

(2017) 02 DEL CK 0273

In the Delhi High Court

Case No : 1300 of 2016

MRS. R.K. JODHKA & ORS

APPELLANT

Vs

DIRECTOR OF EDUCATION & ORS

RESPONDENT

Date of Decision : 08-02-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

[Limitation Act, 1963](#), [Section 3](#) - Bar of
limitation

Citation : (2017) 02 DEL CK 0273

Hon'ble Judges : Valmiki J.Mehta

Bench : SINGLE BENCH

Advocate : J.R. Bajaj, D.R. Bhatia, Jasmeet Singh, Gayatri Aryan

Judgement

1. This writ petition is filed by a total of 27 petitioners. These 27 petitioners seek payment of their salaries as per the scales of pay of the 6th Pay Commission Report as made applicable to schools in Delhi by virtue of the order of the Director of Education dated 11.2.2009. The dates of retirement of the different petitioners or termination of services so far as petitioner no.12 as per the stand of the school is concerned, are stated in Tables A, B and C of the counter affidavit of the school represented by respondent nos.2 to 6. These Tables read as under:-

TABLE A

S. No. Name Party Position Held Retirement Date

- 1) R.K. Jodhka Petitioner no.1 Offtg. Principal 30.06.2011
- 2) Mrs. Varinder Kaur Lamba Petitioner No.4 TGT 30.11.2009
- 3) Mrs. Harjinder Kaur Rekhi Petitioner No.7 PGT 31.01.2009
- 4) Mrs. Jaswant Kaur Petitioner no.8 Aya 31.10.2010
- 5) Ms. Rani Parmar Petitioner no.9 TGT 31.03.2009

- 6) Mrs. Sudesh Petitioner no.10 TGT 31.03.2010
- 7) Mrs. Bachan Kaur Bindra Petitioner no.11 PGT 31.10.2012
- 8) Mrs. Davinder Kaur Jolly Petitioner no.13 TGT 31.03.2010
- 9) Mrs. Mandeep Chaudhry Petitioner no.15 Vice Principal 31.08.2009
- 10) Mrs. Paramdeep Kaur Petitioner no.16 TGT 31.01.2012
- 11) Mrs. Avtar Kaur Petitioner no.19 Office Clerk 31.11.2010
- 12) Mrs. Amrit Vir Sikand Petitioner no.20 PRT 04.04.2012
- 13) Mr. S. Mohan Singh Petitioner no.22 Watchman 31.08.2012
- 14) Mrs. Swaraj Pachauri Petitioner no.26
31.03.2009

TABLE B

S. No. Name Party Position Held Date of termination

- 1) Mrs. Harvinder Kaur Talwar Petitioner no.12 TGT 31.03.2012 (Terminated)

TABLE C

S. No. Name Party Date of Retirement

- 1) Mrs. Parkash Kaur Petitioner no.3 31.12.2014
- 2) Mrs. Manjeet Kaur Petitioner no.5 31.01.2015
- 3) Mrs. Darshan Kaur Sharma Petitioner no.6 30.09.2014
- 4) Mrs. Surinder Kaur Petitioner no.14 30.06.2013
- 5) Mrs. Rajinder Kaur Petitioner no.17 31.07.2013
- 6) Mrs. Sukhwinder Kaur Jolly Petitioner no.18 30.11.2014
- 7) Mrs. Harjeet Kaur Bhatia Petitioner no.21 01.08.2014
- 8) Mr. Rajinder Pal Singh Petitioner no.23 31.03.2013
- 9) Mrs. Jasvinder Taneja Petitioner no.25 31.12.2013
- 10) Late Mrs. Gurdip Kaur (Through husband Satnam Singh Sohal) Petitioner no.27 03.04.2015
- 11) Mrs. Tarwinder Kaur Petitioner no.24 31.10.2015

2. No doubt, by virtue of the order of the Director of Education dated 11.2.2009, a teacher of school is entitled to payment of salary as per the 6th Pay Commission Report, however, such a petitioner who approaches this Court must approach this Court within limitation in view of ratio of the judgment of the

Supreme Court in the case of State of Orissa and Another Vs. Mamta Mohanty (2011) 3 SCC 436. Learned counsel for the respondent nos.2 to 6/school has along with the counter affidavit relied upon a judgment passed by this Court in more or less identical circumstances where the claim of the teacher in a school in Delhi was denied on the ground of limitation and which judgment is dated 16.4.2015 in W.P. (C) No.4107/2013 titled as Dr. Avtar Singh Vs. Guru Nanak Public School & Ors. and which short judgment reads as under:- "1. Petitioner, who was the Principal of the respondent no.1/School and who left the services of the School on 15.4.2009, claims that he should be paid the benefits payable to employees of the School in terms of 6th Central Pay Commission Report as adopted by the schools by the circular of the Director of Education dated 11.2.2009.

