

(2008) 10 MP CK 0023

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4290 of 2005 (S)

Gopal and Another

APPELLANT

Vs

M.P. Road Transport Corporation

RESPONDENT

Date of Decision : 14-10-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2008) 119 FLR 702

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : B.P. Singh, for the Appellant; S.K. Shrivastava, for the Respondent

Judgement

S.C. Sharma, J.—The Petitioner No. 1 is a retired employee of M.P. Road Transport Corporation and the Petitioner No. 2 is a widow of late Shri Narayan (Sic)ho was also a retired employee of M.P. Road Transport Corporation. The (sic)titioner No. 1 has retired on attaining the age of superannuation on 31.10.2001 (Sic)d the husband of Petitioner No. 2 had retired with effect from 28.2.1997.

2. It has been stated in the writ petition that Petitioner No. 1 and husband Petitioner No. 2 were entitled for higher pay scale by virtue of an order passed (Sic) the State Government dated 13.5.1994. It has also been stated that as the (Sic)pondent-Corporation has not conferred the benefit of higher pay scale, a writ (Sic)tition was filed before this Court by some of the Carpenters and the same was (Sic)gistered as M.P. No. 442/1995 (Lalaram and Ors. v. M.P. State Road Transport (Sic)rporation) and this Court has directed the payment to the Petitioners therein. It (Sic)s also been stated that a L.P.A. preferred by Respondent-Corporation was also (Sic)mised. The contention of the Petitioners is that they are entitled for arrears of (Sic)lary which have been denied to them and denial is in violation of the Article 14 (Sic) the Constitution of India.

3. The Respondent-Corporation has filed a reply and it has been stated in (Sic)

reply that order dated 13.5.1994 which relates to direction by the State (Sic)vernment for grant of higher pay scale in respect of some of the employees has been admitted. They have also admitted the fact regarding filing of the writ petition i.e. M.P. No. 442/95 and also dismissal of the L.P.A. No. 274/97. The Respondent-Corporation has stated that the Petitioner while in service have not approached the appropriate authority claiming relief and as they have slept over their rights for more than two decades, they are not entitled for any relief whatsoever kind.

4. Heard learned Counsel for the parties at length and perused the record.

5. In the present case, it has been stated by the Petitioners that they are entitled for same pay scale which was given to some of the identically placed employees by the Respondent-Corporation and as there was an order in their favour passed by the State Government on 13.5.1994. A writ petition was filed by some of the employees which was registered as M.P. No. 442/1995 and this Court has granted the actual payment for a period of three years prior to 30th May, 1994 to the employees therein. A L.P.A. preferred by the Respondent Corporation was also dismissed in the matter. The Petitioner No. 1 was superannuated on 31.10.2001 and he has filed the present writ petition in the year 2005 claiming arrears of salary/a particular pay scale of the year 1994. Similarly, the husband of Petitioner No. 2 who had retired on attaining the age of superannuation on 28.2.1997 is claiming arrears of salary/a particular pay scale of the year 1994 and even prior to year 1994.

6. The learned Counsel for the Petitioner has relied upon a judgment delivered by the Apex Court in the case of State of U.P. and Ors. v. Raj Bahadur Singh and Anr. decided on 2.1.1996. The Hon"ble Supreme Court while dealing with a case of termination has set aside the order passed by the High Court, by which, the writ petition of the State Government challenging the order of the Tribunal was dismissed on the ground of delay. The aforesaid case was arising out of termination and the matter was adjudicated before the Tribunal as well as before the higher Court and, therefore, as it was not a case of grant of pay scale, arrears of salary, the same is distinguishable in the facts and circumstances of the case.

7. Learned Counsel for the Petitioner has also relied upon a judgment delivered by the Hon"ble Supreme Court in the case of S.R. Bhanrale v. Union of India and Ors. decided on 19.7.1996, wherein, the payment due to an employee was denied by the employer and the employee while in service and also after superannuation kept on representing the matter to the department to pay his dues. In the present case, the Petitioners have not agitated the matter before any authority at any point of time nor any representation is on record stating that they have claimed a particular pay scale while in service also. The Petitioner No. 1 stood retired on 31.10.2001 and the husband of Petitioner No. 2 stood retired on 28.2.1997. The present writ petition has been filed in the year 2005 and. therefore, as the Petitioners have not taken any steps in the matter claiming

a particular pay scale, the judgment referred by the learned Counsel is again distinguishable.

8. The learned Counsel for the Petitioner has also relied upon a judgment delivered by this Court in the case of Rehmat Khan and Anr. v. M.P. State Road Transport Corporation and Anr. W.P. No. 1820 of 1997, in which, the Respondent-Corporation was directed to adjudicate the claim of the Petitioners therein. The Petitioners in the aforesaid case were claiming parity with the Petitioners of Writ Petition No. 441/95 decided on 1st December, 1995. The present writ petition has been filed after a decade by the Petitioners and it is not a case where the Respondent-Corporation has admitted in the return that the Petitioners are entitled for a particular pay scale.

9. Learned Counsel for the Petitioner has also relied upon a judgment delivered by the Supreme Court in the case of M.R. Gupta v. Union of India and Ors. decided on 21.8.1995, wherein, the application of the Petitioner therein was dismissed by the Tribunal as barred by limitation regarding fixation of his pay. In the aforesaid case, the grievance of the Petitioner therein before the Apex Court was for fixation of pay in accordance with rules and it was continuing wrong against him which gave rise to recurring cause of action each time he was paid a salary which was not computed in accordance with rules. In the aforesaid case claim of the Appellant therein was found correct on merits and the Apex Court has held that it is based on a recurring cause of action. In the present case, the claims of the Petitioners have not adjudicated on merits and whether they are entitled for a particular pay scale or not, has not been answered by the Respondent-Corporation. The Petitioners are claiming arrears of salary on the basis of some order passed by the State Government dated 13.5.1994 and it is not a case wherein their pay fixation have not been done in accordance with rules, moreover, their claims have also not been admitted by the Respondent Corporation in their return and, therefore, in the facts and circumstances of the case, it is not a case of recurring cause of case.

10. Learned Counsel for the Respondent-Corporation has relied upon a judgment delivered by the Apex Court in the case of Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another, wherein, it, has been held by the Apex Court that the delay and laches has to be considered an important factor in exercise of the discretionary relief under Article 226 of the Constitution. In the aforesaid case it has also been observed by the Apex Court that when a person is not vigilant to his rights and acquiesces with the situation, his writ petition cannot be heard after a couple of years on the ground that same relief should be granted to him as was granted to a person similarly situated who was vigilant about his rights. In the present case order passed by the State Government was of the year 1994 based upon which, the writ petition of the other employee was decided on 1.12.1995 and the present writ petition was filed in the year 2005 and therefore as the Petitioners have never preferred any representation at any point of time before any authority, are not entitled for the same relief on the ground of delay

and laches.

11. The Apex Court while dealing with the case of A.P. Steel Re-Rolling Mill Ltd. Vs. State of Kerala and Others, in paragraph 40 has held as under:

The benefit of a judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the Petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ Petitioner had chosen to sit over the matter and then wake up after the decision of this Court. It is found that the Appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief.

12. Keeping in view the fact that the Petitioners have not taken any steps in the matter immediately after their retirement and are claiming relief on the basis of some order of the State Government dated 13.5.1994, no case for interference is made out in the matter. Resultantly, the writ petition is dismissed. No order as to costs.