
(2011) 05 P&H CK 0051
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 14394 of 2010

Major Singh and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 11-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 2 ILR (P&H) 626

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : R.K. Arora, Mr. Y.M. Bhagirath, Mr. Sameer Sachdeva, Alka Chatrath, Vikas Chatrath, Mr. Amrik Singh, KPS Sandhu, Tribhawan Singla, GS. Bal, Harinder Sharma, Mr. SK Arora, Anil Chopra, Mr. Sunny Singla and Deepak Gupta, for the Appellant; Puneet Gupta, A.A.G., Punjab, with Charu Tuli, Senior DAG, Punjab, for the Respondent

Final Decision : Allowed

Judgement

Permod Kohli, J.—Controversy in all these writ petitions is common based upon identical facts and same question of law. The petitioners

are claiming benefit of the revised pay scales with effect from 19.06.1971, the date when the similarly situated government employees were held

entitled to the revised pay scales on completion of five years of service. These petitioners were denied benefit though later all of them were granted

the benefit with effect from 16.07.1975. This controversy earlier came up before this Court in CWP No. 2208 of 1989 (Lekh Raj Khera and

others Vs. State of Punjab and another). This writ petition was allowed vide judgment dated 24.03.2009, with the following directions:-

In view of the above legal and factual position, this petition succeeds partially. Respondents are directed to extend the benefit of the Pay revision in

case of petitioners w.e.f. 1.11.1971 instead of 16.7.1975. They are further directed to fix the pay scale of the such of the petitioners whose

unrevised pay falls between two stages in the new time scale in the revised scale in the next stage. The process of fixation of pay be completed

within a period of four months from the date certified copy of this order is served upon the competent authority. The consequential benefit be

released in favour of the petitioners within a period of two months thereafter.

24.03.2009

(PERMOD KOHLI)

JUDGE

2. It is common case of the parties that all the petitioners are governed by the directions contained in Lekh Raj Khera's case (supra), noticed

hereinabove. However, learned counsel appearing for the State respondents has expressed reservation in regard to grant of relief to these writ

petitioners particularly those who approached the Court after a long delay for seeking the relief. As a matter of fact, all the petitioners are seeking

implementation of the judgment of Lekh Raj Khera's case, for their respective benefits. In view of the objection raised by the State-respondents

on the question of delay, these writ petitions were heard though principally all the writ petitions are covered by the judgment rendered in Lekh Raj

Khera's case.

3. The State has relied upon various judgments which are noticed hereunder.

4. In the case of The Regional Manager, APSRTC Vs. N. Satyanarayana and Others, , Hon"ble the Supreme Court declined the prayer for

regularisation of daily wagers from the date of their initial engagement in the year 1986, in the writ petition filed in the year 1999, on the ground of

delay and laches though they were entitled to such relief under an earlier judgment of the Court.

5. In the case of Nadia Distt. Primary School Council and Another Vs. Sristidhar Biswas and Others, the Court declined the relief on the ground

of delay in the matter of appointment when the writ petition was filed after a period of nine years. The relevant observations are contained in

paragraph 11 of the judgment aforesaid which are asunder:-

11. In the present case, the panel was prepared in 1980 and the petitioners

approached the court in 1989 after the decision in Dibakar Pal. Such persons should not be given any benefit by the court when they allowed more than nine years to elapse. Delay is very significant in matters of granting relief and court cannot come to the rescue of the persons who are not vigilant of their rights. Therefore, the view taken by the High Court condoning the delay of nine years cannot be countenanced.

6. In *Eastern Coalfields Ltd. Vs. Dugal Kumar*, a writ petition was filed after a decade claiming the benefit of additional quantity of coal allotted to the company 10 years before the date of filing of the writ petition. It has been held that inordinate delay on the part of the petitioner in making the motion for a writ is an adequate ground for refusing to exercise discretion under Article 226 of the Constitution of India.

7. In the case of *S.S. Balu and Another Vs. State of Kerala and Others*, Hon^{ble} the Supreme Court made following observations to deny the relief when there is inordinate delay:-

17. It is also well-settled principle of law that "delay defeats equity", The Government order was issued on 15-1-2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal there against, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage. In *NDMC v. Pan Singh*, this Court held: (SCC p.283 para 16).

8. In the case of *Shiv Dass Vs. Union of India (UOI) and Others*, the writ petitioner was denied the disability pension in the year 1983. He filed a writ petition in the High Court in the year 2005. This writ petition was dismissed by the High Court considering the question of delay and laches.

