

(2017) 02 DEL CK 0363

In the Delhi High Court

Case No : 771 of 2011

SMT. N. ANNAPURNA

APPELLANT

Vs

THE EDUCATION OFFICER AND ORS.

RESPONDENT

Date of Decision : 22-02-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Delhi School Education Act, 1973, Section
10 - Salaries of employees

Citation : (2017) 02 DEL CK 0363

Hon'ble Judges : Valmiki J.Mehta

Bench : SINGLE BENCH

Advocate : Sunil Kr. Mund, Amarnath Jaiswal, Varun Nishal, Sethu Ramalingam

Judgement

1. By this writ under Article 226 of the Constitution of India, the petitioner seeks the relief of adding of her services as a teacher with the respondent no.2-school/ Dr. K.R.B.M School from 18.7.1980 to 15.7.1987 for the purpose of sanctioning of pension and pensionary benefits. Petitioner pleads that the period from 18.7.1980 to 15.7.1987 be added to the qualifying years of service for the purposes of granting her pension and pensionary benefits. Respondent no.2/school started receiving the grant-in-aid from the respondent no.3/Director of Education (DOE) w.e.f. 16.7.1987 and earlier the period of the service of the petitioner from 18.7.1980 to 15.7.1987 with the respondent no.2/school was when the respondent no.2/school did not receive any grant-in-aid from the respondent no.3/DOE.

2. When the respondent no.2/school received grant-in-aid from the respondent no.3/DOE, the petitioner was admittedly given a fresh appointment specifically in terms of the letter dated 16.7.1987 of the respondent no.2/school. This letter dated 16.7.1987 has been annexed by the petitioner as Annexure P-2 to the writ petition. This letter dated 16.7.1987 informs the petitioner that on her appointment as Assistant Teacher with the respondent no.2/school, her pay-scale

is fixed in the scale of pay of Rs.1200-30-1560. In the writ petition paras 2 (v) & (vi) petitioner pleads that senior scale of pay granted to the petitioner w.e.f 16.7.1999 should not have been from 16.7.1999 but should have been instead from 18.7.1992 on account of the petitioner's appointment being taken not from 16.7.1987 but from 18.7.1980. These paragraphs read as under:- "(v) The Respondent No.2 school having conceded that the Petitioner was appointed with effect from 18.07.1980, ought to have fixed the pay scale w.e.f the time when the school was admitted to grant in aid by granting increments, taking her initial appointment date i.e 18.07.1980 into consideration and ought to have granted her the senior scale of pay by 18.07.1992 i.e after completion of 12 years, but the school denied the same perpetrating gross injustice. (vi) That against the aforesaid action of the school in fixing the minimum of the scale of the Petitioner at the time the school was admitted to grant in aid and as well as granting the Senior Pay Scale w.e.f. 16.07.1999 instead of 18.07.1992, the Petitioner made several representations including ventilation through personal approach to Respondent No.2, leading to mere forwarding by Respondent No.2 to Respondent No.1 seeking clarification about the treatment of the total service rendered in either substantive or in any officiating capacity or temporary capacity under the management of the Respondent No.2 school as total service or not for the purpose of pension and pensionary benefits. In this connection, it is respectfully submitted that the Hon"ble High Court of Delhi as well as the Hon"ble Supreme Court of India have been pleased to hold that the pay scale of those who were working in the recognized schools prior to admitting to grant in aid, have to be fixed taking into consideration the earlier service rendered by them as the school was a recognized one. A copy of memorandum dated 16.07.1987 is annexed herewith and marked as Annexure-P/2."

