
(2014) 02 AHC CK 0038

In the Allahabad High Court

Case No : Special Appeal Defective No. 87 of 2014

Nand Lal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 19-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 3 ALJ 145

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J;Devendra Kumar Arora, J

Bench : Division Bench

Advocate : Angrej Nath Shukla, Advocate for the Appellant

Final Decision : Allowed

Judgement

1. The appellant was appointed on the post of Store Superintendent Grade-II under the Director, Civil Defence, U.P. Lucknow (the second respondent to the appeal). The appellant was thereafter promoted on 17 June, 1984 to the post of Store Superintendent Grade-I. On 6 September, 1971, a Government Order was issued regarding the fixation of pay-scales in which it was stipulated that if the posts of Store Superintendent Grade-I are filled up from Police Inspectors, they would be entitled to a pay-scale of Rs. 225-500 and as regards the posts of Store Superintendent Grade-II when drawn from Police Sub-Inspectors, would be admissible to a pay-scale of Rs. 175-300. All other persons appointed on the posts of Store Superintendent Grade-I would receive a pay-scale of Rs. 150-350 and on the posts of Store Superintendent Grade-II to a pay-scale of Rs. 120-250.

2. This discrimination between persons occupying the same posts with the same responsibilities but drawn from two different sources was challenged before the State Public Services Tribunal in a claim petition instituted by one Rajendra Prasad Singh. That claim petition (Claim Petition No. 215/V/HM3/87, Rajendra Prasad Singh v. Director, Civil Defence, State of U.P. and Ors.) was allowed by the Tribunal on 1 October, 1996. The Tribunal held as follows:

... But no reason has been given as to why the persons coming from other departments were not entitled to get the same pay-scale, which police personnel have been allowed. There is no dispute that both these two types of personnel discharge the same duties on the same place and on the same posts. It is also clear that when the petitioner was appointed as Store Superintendent Grade-I, he was getting the same pay-scale which police personnel had been allowed. In these circumstances granting of lower pay-scale than those of police department, is illegal, discriminatory and arbitrary. In the above circumstances the opposite parties are directed to ignore the G.O.'s contained in Annexure Nos. 2 & 3 and to pay the same pay-scale which opposite parties are given to police personnel on the post of Store Superintendent Grade-I.

Accordingly, the Tribunal directed that the petitioner before it be granted same pay-scale on the post of Store Superintendent Grade-I which the police personnel had been allowed.

3. The order of the Tribunal was challenged by the State in writ proceedings before this Court. By a judgment dated 12 April, 2012, a Division Bench of this Court dismissed the petition filed by the State (Director, Civil Defence & another v. Rajendra Prasad Singh & Ors., Service Single No. 601 of 1997). A SLP filed by the State (Special Leave to Appeal (Civil) CC 15074/2012) was dismissed by the Supreme Court on 14 September, 2012.

4. In 2000, another employee, Syed Hasan Jafri had filed writ proceedings before this Court (Syed Hasan Jafri v. Joint Director, Civil Defence & Anr., Writ-A No. 17929 of 2000) seeking parity with the employee who had been granted relief by the Tribunal by its judgment dated 1 October, 1996. The learned single Judge by a judgment dated 20 February, 2013 held that the facts were squarely covered by the order of the Tribunal and of this Court in the judgment dated 12 April, 2012 against which a SLP was dismissed. Hence, relief was granted in the same terms.

5. The appellant filed a representation on 10 May, 2013 with the second respondent. When the representation was not disposed of, he filed writ proceedings on 2 July, 2013 seeking the extension of benefits of the judgment and order of this Court dated 20 February, 2013 passed in the case of Syed Hasan Jafri (supra) and of the judgment of the Tribunal dated 1 October, 1996. The petition has been dismissed by the learned single Judge on the ground that there was a delay of 17 years since the order of the Tribunal dated 1 October, 1996. The learned single Judge held that the appellant had made his representation for the first time on 10 May, 2013. Since the appellant had entered in service on 12 June, 1984, it was held that at any rate, the cause of action had arisen when he entered service or when the order was passed by the Tribunal on 1 October, 1996 in the claim petition in favour of Rajendra Prasad Singh. The learned single Judge has relied upon several judgments of the Supreme Court in coming to the conclusion that in view of the absence of any explanation for the lapse of 17 years, the petitioner would not be entitled to relief.

6. Learned counsel appearing on behalf of the appellant submits that in a matter of pay fixation, which would have effect on his pensionary benefit delay by itself ought not to disentitle him to relief. In this regard, reliance was placed on the judgment of the Supreme Court in *State of Madhya Pradesh and Others Vs. Yogendra Shrivastava*, to hold that where the issue relates to payment or fixation of salary, the challenge is not barred by limitation since the denial of a benefit occurs every month giving rise to a fresh cause of action.

7. Similarly reliance was also placed on the decisions of the Supreme Court in *Purnendu Mukhopadhyay and Others Vs. V.K. Kapoor and Another*, *Union of India (UOI) and Others Vs. Tarsem Singh*, and *M. Sudakar Vs. V. Manoharan and Others*.