The Hon^{ble} Supreme Court while remanding the matter to the High Court, made the following observations:-

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in

filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit the appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.

9. Learned counsel appearing for the respondents have also referred to various judgment of this Court and also the government instructions in regard to implementation of the judgments of the High Court. The State of Punjab issued instructions dated 17.07.2002 to all the Financial Commissioners, the Principal Secretaries and the Administrative Secretaries to the Government of Punjab. The instructions are as under:-

(i) Wherever the rights of the parties have been settled by a judgment of the Court, the State has taken all remedies available to it in law against that judgment even upto the highest court of the land and the judgment has attained finality, then the State must accept the judgment and implement it in its true spirit and command. There is implicit obligation on the part of the State to grant same relief to other members of the cadre whose claim was based upon identical facts and point of law.

(ii) The State Government shall as expeditiously as possible in any case not later than four months react and respond to a legal notice/representation served upon it by any of its employees in redressal of his grievance/grant of relief, which has been granted to his co-employees similarly situated, in furtherance to the judgment of the Court. Unless for reasons to be indicated in the reply, the State feels compelled to deny such relief. Needless to point out that denial must neither be evasive nor intended to circumvent the orders of the Court.

(iii) In the event such an employee is compelled to approach the court of law, whereupon the court awards interest and/or costs while allowing such a petition, then the expenditure incurred by the State including the costs/interest paid in furtherance to the orders of the Court, should be recovered from the erring officer(s).

(iv) The concerned quarters of the Government are expected to work out the details in furtherance to the above directions and issue pervasive but

definite instructions to all its departments forthwith to ensure compliance.

10. In the case of State of Karnataka and Others Vs. C. Lalitha, , Hon''ble the Supreme Court while considering the right of similarly situated

persons, observed as under:-

18. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only

because one person has approached the court that would not mean that persons similarly situated should be treated differently...

11. I have heard the learned counsel for the parties at length.

12. The petitioners are similarly situated as the writ petitioners in Lekh Raj Khera's case (supra). However, it is a fact that these writ petitioners

have approached this Court after the judgment of Lekh Raj Khera's case for the similar relief. The State while conceding that they are similarly

situated resisted their claim only on the ground of delay in filing the writ petitions. The judgment in Lekh Raj Khera's case has attained finality and

the State has implemented the same vide its circular dated 18.08.2010 issued by the District Education Officer, (SE), Gurdaspur, to all the

Principals/Head Masters etc. The relevant instructions for its implementation are as under:-

As per letter under reference, directions were issued to draw the arrears of the concerned with regard to grant of pay scale from 1.11.1971

instead of 16.7.1975 in terms of the report of the Kothari Commission within a period of 15 days. Now Civil Writ Petition No. 8062/2010 has

also been disposed of by the Court in terms of the decision in Lekh Raj Khera's case. Therefore, if any petitioner of this writ petition is pertaining

to your school, the due benefit be given to him within 10 days and receipt be sent to this office. While releasing payment to the petitioner, the Head

of the School will ensure that the benefit has been correctly given to the petitioner as per instructions/rules. If due to the negligence of the school

Head, any petitioner remained deprived for payment, the concerned School Head will be responsible for the same.

13. From the above circular, it is established that the State has implemented the judgment qua writ petitioners in Lekh Raj Khera's case.

Instructions dated 17.7.2002 referred to above clearly depicts Government's policy to implement the judgments attaining finality not only qua the

writ petitioners but also in respect to all non writ-petitioners as well who are similarly situated and may be entitled to similar relief. These

instructions are general in nature and apply in all such cases wherever the judgment against the State has attained finality. Despite these instructions

having been issued in the year 2002, the State is acting in derogation thereof and similarly situated persons are left with no other option but to

approach this Court time and again. This has the effect of burdening this Court with unnecessary litigation and chocking the justice delivery system.

It may also be noticed that not only the Government itself has decided to implement the judgment in respect to all similarly situated persons, a

Division Bench of this Court also issued general directions in this regard in the case of Satbir Singh Vs. State of Haryana The relevant directions

are contained in paragraph 19 of this judgment, which are as under:-

19. Be that as it may, particularly in the afore referred premises, we still feel that it is the bounden duty of the Court to issue the following directions

to the State in the larger public interest and for proper administration of justice:-

(i) Wherever the rights of the parties have been settled by a judgment of the Court, the State has taken all remedies available to it in law against

that judgment even upto the highest court of the land and the judgment has attained finality, then the State must accept the judgment and implement

it in its true spirit and command. There is implicit obligation on the part of the State to grant same relief to other members of the cadre whose claim

was based upon identical facts and point of law.

