

(2014) 03 AHC CK 0191
In the Allahabad High Court
Case No : Writ A. No. 14262 of 2014

Braj Narayan Pandey

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 14-03-2014

Acts Referred:

Citation : (2014) 3 ALJ 505 : (2014) 4 AWC 3988

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : R.C. Dwivedi, Advocate for the Appellant

Judgement

B. Amit Sthalekar, J.—The petitioner by this writ petition is seeking a direction in the nature of mandamus to the respondents to grant arrears of selection grade of Lecturer pay scale to the petitioner w.e.f. 04.10.2005 till his retirement i.e. on 30.6.2007 with a further direction to fix the pension of the petitioner on the basis of selection grade of lecturer pay scale. From the averments in the writ petition, it appears that the petitioner was appointed as Assistant Teacher in the Goswami Tulsidas Inter College, Padrauna, District-Kushinagar. He was promoted as Lecturer and retired as such on 30.6.2007. According to him he should have been granted the selection grade on completion of 10 years of continuous service as given to some others. It is also contended that the Principal of the college had recommended granting of selection grade to the petitioner but no decision has been taken by the DIOS, Kushinagar in this regard. On a preliminary objection that the claim raised by the petitioner is barred by limitation, the learned counsel for the petitioner has relied upon a decision of this Court reported in 2007 (2) ESC 1169 (All.) : Kunwar Singh Kannaujiya Vs. The State of U.P. and Others, . In that case the Court has placed reliance upon a judgment of the Supreme Court reported in M.R. Gupta Vs. Union of India and others, wherein, the Supreme Court with regard to fixation of pay scale has held that the same is a continuous cause of action and a petition claiming such relief would not be barred by limitation however, any claim for arrears on account of such fixation of pay would

be barred by limitation.

2. However, in a subsequent decision reported in *Union of India and others Vs. O.P. Saxena and Others*, , a three Judge Bench of the Supreme Court while deciding a bunch of cases where the relief was with regard to grant of stepping up of pay to the respondents therein vis-?-vis one Sri P.N. Kareer the Supreme Court on merits as well as on the question of limitation allowed the appeal and dismissed the claim holding therein that the respondent did not raise any claim for stepping up of pay while he was in service. He retired on 31.3.1988 and filed the original application before the Central Administrative Tribunal only in July, 1991.

3. Paras 19, 20 and 21 of the said judgment read as follows:--

19. The respondent did not make any claim for stepping up of his salary as long as was in service. Having retired on 31st March, 1988, in July, 1991 he filed an application before the Central Administrative Tribunal for stepping up of his pay to bring it at par with that of Sh. Sood and also to give him consequential benefits.

20. The Tribunal by the impugned judgment allowed the application and directed that the pay of the respondent should be stepped up and he should be given all the consequential benefits.

21. Apart from the fact that the application of the respondent before the Central Administrative Tribunal which was filed in July 1991 was highly belated, the position in this case is no different from that of *Union of India and Ors. v. O.P. Saxena*. In this case also the respondent and Sh. Sood were appointed to the stationary post from two different sources. The respondent was Driver Grade-C when he was so appointed while Sh. Sood was appointed to the stationary post from the post of Driver Grade-A. Therefore, for the reasons contained in judgment in C.A. No. 5582 of 1996 the order of the Tribunal has to be set aside.

In the present case also the claim has been raised by the petitioner with regard to grant of selection grade from 2005 and has also prayed for a grant of arrears of selection grade of the pay scale of Lecturer w.e.f. 4.10.2005 till the date of his retirement i.e. on 30.6.2007. This petition has been filed on 20.3.2014 and therefore, in view of the law laid down by the Supreme Court in the case I of *O.P. Saxena* (supra) this petition is grossly delayed and barred by laches and is accordingly dismissed.