3. Petitioner has pleaded in a writ petition that she made various representations to the respondent nos. 1 and 3 to add the period of service from 18.7.1980 to 15.7.1987 for determining her total qualifying years of service for pensionary benefits, and which are referred to in the communications of the respondent no.2/school to the respondent no.3/DOE dated 17/23.10.2002, 16.1.2003, 23.1.2003 and 3.3.2009. Petitioner thereafter had served a legal notice to the respondent no.3/DOE through the respondent no.1 on 18.7.2009. Respondent no.2/school rejected the stand of the petitioner in her legal notice by the reply of the school dated 21.8.2009. Respondent no.3/DOE through the respondent no.4 rejected the claim of the petitioner by its letter dated 21.10.2009. Petitioner therefore has filed this writ petition in this Court on 4.2.2011.

4. Learned counsel for the petitioner, in support of the argument that the qualifying service of the petitioner for the purpose of calculation of pension and pensionary benefits should include the period from 18.7.1980 to 15.7.1987 (the period when the respondent no.2/school was not receiving the grant-in-aid) relies upon a judgment of a learned Single Judge of this Court in the case of P.M. Lalitha Lekha Vs. Lt. Governor and Ors. 186 (2012) DLT 538. In this judgment a learned Single Judge of this Court by applying Section 10 of the Delhi School

Education Act, 1973 held that qualifying years of service means total years of service of a teacher in a school, whether the same be after the grant-in-aid or before the grant-in-aid. After holding the employee entitled to qualifying service of the total period of service, including the period of pre grant-in-aid, the learned Single Judge in P.M. Lalitha Lekha's case (supra) however apportioned the financial liabilities towards pensionary benefits of the employee between the Director of Education and private management of the school by holding that for the period of service of pre grant-in-aid, only the school management was financially liable and not the Director of Education.

5. The issue requiring determination is that whether petitioner who retired on 30.6.2006 is entitled to pension by taking her service period not from 16.7.1987 to 30.6.2006 but the period of service of the petitioner qualifying for pension should be taken from 18.7.1980 to 30.6.2006. For determining the main issue there are two issues which arise for determination. The first issue is that whether the period of service of the petitioner from 18.7.1980 to 15.7.1987 should be added as a qualifying service period for the purpose of grant of pensionary benefits in view of the ratio of the judgment in P.M. Lalitha Lekha's case (supra). The second issue is that whether in spite of the ratio in the case of P.M. Lalitha Lekha (supra) the petitioner is not entitled to add to her service period for determining qualifying service the period from 18.7.1980 to 15.7.1987, inasmuch as, the petitioner firstly is estopped in the year 2011 when the writ petition is filed from challenging the scale of pay granted way back to the petitioner when she was appointed by the respondent no.2/school by the letter dated 16.7.1987 at a pay-scale of Rs.1200-30-1560 because in effect the petitioner by seeking to add the period from 18.7.1980 to 15.7.1987 for qualifying the years of service for determining pensionary benefits will in effect be challenging the scale of pay granted to the petitioner way back on 16.7.1987 and the petitioner acted upon and took benefit of which for around 15 years till 2002 and only when she first raised the issue. Secondly if the petitioner in 2002 or in 2011 (when the writ petition was filed) is allowed to challenge the letter dated 16.7.1987 of her appointment and which challenge is time barred and hit by the doctrine of delay and laches.

6. So far as the issue of determination of the expression "qualifying years of service" for determination of pensionary benefits, petitioner no doubt can take benefit of the ratio of the judgment of a learned Single Judge of this Court in the case of P.M. Lalitha Lekha (supra) with the clarification that if the pensionary benefits were to be granted then the liability of the respondent no.3/DOE would have been only limited to the period post the grant-in-aid from 16.7.1987, and that for the period of service before the petitioner from 18.7.1980 to 15.7.1987 with the respondent no.2/school, the pensionary liability for this period will not be upon the respondent no.3/DOE but only upon the respondent no.2/school exclusively. However, in my opinion, the writ petition is liable to be dismissed on the grounds of estoppel as also application of doctrine of delay and laches by applying the principles of limitation contained in the Limitation Act, 1963.