(ii) The State Government shall as expeditiously as possible in any case not later than four months react and respond to a legal

notice/representation served upon it by any of its employees in redressal of his grievance/grant of relief, which has been granted to his co-

employees similarly situated, in furtherance to the judgment of the Court. Unless for reasons to be indicated in the reply, the State feels compelled

to deny such relief. Needless to point out that denial must neither be evasive nor intended to circumvent the orders of the Court.

(iii) In the event such an employee is compelled to approach the court of law, whereupon the court awards interest and/or costs while allowing

such a petition, then the expenditure incurred by the State including the costs/ interest paid in furtherance to the orders of the Court, should be

recovered from the erring officer(s).

(iv) The concerned quarters of the Government are expected to work out the details in furtherance to the above directions and issue pervasive but definite instructions to all its departments forthwith to ensure compliance.

14. It is a matter of concern that the above directions issued by this Court as far back as in the year 2002 are being flouted with impunity. The

State has failed to discharge its obligation to grant relief to similarly situated persons at its own level. Under such circumstances, it cannot be

permitted to plead delay and laches where the State itself is responsible for unnecessary litigation which could be conveniently tackled at

administrative level on account of concluded and binding judgments of this Court and the Hon"ble Supreme Court.

15. Apart from the above, it has also come on record that after Lekh Raj Khera's case, a number of writ petitions came to be filed in the year

2009 and 2010 which have been decided by this Court granting the similar relief as in Lekh Raj Khera's case and the State has chosen not to

prefer any appeal against those judgments.

16. The question of re-fixation of the salary, in fact, gives a recurring cause of action to the government employee as every month he loses some

amount from his salary or retiral benefits on account of wrong fixation of salary. Thus, the doctrine of delay and laches cannot be permitted to be

invoked as thumb rule in every case. The judgments cited on behalf of the State mostly pertained to appointment matters, seniority and policy

matters. In C. Lalitha's case (supra), Hon"ble the Supreme Court has clearly held that similarly situated persons should not be treated differently.

Similarly, in Shiv Dass's case (supra) cited on behalf of the respondents, Hon"ble the Supreme Court has again clearly held that in cases of

pension, at the most, relief could be restricted to three years.

17. A Full Bench of this Court in the case of Saroj Kumari, Teacher Govt. Girls Sr. Sec. School, Ferozepur and Others Vs. State of Punjab and

Others, , have examined the question of re-fixation in the context of delay in approaching the Court wherein it has been held as under:-

9. Learned counsel for the petitioners submitted that in case of wrong fixation of pay to which an employee may be entitled under the relevant

rules, instructions or even on account of a judgment, there is no question of any

limitation as the wrong payment of salary every month is a continuing wrong against him which gives rise to recurring cause of action each time he is paid salary which is not computed according to the relevant rules, instructions or a judgment, the employees in such a case has a right to ask for a direction to the State Government or to the employer to fix the pay correctly right from day one in accordance with the relevant rules and instructions. However, while granting the relief of arrears of pay etc., the same can be confined to three years and two months which is the period of limitation provided for getting a relief of realisation of arrears in a civil suit.

14. For the foregoing reasons we are of the view that in cases where only fixation of pay according to the relevant rules/instructions or a judgment is prayed for, the writ petition cannot be dismissed at the threshold on the ground of delay and laches but the payment of arrears can be restricted to a reasonable period. Three years and two months would be considered a reasonable period as that is the period for which a person can ask for the payment of arrears before a Civil Court.

18. The cause of the petitioners is a recurring cause. Thus, the ratio of the judgment of the Full Bench is applicable on all four corners to the facts of this case. Petitioners right cannot be defeated merely on account of delay and laches, though the relief for arrears can be restricted to a period of three years as observed by Hon"ble the Supreme Court and Full Bench of this Court, referred to hereinabove.

19. In view of the above circumstances, these petitions are allowed in terms of the judgment in Lekh Raj Khera's case. However, the claim for arrears is restricted to three years preceding the filing of the writ petitions. No costs.

20. It is further directed that all similarly situated government employees may be granted the relief in terms of Lekh Raj Khera's case though restricting claim of arrears to three years. It would be prudent and appropriate for the Government to issue a circular/notification in this regard as early as possible to prevent further litigation on this question. A copy of this order be placed on the file of other connected writ petitions.