

(2016) 11 TP CK 0009
In the Tripura High Court

Case No : WP(C) No. 144 of 2016 with W.P. (c) Nos. 159 to 167 of 2016

Sri Hiralal Debnath

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 30-11-2016

Acts Referred:

Citation : (2017) 152 FLR 798

Hon'ble Judges : Mr. S.C. Das, J.

Bench : Single Bench

Advocate : Ms. S. Deb (Gupta), Advocate, for the Petitioners; Mr. S. Chakraborty, Addl. G.A, for the Respondents

Final Decision : Allowed

Judgement

Mr. S.C. Das, J.—On the prayer of learned counsel of both side, all the writ petitions, mentioned above, were heard together since identical fact and question of law involved in all the cases and hence, this common judgment is passed in respect of all the writ petitions.

2. WP(C) 144 of 2016, as prayed for by learned counsel of both side, is treated as the lead case. The other writ petitioners referred to the pleadings and documents filed in WP(C) 144 of 2016 and prayed for same relief. The respondents also in the other writ petitions by filing counter affidavit relied on the pleadings and documents referred to in the counter affidavit filed in WP(C) 144 of 2016.

3. At the very outset, learned counsel, Ms. S. Deb (Gupta) submitted that the present writ petitions are covered by judgment dated 29.04.2014, passed in WP(C) 490 of 2005 and WP(C) 491 of 2005 (common judgment) and also judgment dated 18.03.2014, passed in WP(C) 305 of 2005 and WP(C) 306 of 2005 (common judgment). It is emphatically submitted by Ms. Deb (Gupta) that the petitioners of those writ cases and the petitioners of present writ cases are similarly situated and so they are entitled to the same relief.

4. By filing the writ petitions, the petitioners prayed for the following reliefs:-

"i) Admit the petition of the petitioner.

ii) Call for records from the custody of the respondents, having relevance to the subject matter.

iii) Issue writ directing the respondents and each of them to allow the petitioner the scale of pay of Rs.240440/- w.e.f. 01.04.1979 in the similar mode as has been provided to the other similarly situated employee by dint of the order No.F.DI/ESTT/IV-27/2013/18686761, dated 29.12.2014 forthwith and with all actual financial and service benefits or pass such further order or orders, direction or directions as the Hon"ble High Court may deem fit and proper having regards to the circumstances of the case.

iv) A Writ in the nature of mandamus directing the Respondents to grant the pay scale of Rs.240-440 under the Tripura Govt. Service (Revised Pay) rules 1975 and/or corresponding revise pay scale from time to time to the petitioner and for payment of consequential arrear of salary.

v) Issue Writ directing the Respondents and each of them to treat the petitioners alike the employee whose name appear in the order No.F.DI/ESTT/IV27/2013/18686-761, dated 29.12.2014 while implementing the Judgment dated 29.04.2014 passed by the Hon"ble High Court in W.P(C) 490/2005 & 491/2005."

5. The petitioners contended that they along with other workers under the Department of Industries and Commerce were regularized as Industrial workers w.e.f. 01.04.1979 by an order dated 21.08.1979, but, they were wrongly placed in the pay scale of Rs.170-210/- whereas they were entitled to the pay scale of Rs.240-440/- w.e.f. 01.04.1979. Some of the similarly situated Industrial workers approached Labour Court by filing Labour Case No.01/1998 and the Labour Court by judgment dated 14.12.2000 held that those Industrial workers were entitled to the pay scale of Rs.240-440/- w.e.f. 01.04.1979. That order was challenged before the High Court by filing WP(C) 546 of 2001 and the High Court upheld the order of the Labour Court by judgment dated 15.11.2002.

6. It is submitted by learned counsel, Ms. Deb (Gupta) that the State-respondents preferred Special Leave Petition but Special Leave Petition was also dismissed which is reflected in judgment dated 08.10.2013 passed by this Court in WP(C) 7 of 2006. A copy of that judgment also placed on record.

7. It is an admitted position that the Govt. of Tripura by issuing order dated 17.03.2005 implemented that judgment passed by the Labour Court and affirmed by the Writ Court allowing those petitioners the pay scale of Rs.240-440/- w.e.f. 01.04.1979.

It is also an admitted position that the petitioners of WP(C) 490 of 2005 and WP(C) No.491 of 2005 as well as the petitioners of WP(C) 305 of 2005 and

WP(C) 306 of 2005 were also similarly situated and after the judgment in those writ cases, as aforesaid were passed, the respondents by order No. F.DI/ESTT/IV-27/2013/18686-761, dated 29.12.2014 granted the same relief to those petitioners. It is the definite case of the petitioners that they are similarly situated and so they are also entitled to get the same relief.

