
(2010) 03 SHI CK 0023
In the High Court Of Himachal Pradesh
Case No : CWP No. 348 of 2007

Smt. Shakuntla Devi

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21

Citation : (2010) 03 SHI CK 0023

Hon'ble Judges : Kuldip Singh, J;Dev Darshan Sud, J

Bench : Division Bench

Judgement

Dev Darshan Sud, J.—The Petitioner challenges the order of the State Administrative Tribunal dismissing the claim for grant of benefit of past service which has been rendered by her with Beas Satluj Link High School Slapper before her absorption in the State services. She claimed continuity in service and grant of increments on the basis of her previous service. The Tribunal holds that the petition is barred by the provisions of Section 21 of the Administrative Tribunals Act, 1985, as the Petitioner agitated the matter after a period of eleven years from the accrual of the cause of action. The Tribunal reaches this conclusion by holding that the cause of action if any arose to the Petitioner herein in the year, 1979 and she could not agitate this case after a period of more than 11 years.

2. We have heard learned Counsel for the parties and gone through the record. We find that Original Application No. (M)89/1994 was filed by the Petitioner, which was disposed of by an order dated 17th May, 1994, (annexure P-3), holding that the notice served by the Petitioner dated 20th January, 1994 has not been decided. Accordingly, the Tribunal directed the Original Application to be treated as a representation to the Secretary (Education) to be disposed of in accordance with law and decide it within a period of three months with liberty reserved to the Petitioner to approach the Tribunal again on the same cause of action. This representation was disposed of by the Commissioner-cum-Secretary (Education) vide his order dated 23rd September, 1994, (annexure P-4),

observing that the Petitioner was not entitled for benefits of past services rendered with the Beas Satluj Link, which is an autonomous organisation independent of the State of Himachal Pradesh. The order also states that the claim is stale and cannot be agitated after a period of 15 years. This order was challenged by the Petitioner.

3. We are unable to accept the reasons given by the Tribunal. Annexure P-1 is the notice dated 20.12.1990 and we find that specific averment have been made in paragraph 7 of the notice which reads:

7) That I could not apply for counting/taking over of my services due to non-availability of service record from the quarter concerned which has now been provided/obtained by me after repeated requests from my previous employer.

The case of the Petitioner was that she had been running for pillar to post to obtain her service record to enable her to substantiate her claim for grant of benefit of past service. The Secretary (Education) has not dealt with this particular/aspect of the matter but simply glossed over the facts. We also find from the record that one Sh. Brij Lal, who was also working with the Beas Satluj Link, was granted benefit of his past service rendered with the Board by order dated 24th February, 1979. Different standards cannot be adopted by the State. If the other employees of the Beas Satluj Link whose services were taken over by the State have been granted continuity of service and given the benefit of increments etc., the Petitioner cannot be deprived of this benefit. We find that the Secretary (Education) has not dealt with this aspect of the matter satisfactorily. In fact, he completely ignored it. On the question of limitation it is trite to observe that the law is well settled that repeated representations do not extend limitation. So far as the question of pay fixation is concerned, it is a continuing cause of action. On this point the Supreme Court in *M.R. Gupta Vs. Union of India and others*, has held:

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 to 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 a 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 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 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. Learned Counsel for the Respondents placed strong reliance on the decision of this Court in *S.S. Rathore Vs. State of Madhya Pradesh*, . That decision has no application in the present case. That was a cause of termination of service and, therefore, a case of one time action, unlike the claim for payment of correct salary according to the rules throughout the service giving rise to a fresh cause of action each time the salary was incorrectly computed and paid. No further consideration of that decision is required to indicate its inapplicability in the present case.

We, therefore, held that the decision of the Tribunal is not in accordance with law. The order of the Tribunal passed on 1.12.2006 Annexure P-5 in this Writ Petition is quashed and set aside. We direct that the Petitioner herein shall be entitled to the benefit of pay fixation by granting continuity in service by counting the service rendered by her in the Beas Satluj Link project. It will open to the Respondents to determine the period of service rendered by the Petitioner herein with the Beas Satluj Link on the material placed on record before it. We have not pronounced on the fact as to whether such service was actually rendered which will be determined by the Respondents in accordance with law. We further direct that once the pay of the Petitioner has been fixed by taking into account the continuity in service, she shall not be entitled for any monetary benefits during the time she served with the Respondents, but her pay after being refixed by grant of increments in accordance with law will be made the basis for fixing her pension; as she has already been superannuated from service as this Court has been informed by the learned Counsel appearing for the Petitioner. This Writ Petition is disposed of accordingly. All miscellaneous applications stand disposed of. All the interim order(s) stand vacated.