(2010) 02 CHH CK 0012

In the Chhattisgarh High Court

S.B. Tripathi and Others APPELLANT

Vs

State of Chhattisgarh and Another RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:

Citation : (2010) 2 MPHT 59

Hon'ble Judges : Rajeev Gupta, C.J;Sunil Kumar Sinha, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.—Being aggrieved with the order dated 13-8-2008 passed in W.P. (S) No. 4421/2008 by the learned Single Judge of this Court, the appellants/ petitioners have filed this writ appeal.

2. The facts, briefly stated, are as under:

Appellant Nos. 1, 2 and 3 were working on the post of Principals, Government Higher Secondary Schools. They have already retired from services. Appellant No. 4 is still working on the post of Principal, Government Higher Secondary School. The appellants were promoted to the post of Principals in the pay scale of Rs. 2375-75-3200-100-3500-125-4125/- vide order dated 30-7-1990. As per the promotion orders, they joined on the promotional posts. Later on, the State Government vide order dated 19-3-1991 substituted the above pay-scales of the Principals by Rs. 2000-60-2300-75-3200-100-3500/-in place of earlier pay scale of Rs. 2375-4125/-. According to the said order, the higher pay scale in the earlier order was quoted on account of clerical mistake.

According to the appellants, the said order was challenged before the High Court of Madhya Pradesh by many other Principals and it was directed that the petitioners of the said cases would draw the salary in the pay scale of Rs. 2375-4125/-. One of such orders has been filed as Annexure P-3 in the writ petition. It is stated that the State of Madhya Pradesh filed the SLP before the Supreme Court against the order passed by the High Court, but the same was dismissed. The review petition filed against the order of SLP was also dismissed. All these facts are mentioned in the order dated 24-7-2007, copy of which has been filed as Annexure P-4 in the writ petition.

The contention of the appellants/petitioners is that they are at par with the Principals in whose favour the orders have already been passed by the High Court of Madhya Pradesh. Therefore, their salaries may also be fixed on the pay scale which was initially given to them and accordingly, the arrears with interest and all consequential benefits be given to them.

The learned Single Judge dismissed the writ petition holding that it was delayed by almost 17 years and the appellants have filed the petition without any explanation or justification for the said delay.

3. Mr. Rakesh Pandey, learned Counsel appearing on behalf of the appellants argued that the said action of the State was a continuing wrong giving rise to a recurring cause of action every month on the occasion of payment of salary. Even the recurring cause of action continues on payment of every month''s pension, therefore, the writ petition would not have been dismissed on account of delay and laches. He relied on the decision rendered in the matter of M.R. Gupta Vs. Union of India and others, .

4. On the other hand, Mr. Kishore Bhaduri, learned Additional Advocate General, appearing on behalf of the respondents, opposed these arguments and supported the order passed by the learned Single Judge.

5. We have heard the learned Counsel for the parties at length and have also perused the records of the writ appeal as also the writ petition.

6. In M.R. Gupta (supra), the question raised was : Whether the impugned judgment of the Tribunal dismissing as time barred the application made by the applicant for proper fixation of his pay was contrary to law ? In the said case, the Tribunal held that raising of matter of fixation of pay after the lapse of 11 years since the initial pay fixation, was hopelessly barred by time. Accordingly, the application was dismissed as time barred without going into the merits of the appellants claim for proper pay fixation. The Supreme Court, almost in similar facts and circumstances, answered the question in the following manner vide Paras 5 and 6 of the judgment:

5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant''s grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant''s claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay

scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant''s claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on recurring cause of action.

6. The Tribunal misdirected itself when it treated the appellant''s claim as "one time action" meaning thereby that it was not a continuing wrong based on a recurring cause of action. 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. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind (See : Thota China Subba Rao v. Mattapalli Raju AIR 1950 FC 1)

7. In the present case also, the appellants/petitioners are mainly challenging their wrong pay fixation, therefore, the cause of action which arose in favour of the appellants was a recurring cause of action as it arose on each month''s salary payment on the basis of wrong fixation of pay and it further arose on each month''s pension payment made to the respective appellants.

8. For the foregoing reasons, we allow the appeal, set aside the impugned order and remand the matter to the learned Single Judge with a request to decide the matter on merits.

9. The appeal is disposed of in the above terms with no orders as to costs.