

(2022) 03 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No.61 Of 2020

H.P. Khadi

APPELLANT

Vs

Bhupinder Singh Thakur And Others

RESPONDENT

Date of Decision : 05-03-2022

Acts Referred:

Citation : (2022) 03 SHI CK 0010

Hon'ble Judges : Sabina, J; Satyen Vaidya, J

Bench : Division Bench

Advocate : Rishi Tandon, Shalini Thakur, Ashwani K. Sharma

Final Decision : Disposed Of

Judgement

Sabina, J

1. Appellant-Board has filed this Letters Patent Appeal challenging the judgment dated 21.09.2020, passed in CWPOA No.4859 of 2019 by the learned Single Judge, whereby the writ petition filed by the private respondents was allowed.
2. Mr. Rishi Tandon, learned counsel for the appellant-Board, has submitted that writ petition filed by the private respondents was hit by delay and laches and was liable to be dismissed. Learned counsel has further submitted that the learned Single Judge has further erred in granting all consequential benefits to the private respondents with effect from the year 1983, whereas, the arrears were liable to be restricted to three years prior to the filing of the writ petition.
3. Learned counsel for respondents No.1 to 4, on the other hand, has opposed the appeal and has submitted that the case of the private respondents could not be rejected on the ground of delay and laches because the cause of action to the petitioners was recurring one. On account of anomaly in their pay scales, respondents were being paid less salary every month. Thus, it was a case of continuing wrong. Learned counsel for the respondents has fairly conceded that the arrears were liable to be restricted to three years prior to the filing of the writ

petition.

4. The case of the private respondents, in brief, was that some Assistant Development Officers, working with the Appellant-Board, had approached this Court by filing a writ petition seeking a direction that the anomaly of pay scales existing, vis-à-vis, Assistant Development Officers with effect from the year 1983, be removed. This Court, vide order dated 27.11.2012, allowed the writ petition and directed the appellant-Board to revise the pay scales of the Assistant Development Officers at par with Senior Assistants with effect from the year 1983. Private respondents, being similarly situated, were also liable to be extended the benefit of revision of pay scales with effect from the year 1983, as had been done in the case of similarly situated Assistant Development Officers.

5. Objection was taken by the Board that the writ petition filed by the petitioners was liable to be rejected on the ground of delay and laches.

6. Learned Single Judge rightly came to the conclusion that so long as the petitioners were in service, they were getting less salary every month and thus, it could be said to be a case of recurring cause of action. Hence, the relief sought by the private respondents could not be denied to them on the ground of delay and laches. Similarly situated Assistant Development Officers had been granted relief with regard to revision of their pay scales at par with Senior Assistants with effect from the year 1983. As the respondents were similarly situated, they should have been extended the relief sought by them on the administrative side. However, the respondents were not granted the relief of revision of pay scales at par with their similarly situated employees. Consequently, left with no option, the private respondents approached this Court by filing the writ petition.

7. Learned Single Judge by placing reliance on the judgment passed by this Court on 27.11.2012 in CWPT No.11365 of 2008, rightly allowed the writ petition filed by the respondents and the impugned order to this extent is upheld. However, learned Single Judge should have restricted the payment of arrears for three years from the date of filing the writ petition. In (2010) 12 SCC 538, titled State of Madhya Pradesh and Others versus Yogendra Shrivastava, it was held as under:-

"18. We cannot agree. Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will

have to be restricted to a period of three years prior to the date of the original application. [See: M.R. Gupta vs. Union of India - 1995 (5) SCC 628, and Union of India vs. Tarsem Singh 2008 (8) SCC 648].”

8. Keeping in view the above discussion, we are of the opinion that the impugned order dated 21.09.2020, passed by the learned Single Judge in CWPOA No.4859 of 2019, is liable to be modified to the extent that in terms of the revision of pay scales of private respondents No.1 to 4, the arrears of such calculations would be restricted to the period of three years prior to the date of filing the writ petition.

9. Appeal stands disposed of accordingly. Pending miscellaneous application(s), if any, shall also stand disposed of.