
(2015) 05 DEL CK 0378

In the Delhi High Court

Case No : Writ Petition (C) No. 5661 of 2002

Kamlesh Gopal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi School Education Act, 1973 — Section 10, 10(1)
Limitation Act, 1963 — Section 3

Citation : (2015) 221 DLT 89

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Latika Chaudhary for Avnish Ahlawat, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J—By this writ petition filed under Article 226 of the Constitution of India, petitioner who was an employee of respondent No. 4/ School seeks the following reliefs:

"26. That the petitioner respectfully prays that this Hon"ble Court be pleased to:--

"(i) issue a writ of mandamus or any other appropriate writ directing the respondent Nos. 1 to 3 to enforce the provision of the Delhi School Education Act, 1973 vis-a-vis the respondent Nos. 4 and 5 and on the failure of respondent Nos. 4 and 5 to follow the provisions of the said Act to take action against the respondent Nos. 4 and 5 as per the provisions of Delhi Education Act, 1973.

(ii) to direct the respondent Nos. 4 and 5 by means of the said writ to:--

(a) Count the services of the petitioner from the date of entering into the service of respondent No. 4 i.e., from 5.7.1973 to the date of her retirement i.e. 30.9.1999 for purposes of calculation of all superannuatory benefits payable to the petitioner such as pension, gratuity, encashment of leave and to pay the

same to the petitioner less the amount paid i.e., balance of Rs. 35,352/- towards gratuity and Rs. 21,799/- towards balance of leave encashment or such other amount as the Hon"ble Court may deem fit and proper.

(ii) pay all amounts withheld by the said respondent Nos. 4 and 5 on account of revision of pay scale; and otherwise.

(iii) to pay pension at the rate of 3112/- p.m. plus D.A. as applicable from time-to-time w.e.f. 1.1.2000 or such other amount as this Hon"ble Court deems fit and proper or from 1.5.2000 if the benefit of re employment till 31.4.2000 is given to the petitioner as envisaged in Section 10(1) of the Delhi School Education Act, 1973.

(iv) to give leave travel concession due to the petitioner during her tenure of service according to the rules framed by the Delhi Administrator.

(v) give senior scale to the petitioner on the completion of 12 years continuous service in the Junior Scale and to pay the difference between the senior scale and junior scale to the petitioner.

(vi) pay the petitioner the difference between the full pay and allowance payable to the petitioner and Rs. 4,000/- paid for the period 1.10.99 to 31.12.99 and full pay and allowance for the period 1.1.2000 to 30.4.2000 when the re-employment of the petitioner was illegally and maliciously terminated by the respondent No. 4 total amounting to Rs. 85,251/-.

(vii) interest @ 18% p.a. be awarded on all amounts found due and payable to the petitioner.

(viii) Costs of the suit be also passed in favour of the petitioner and against the respondents.

(ix) any other relief which this Hon"ble Court deems fit and proper in the circumstances of the case be also granted in favour of the petitioner."

At the outset, it is required to be noted that the principle of limitation governs a writ petition and this Court cannot grant monetary emoluments which were due 3 years before filing of the writ petition. This is held by the Supreme Court in the judgment in the case of State of Orissa and Another Vs. Mamata Mohanty, (2011) 112 CLT 46 : (2011) 2 SCALE 377 : (2011) 3 SCC 436 : (2011) 2 SCC(L&S) 83 : (2011) 2 SCR 704 : (2011) AIRSCW 1992 : (2011) AIRSCW 1332 , the relevant paragraphs of this judgment are para Nos. 52 to 54 and which read as under:

"Delay/Laches

52. In the very first appeal, the respondent filed Writ Petition on 11.11.2005 claiming relief under the Notification dated 6.10.1989 w.e.f. 1.1.1986 without furnishing any explanation for such inordinate delay and on laches on her part. Section 3 of the Limitation Act, 1963. makes it obligatory on the part of the

Court to dismiss the Suit or appeal if made after the prescribed period even though the limitation is not set up as a defence and there is no plea to raise the issue of limitation even at appellate stage because in some of the cases it may go to the root of the matter. (See Lachhmi Sewak Sahu vs. Ram Rup Sahu and Others AIR 1944 24 (Privy Council) and Kamlesh Babu and Others Vs. Lajpat Rai Sharma and Others, (2008) 4 JT 652 : (2008) 151 PLR 455 : (2008) 6 SCALE 403 : (2008) 12 SCC 577 .)