8. On the other hand, it has been urged on behalf of the State that the judgment of the learned single Judge was clearly right since the original Government Order dated 6 September, 1971 continued to hold the field. Moreover, it was submitted that though the appellant retired on 31 January, 2009, he had not raised the claim until he filed his representation on 10 May, 2013.

9. The essential aspect upon which the decision of the present case must turn, relates to whether the learned single Judge was justified in declining to entertain the petition under Article 226 of the Constitution only on the ground of delay.

10. The facts of the case would indicate that another employee, Rajendra Prasad Singh had moved the Tribunal. The Tribunal had found merit in the grievance of the employee which was that where persons occupy the same posts - either of Store Superintendent Grade-I or Grade-II as the case may be, in the present case, there was no justification to make a discrimination in regard to the applicable pay-scale since both personnel drawn from the police department as well as the others perform the same duties and responsibilities on the same place and in the same post. The judgment of the Tribunal was eventually confirmed by this Court on 12 April, 2012 and the SLP was dismissed on 14 September, 2012.

11. In the meantime, another employee, Syed Hasan Jafri had claimed the benefit of the judgment of the Tribunal by filing a petition in 2000. That petition was allowed by a judgment dated 20 February, 2013 by the learned single Judge of this Court in *Syed Hasan Jafri (supra)*.

12. When the issue of delay in moving under Article 226 arises as is in the present case, the first and foremost principle of law which must be borne in mind is that delay is a matter of exercise of judicial discretion. There cannot be any absolute prescription in the exercise of the constitutional jurisdiction under Article 226.

13. Undoubtedly, unexplained delay is a circumstance which can weigh to the Court. The Court under Article 226 would not permit a stale cause of action to be raised. These principles emerge from the judgments of the Supreme Court on

which reliance has been placed by the learned single Judge. At the same time, a nuanced approach has been adopted in matters where the wrong of which a complaint is made is a continuing wrong. When a service related claim is based on a continuing wrong, relief can be granted despite a long delay unless the reopening of the issue would affect the settled rights of third parties. The Supreme Court has specifically held that if the issue relates to payment or refixation of pay or pension, relief may be granted inspite of delay as it does not affect the rights of third parties. However, the consequential relief in regard to the payment of arrears can be restricted for a period of three years prior to the date of filing of the representation.

14. In *M.R. Gupta Vs. Union of India and others*, , the Supreme Court held that "the claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules."

15. This principle has been enunciated in the judgment of the Supreme Court in *Union of India and others v. Tarsem Singh*, (supra) in the following observation:

To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

Hence in that case, where there was a delay of 16 years, the Supreme Court held that the High Court was not justified in directing payment of arrears for the entire period and the relief should have been restricted to arrears of three years before the date of filing of the writ petition, or from the date of demand to the date of writ petition, whichever was lesser.

16. The same principle was reiterated in a subsequent decision in *State of Madhya Pradesh and Others Vs. Yogendra Shrivastava*, where it was held as follows:

... 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 and others*, and *Union of India (UOI) and Others Vs. Tarsem Singh*, .

17. In a petition under Article 226 of the Constitution, when the High Court issues a high prerogative writ, it is open to it to mould the relief based on the facts and circumstances of each case. The petitioner may not be entitled to the entire relief claimed. Delay and laches do not bar the jurisdiction of the Court since the question of delay lies in the discretion of the Court and does not bar the exercise of jurisdiction (*M. Sudakar v. V. Manoharan and Ors.*, (supra).

18. In the present case, another circumstance, which can be legitimately borne in mind is the fact that relief has been granted to other similarly situated employees in the same department.

19. In view of the discussion above, it would emerge that the appellant moved his representation before the Director, Civil Defence for the first time on 10 May, 2013. The claim of the appellant to a proper pay fixation based on the decision of the Tribunal dated 1 October, 1996 as confirmed by this Court on 12 April, 2012 and on the subsequent decision of a learned single Judge of this Court dated 20 February, 2013, cannot be dismissed on the ground of limitation or delay. However, in such a situation the Court would be justified in holding that the appellant would not be entitled to any arrears of pay in respect of a period of more than three years prior to the filing of the representation. Since the appellant had already in the meantime attained the age of superannuation on 31 January, 2009, the correct approach would be to direct the department to fix the pay on a notional basis, having due regard to the judgment of the Tribunal dated 1 October, 1996 and the decision of the learned single Judge of this Court dated 20 February, 2013 noted earlier in order to enable the appellant to receive his pensionary benefits on the basis of the notional pay fixation. The arrears of pension on the basis of the notional pay fixation shall be provided to the appellant with effect from the month of May, 2010 which would be three years

prior to the filing of the representation. We direct that the department shall now re-examine the case of the appellant in the light of our observations made above.

20. We clarify that the appellant would not be entitled to arrears of salary on the basis of the notional pay fixation. The pensionary benefits payable to the appellant shall, however, be computed on the basis of the notional pay fixation. The appellant would be entitled to receive the arrears of pensionary benefits with effect from 1 May, 2010 and to have his revised pension payable thereafter in accordance with law. We direct the second respondent to pass suitable orders to give effect to this judgment within a period of two months from the date of receipt of a certified copy of this order and to ensure that necessary arrears are paid to the appellant within a period of two months thereafter. The special appeal is allowed in the aforesaid terms. There shall be no order as to costs.