2nd post)",01.06.1982,"01.6.1982@1/3rd

01.06.1984@2/3rd

01.06.1986@ Full",Â

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manner:,,,,,

â??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. In so far 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, 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.â??,,,,,

17. With regard to the aforesaid decision, it is clear that if the wrong is continuing, 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 even there is long delay in seeking remedy with reference to the date to,,,,,

which continue wrong commenced, the claim cannot be defeated.",,,,,

18. Now adverting to the present case that the petitioner has been approaching different forum since 2001 and finally the matter was culminated by,,,,,

the order of the Honâ??ble Apex Court in 2013, it is a continuous wrong and the wrong doer is the opposite parties who have dragged litigation. So,",,,,,

according to principle in Tarsem Singhâ??s case, the petitioner is not responsible for the delay but the opposite party No.1 is responsible for long",,,,,

delay in clearing the arrears of the petitioner. That apart, on 27.6.2015 the

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opposite party No.1 admitted that she is entitled to grant-in-aid from",,,,,

1.6.1982. It appears that the writ petition was filed in 2017. On the other hand, there is no delay at all in making claim through this petition. Hence,",,,,,

following the judgment of Tarsem Singhâ??s case as per the facts and circumstance of this case, the petitioner is entitled to quantum of grant-in-aid",,,,,

with effect from 1.6.1982. Hence, the contention of the learned Additional Government Advocate that as per Tarsem Singhâ??s case the petitioner",,,,,

is not entitled to get arrear from 1.6.1982 is indefensible. Thus, the judgment of Tarsem Singhâ??s case does not defeat the claim of the petitioner.",,,,,

The point is answered accordingly.,,,,,

CONCLUSION,,,,,

19. In the writ petition, it is prayed to quash the stipulation made in para-3 of the impugned order dated 27.6.2015 under Annexure-7 and at the same",,,,,

time to allow the petitioner for releasing differential arrear salary for the period from 1.6.1982 to 30.11.2012 against the 2nd post of Lecturer in,,,,,

Economics.,,,,,

20. In view of the aforesaid discussion that the petitioner is entitled to the salary under grant-in-aid with effect from 1.6.1982 till her retirement, i.e.,",,,,,

30.11.2012, the observation made in para-3 of Annexure-7 that she is entitled to only three years prior to filing of the G.I.A. case vide the observation",,,,,

of the Honâ??ble Apex Court in Tarsem Singhâ??s case is illegal and de hors the principle of law. So, the said portion of Annexure-7 is hereby",,,,,

quashed. Not only this but also the Court direct the opposite party No.1 to issue fresh notification by modifying the same as per the observation made,,,,,

above. It is further directed that the petitioner be released with the differential arrear salary for the period from 1.6.1982 to 30.11.2012 as observed,,,,,

above. The entire exercise be completed within a period of four months from today. The writ petition is disposed of accordingly.,,,,,

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