53. Needless to say that Limitation Act, 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the Court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the Respondent claimed the relief from 1-1-1986 by filing a petition on 11.11.2005 but the High Court for some unexplained reason granted the relief w.e.f. 1.6.1984, though even the Notification dated 6.10.1989 makes it applicable w.e.f. 1.1.1986.

54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time. (See Rup Diamonds and Others Vs. Union of India and Others, AIR 1989 SC 674 : (1989) 20 ECC 15 : (1989) 40 ELT 226 : (1989) 1 JT 7 : (1989) 2 SCALE 356 : (1989) 1 SCALE 1 : (1989) 2 SCC 356 : (1989) 1 SCR 13 : (1989) 1 UJ 306 , State of Karnataka and Others Vs. S.M. Kotrayya and Others, (1996) 8 AD 5 : (1997) 1 LLJ 640 : (1996) 7 SCALE 179 : (1996) 6 SCC 267 : (1996) 5 SCR 426 Supp and Jagdish Lal and others Vs. State of Haryana and others, AIR 1997 SC 2366 : (1997) 5 JT 387 : (1997) 4 SCALE 202 : (1997) 6 SCC 538 : (1997) SCC(L&S) 1550 : (1997) AIRSCW 2257 : (1997) 5 Supreme 1 .)"

(Underlining added)

2. In addition to the aforesaid aspect of limitation, it is necessary to note that the petitioner claims to have been appointed with respondent No. 4/School from 5.7.1973 but petitioner has not substantiated the same by filing any document with the writ petition showing her employment from 1973. Respondent No. 4 was admittedly taken over by respondent No. 5/Khosla Education Foundation and petitioner was treated as a regular T.G.T. from the year 1978 and from when all her dues as claimed, have more or less been paid subject to what is hereafter said. It is also noted that the petitioner acquired qualifications of B.Ed. only in the year 1978 and therefore she thus only could be appointed as a T.G.T. thereafter as B.Ed. qualification was required for appointment of the T.G.T. and

hence petitioner cannot claim employment as a teacher from the year 1973 as claimed by her.

3. In view of the aspect of limitation, all monetary reliefs which are claimed by the petitioner as stated in the relief clauses can only be granted for three years prior to August, 2002 when the writ petition was filed. Let us therefore examine that what are the reliefs which the petitioner would be granted from August, 1999 onwards.

4. At this stage, it is relevant to state that the petitioner will not be entitled to pension as claimed by her because petitioner can only take benefit either of provident fund or pension and since the private schools such as the respondent No. 4/School are having a provident fund scheme and the petitioner received provident fund in terms of the provident fund scheme, petitioner cannot be held entitled to pension as claimed by her.

5. So far as the claim of senior scale to the petitioner is concerned, admittedly, the same is being claimed from the years 1985 to 1998 inasmuch as the petitioner was granted the senior scale in the year 1998 as per para 6 of the writ petition. Assuming that the petitioner was entitled to senior scale then for this period from the years 1985 to 1998, petitioner had to claim this amount as per limitation at the very maximum by the year 2001. The writ petition therefore cannot be filed in the year 2002 for claiming entitlement of payment from the years 1995 to 1998.

6. So far as petitioner's claim of leave travel concession is concerned, the same is totally vague and not at all substantiated. Also, this aspect also will have to be taken with the principle of limitation, and at best in the year 2002 petitioner could only have claimed leave travel concession of the years 1998-1999 inasmuch as petitioner retired on 30.9.1999.

7. The next claim of the petitioner is for full pay and allowance after the date of her retirement of 30.9.1999 and for the period from 1.10.1999 to 31.12.1999 and in this regard it is noted that the petitioner has already received a contractual lump sum amount of Rs. 4,000/- per month. Today, therefore, taking that petitioner will be entitled to benefit of Section 10 of the Delhi School Education Act, 1973 and the complete pay and not only a lumpsum amount of Rs. 4,000/-, considering the peculiar facts of this case, I refuse to exercise discretion under Article 226 of the Constitution of India so far as this relief (vi) is concerned more so when the petitioner has not pursued and appeared at the time of hearing. In view of the above, the petition is dismissed.