7. When the respondent no.2/school received grant-in-aid, the petitioner was given a specific and fresh appointment by the respondent no.2/school in terms of the letter dated 16.7.1987, and which letter reads as under:- "Ref. No.F.AES/RBM/57/87 Dated 16th July" 87 MEMORANDUM Smt. N. Annapurna is hereby informed that she has been selected as an Assistant Teacher in the Andhra Education Society Dr. K. Ramesh Babu Memorial School New Delhi-65, in the scale of pay of Rs.1200.00 plus allowances, under the following terms and conditions: 1. She will be allowed the initial pay of Rs.1200.00 in the Scale of Pay of Rs.1200-30-1560 EB 40-2040 plus allowances as admissible from time to time. 2. She will be on probation for a period of one year. 3. During the period of probation she will be liable for termination with one month's notice. 4. During the period of probation, she will have to give one month's notice to the authorities, if she wants to leave the job. 5. She has to produce two character certificates from two different gazette officers at the time of joining. She is also required to produce a Medical certificate of fitness from a Hospital/Dispensary of the Delhi Administration, Delhi. If the offer of appointment is acceptable to her She must report to duty to the Headmistress on 16th July" 87 at 8.00 A.M. This appointment is subject to the approval of the Directorate of Education, Delhi Administration Delhi. Sd/- MANAGER C.C. 1. Smt. N. Annapurna 2. The District Education Office Zone-S-19. 3. Personal File."

8. Petitioner has indubitably taken benefit of and acted upon this letter dated 16.7.1987 giving a specific pay scale. Accordingly, the petitioner also got senior scale from 16.7.1999. Today, if the petitioner is allowed to claim addition to the qualifying years of service, the period from 18.7.1980 to 15.7.1987, then, effectively the petitioner is allowed not only to challenge the terms and conditions of her appointment by the letter of appointment dated 16.7.1987, and which would be after a period of 23 years (writ petition being filed on 4.2.2011), in fact the petitioner will be further allowed to challenge the decision of granting senior pay scale from 16.7.1999 i.e a fact which took place around 12 years prior to filing of the writ petition. This cannot be allowed. The claim of the petitioner is therefore clearly barred by principles of limitation contained in the Limitation Act and the writ petition is liable to be dismissed therefore by applying the doctrine of delay and laches. That the principles of the Limitation Act apply to writ petitions for the writ petition being dismissed as being barred by the doctrine of delay and laches has been so held by the Supreme Court in the case of State of Orissa and Another Vs. Mamata Mohanty (2011) 3 SCC 436 and the relevant paras of which judgment 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."

9. It is also seen that the petitioner at the very best by a representation firstly made only in the year 2002 (in view of the letter dated 17/23.10.2002 of the respondent no.2/school to the respondent no.3/DOE) seeks to challenge the finality of the terms of her appointment way back on 16.7.1987. By a representation of the year 2002, and assuming which extends the cause of action till the same was rejected by the respondent no.3/DOE vide letter dated 21.8.2009, petitioner cannot be allowed to challenge in the year 2002 a decision taken around 15 years back on 16.7.1987 of granting a particular pay scale to the petitioner of Rs.1200-30-1560/-.

10. Hence the writ petition is liable to be and is accordingly dismissed by applying the principles of the Limitation Act and the doctrine of delay and laches in view of the ratio of the judgment of the Supreme Court in the case of Mamata Mohanty (supra). The writ petition is also liable to be and is accordingly dismissed by applying the doctrine of estoppel against the petitioner inasmuch as petitioner acted upon and took benefit of her appointment to the respondent no.2/school in terms of the letter of appointment dated 16.7.1987 and petitioner cannot now question the terms of appointment and the pay scale granted by the letter of 16.7.1987 by claiming that petitioner in fact should be allowed a higher pay scale on account of earlier years of service from 18.7.1980 to 15.7.1987.

11. In view of the above discussion, the writ petition will stand dismissed, leaving the parties to bear their own costs.