

(2014) 10 P&H CK 0083
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 20814 of 2014

Dalbar Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 301
Contract Act, 1872 — Section 72

Citation : (2015) 2 SCT 180

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Sunny Singla, Advocates for the Appellant

Judgement

Rajiv Narain Raina, J.—This petition has been filed on the strength of a legal notice served on the respondents including on the Principal Secretary to Government of Punjab, Department of School Education, Punjab Civil Secretariat, Chandigarh in February, 2014. In the notice, the petitioner claimed the benefit of executive instructions dated 23rd July, 1957 and 1st September, 1960 of the Punjab Government granting advance increments on the basis of higher qualifications earned through a post graduate degree prior to 19th February, 1979. The Masters/Mistresses/JST teachers who were denied advance increments on the strength of higher qualifications had approached this Court in a number of writ petitions including CWP No. 2632 of 1985; Vidya Sagar Singla v. State of Punjab where teachers who had secured post graduate qualifications prior to 19th February, 1979 and were regularized before that date, were granted advance increments. LPA No. 572 of 1986 preferred by the State of Punjab failed on 11th September, 1986 and the SLP carried to the Supreme Court was dismissed on 8th April, 1987. When these teachers secured the benefit of increments, many Masters and Mistresses who joined service with Post Graduate qualifications or acquired them later, came to enjoy a higher pay and this anomaly was resolved by this Court in Rawail Singh and others v. State of Punjab and another, 1995 (4) SCT 481 and both sets of employees were brought at par

irrespective of the fact whether the petitioners therein joined service with Post Graduate qualifications before 1st January, 1978 or acquired such qualifications before that date. The monetary benefit was restricted to three years and three months prior to the date of filing of the writ petition. In the same strain, a Coordinate Bench followed the principles in *Usha Rani v. State of Punjab*, 1996 (4) SCT 739 and the principle laid down in *Rawail Singh's* case was applied. The present petitioners No 1 & 2 were appointed to service on 16th May, 1975 and 7th May, 1975 and retired on reaching the age of superannuation on 30th June, 2008 and 31st July, 2007 respectively. Petitioner No. 1 earned his MA degree on 25th June, 1975 while the 2nd petitioner on 3rd August, 1975. Both are pensioners since the last six or seven years.

2. The Punjab Government had issued instructions on 11th October, 1991 on the basis of the judgment of the Supreme Court rendered on 8th April, 1987 whereby it was clarified that the benefit of higher pay scales be given to the non-petitioners from the date of ad hoc appointment before 19th February, 1979 and to such as had acquired higher qualifications, before the said dates.

3. The grievance of the petitioners is that with effect from 1st January, 1978, the pay scale of the cadre to which the petitioners belong was revised to Rs. 620-1200 with initial pay of Rs. 660/-. It is urged by way of example that a person who was appointed on 1st January, 1978 got Rs. 660/- as initial pay and if he acquired the post graduate qualification (M.A) in the 2nd division would get pay of Rs. $660+20+20+25 = \text{Rs. } 725/-$ and according to the criteria for fixation of pay in the revised pay scale contained in Punjab Civil Services (Revised Scale of Pay), Rules, 1979, the claim with regard to increment with effect from 1st January, 1978 has not been granted to the petitioners for which they rely upon *Rawail Singh* and *Usha Rani* cases. In paragraph 12 of the petition it is pleaded that the petitioners made various representations for the grant of benefit of three advance increments with effect from 1st July, 1978 which have not been decided. 7-8 years after their retirement, the petitioners served a legal notice dated 15th February, 2014 (P-8) on the respondents on which also no decision has been taken so far. However, the reasons or causes for approaching the Court belatedly after 6/7 years of retirement, has not been explained in the petition. Legal notice dated 15th February, 2014 does not speak of any prior representation served on the Government for redressal of their grievance. None is referred to. The petitioners are before the Court praying that a mandamus be issued to the State to decide the legal notice within a time bound period.