2. Learned counsel for the respondents argues that the petitioner left the school on 15.4.2009 and this writ petition is filed on 29.6.2013 i.e well beyond the period of limitation of three years and therefore monetary reliefs beyond the period of three years cannot be granted as they become time barred.

3. The Supreme Court in its recent judgment in the case of State of Orissa and Anr. Vs. Mamata Mohanty (2011) 3 SCC 436 has held as under:-

"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 v. Ram Rup Sahu: AIR 1994 PC 24 and Kamlesh Babu v. Lajpat Rai Sharma: (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 v. Union of India*: (1989) 2 SCC 356, *State of Karnataka v. S.M. Kotrayya*: (1996) 6 SCC 267 and *Jagdish Lal v. State of Haryana*: (1997) 6 SCC 538.)" (underlining added)

4. The aforesaid paragraphs make it clear that though strictly the Limitation Act, 1963 does not apply to writ petitions but the principle of limitation will definitely apply, and on applying the principle of limitation i.e a period of three years in this case, the writ petition would be barred by the doctrine of delay and laches inasmuch as the cause of action in this case accrued on 15.4.2009 when the petitioner left the services of the School and he was not paid the benefits payable and which were to be claimed by the petitioner in terms of the report of the 6th Central Pay Commission and the circular of the Director of Education dated 11.2.2009.

5. In view of the above, I have no option but to dismiss the petition on account of the petition being barred by delay and laches. No costs."

3. I have also recently examined this aspect afresh in the judgment in bunch of cases with lead case being *Ms. Preeti Sharma Vs. Ganga International School and Ors.* in W.P.(C) No.7792/2015 decided on 19.1.2017, and the relevant paras of this judgment in the case of *Ms. Preeti Sharma (supra)* are paras 6 to 8, and which paras read as under:- "6. That Limitation Act does not strictly apply to writ petitions, but principles of Limitation Act do apply by application of doctrine of delay and laches in a writ petition is no longer *res integra* and has been so held by the Supreme Court in the case of *State of Orissa and Another Vs. Mamata Mohanty*, (2011) 3 SCC 436. Paras 52 to 54 of the judgment in the case of *Mamata Mohanty (supra)* are relevant and these paras read as under:-

"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.

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."

7. The reasoning of the case of Mamata Mohanty (supra) is that if a suit to claim the same relief is time barred and has to be dismissed, then at that stage a writ petition cannot be filed and the limitation period provided by the Limitation Act be circumvented. Under Article 226 of the Constitution of India orders are passed for the purposes of applying the laws of this country and not defeating the laws of this country including the Limitation Act. If limitation period is held not at all to apply to writ petitions as such, then a suit which is time barred will be filed as a writ petition for being entertained. Also, doctrine of delay and laches in their application to a writ petition are considered in a liberal manner, however, such doctrine of delay and laches is considered on principles equivalent as contained either in Section 14 of the Limitation Act or similar to acknowledgments of liability under Sections 18 and 19 of the Limitation Act i.e there is a ground for extension of limitation period beyond the period provided under the schedule of the Limitation Act.

8. Also, the issue of extension of limitation will arise provided a cause of action arises i.e if a representation is filed by an employee and pending for favorable consideration before an employer in terms of a letter of the employer, then till an actual refusal a cause of action would not arise for an employee to approach the Court, and in which case, since limitation does not accrue till actual refusal, then in such circumstances, the issue of delay and laches is considered liberally in favour of the petitioner/employee. With this position of law let us turn to the facts of the present case."

4. Therefore so far as petitioners who are stated in Tables A and B above, since the writ petition has been filed on 12.2.2016, and which is beyond the period of three years of the date of retirement/termination of these petitioners (termination being disputed and the same only being a retirement as per the case of petitioner no.12 and which aspect in any case will not make any difference to result), the ratio of the judgment of the Supreme Court in the case of Mamta Mohanty (supra) will apply and as also adopted by this Court in the judgments in the cases of Dr. Avtar Singh (supra) and Ms. Preeti Sharma (supra) as reproduced above. The writ petition, so far as petitioners stated in Tables A and B are concerned, is dismissed by applying the doctrine of delay and laches with the underlying principle of limitation.

5. So far as petitioners who are stated in Table C are concerned, such persons have approached this Court within the limitation period i.e within three years of the date of their retirements. However, such petitioners will only get amounts which are due from a date of three years prior to filing of the writ petition and till the dates of their retirements. Accordingly, so far as petitioners stated in Table C are concerned, the respondent nos.2 to 6/school will be liable to pay to such petitioners their arrears of salary in terms of 6th Pay Commission Report from 12.2.2013 till the dates of their respective retirements as stated in Table C above. The respondent nos.2 to 6/school will make payments of monetary emoluments to such petitioners within a period of three months from today along with simple interest @ 5% per annum from the dates the amounts became due till the amounts are paid to these petitioners by the respondent nos.2 to 6/school.

6. Writ petition is partly allowed and partly dismissed and disposed of in terms of aforesaid observations, leaving the parties to bear their own costs.