4. It is the contention of the learned counsel for the petitioners that though the claim is for money but the cause of action is a continuing one which deprives the petitioners of the monetary benefit of three additional increments which when taken into account will alter their last pay drawn and consequently, they would have a right to increase in pension.

5. This argument, however, misses the point that pension may be a a right in property and a continuing obligation of the State to its retired former servants

and continuing a continuing cause of action but the claim for additional increments for acquiring higher qualifications cannot be perceived on a reading of the circulars to foretell future rights affecting pension. It is not the case that appropriate steps were taken by the petitioners prior to their retirement in 2007 and 2008 for the correction of a perceived wrong. The right to claim advance increments has to be seen from the standpoint of the circular offering the benefit or at least claimed within reasonable time of declaration of rights of co-employees from the point of view of the aforesaid litigation, first ending before the learned Single Judge on 1st March, 1995 in Rawail Singh's case and then from 4th July, 1996 when the learned Single Judge decided Usha Rani's case. Therefore, such a right to advance increments, if any, deserves to have been agitated during the life of the service of the petitioners. Thereafter, the rigour mortis of limitation appears to set in. Even if they assume that the date of retirement is itself the cause of action, then legal proceedings should have been initiated atleast within 3 years of retirement. The State of Punjab cannot be surprised by a financial dent resulting from inactivity of the petitioners. Rights cannot be ignited at the will and caprice of the petitioners agitating for the first time on the issue in February, 2014 by serving a legal notice only to make a base for litigation. I would, therefore, reject the request and refuse to issue a mandamus to the State to decide the legal notice as limitations have set in. Right to pension may start from the date of appointment but remains inchoate till superannuation. The circulars granting monetary benefits midway are not to be seen as continued obligations ad infinitum to be automatically activated or be granted by the State in a case of this kind where the petitioners have slept over their rights for far too long. The statute of limitation is a statue of repose and the remedies are capable of being taken away by their own non-justifiability. Neither any fundamental rights nor statutory rights are involved or pressed in this petition which is a claim for money, pure and simple. Litigation before the High Court cannot be reduced to a pastime.

6. In *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, a Constitution Bench of the Supreme Court dwelt on the scope of Article 226 in the context of Article 301 of the Constitution and Section 72 of the Contract Act in a matter relating to interstate trade and commerce and refund of tax, in which binding precedent the principle that delay alone is sufficient to decline relief, has been expounded. The decision though rendered in taxation law and claim for refund of money beyond three years and rejected on delay is a universal principle which courts have to keep in mind while passing orders, case to case involving the spectrum of law in adjudication. Their Lordships of the Supreme Court also evolved in the verdict the principle, for the first time in writ jurisdiction, that the bar of limitation of three years which applies to a civil suit is a reasonable standard to measure delay in writ petitions. A mandamus will not issue nor an order passed only because it is lawful to do so. This Court while exercising powers under Article 226 of the Constitution is also governed and bound by the principles of delay and laches in approaching Courts and to examine whether to

apply the rule to a case at the threshold on the facts involved and the nature of the relief claimed. It is for these reasons that I refuse to interfere in the matter by issuing a mandamus to the State to decide the legal notice, which is in every sense a non-statutory remedy and the respondents cannot be compelled by judicial fiat to gather ashes from old and dusty record and raise it like a phoenix and decide a claim for money after two decades of slumber if not a little less than a decade.

7. If there were earlier representations made to the respondents they have not been produced and are not to be believed by an assumption. The State Government cannot be treated as the end of a conveyor belt for the representations to be queued up before it and decided by a command of the writ court. The Supreme Court further observed in *Bhailal Bhai* that a Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable. It has been made clear more than once that power under Article 226 is a discretionary power. This is especially true in the case of power to issue a high prerogative writ in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration the Supreme Court further observed in *Bhailal Bhai* in the exercise of that discretion is the delay made by the aggrieved party in seeking special remedy and what excuse there is for it.

8. No ground for interference made out in a stale claim. The petition, for the above reasons fails and is dismissed. At this stage, a request is made for withdrawing the petition. The request is rejected as I find insufficient reasons to interfere in the matter.