8. Respondents by filing counter affidavit admitted the contention that the petitioners of the present batch of writ petitions were absorbed as Industrial workers w.e.f. 01.04.1979 in the pay scale of Rs.170-210/-. It is contended by the respondents that the petitioners during their service life did not claim the benefit and, therefore, the claim now made by the petitioners is a stale claim and is hopelessly barred by principles of delay and laches. No explanation assigned by the petitioners for such abnormal delay and laches and so they are not entitled to get any relief as prayed for. It is also contended by the petitioners that on the ground of delay and laches, this Court by judgment dated 25.06.2015 in WP(C) 368 of 2010 has rejected the prayer of the writ petitioners on the ground of delay and laches and that principle should be applied in these batch of writ petitions.

9. I have meticulously gone through the previous judgments dated 29.04.2014 in WP(C) 490 of 2005 and WP(C) 491 of 2005 and the judgment dated 18.03.2014, passed in WP(C) 305 of 2005 and WP(C) 306 of 2005. As it appears those judgments were passed following a previous judgment dated 08.10.2013 in WP(C) 7 of 2006.

10. It is an admitted position that the petitioners were absorbed as Industrial workers w.e.f. 01.04.1979. It is also an admitted position that some similarly situated Industrial workers approached the Labour Court and the Labour Court held that those petitioners before the Labour Court were entitled to the pay scale of Rs.240-440/- w.e.f. 01.04.1979. That judgment of the Labour Court sustained the test in the High Court and the Special Leave Petition preferred against that judgment was also dismissed by the Apex Court. After that order reached finality, it was implemented by issuing order dated 17.03.2005. The present petitioners and the petitioners of WP(C) 490 of 2005 ; WP(C) 491 of 2005; WP(C) 305 of 2005 and WP(C) 306 of 2005 claimed the same and identical benefit.

11. Learned Addl. G.A. has submitted that the claim of the petitioners is barred by the principles of delay and laches. It is submitted by learned counsel, Ms. Deb(Gupta) that the petitioner of WP(C) 167 of 2016 is still in service and all other petitioners have retired in the meantime. No doubt, the petitioners did not advance their claim at the time when the Labour Court was approached by some other Industrial workers in the year 1998. In that sense no doubt, the petitioners approached this Court after a long delay. But such delay cannot stand in the way of making the claim by the petitioners, since it relates to pay scale of petitioners to which they were legitimately entitled but has been wrongly deprived.

12. "Laches" means an unreasonable delay pursuing a right or claim. There is no

limitation, as such, prescribed to prefer a writ petition claiming relief according to law. But it is a rule of practise that one should approach the Court at the earliest possible time and should not slip over his right. If there is unexplained delay the Court at its discretion may not entertain the writ petition. The "doctrine of laches" is based upon maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in Court of equity. The elements of laches are (i) unreasonable lapses of time; (ii) neglect to assert a right or claim (iii) to the detriment of another. If these three elements are met, the "doctrine of laches" will act as a bar in Court.

13. The Supreme Court in the particular facts and circumstances of case of Ramchandra Shankar DeoDhar & Ors. v. The State of Maharashtra & Ors., reported in (1974) 1 SCC 317 in Para 10 of the judgment has observed-

"10. There was a delay of more than ten or twelve years in filing the petition since the accrual of the cause of complaint, and this delay, contended the respondents, was sufficient to disentitle the petitioners to any relief in a petition under Art, 32 of the Constitution. We do not think this contention should prevail with us. In the first place, it must be remembered that the rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practise based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the court must necessarily refuse to entertain the petition. Each case must depend on its own facts. The question, as pointed out by Hidayatullah, C.J., in Tilockchand Motichand v. H.B. Munshi (1969) 1 SCC 110 "is one of discretion or this Court to follow from ,case to case. There is no lower limit aid there is no upper limit???. It will all depend on what the breach of the Fundamental Right and the remedy claimed are and how the delay arose.???.."

14. In the case of Shankara Cooperative Housing Society Limited v. M. Prabhakar & Ors., reported in (2011) 5 SCC 607, the Apex Court in Para 54 of the judgment observed-

"54. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are:

(1) There is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practise based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.

(2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay

on the part of the petitioners.

(3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy.

(4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

(5) That representations would not be adequate explanation to take care of the delay."

15. What is now settled is that simply on the ground of delay and laches, the Court should not jump to a conclusion to refuse the relief to a genuine litigant. Court must consider the particular fact and circumstances brought before the Court. In the given case, the petitioners were Industrial workers. They claimed that they were entitled to a particular pay scale of Rs.240-440/- w.e.f. 01.04.1979. They have not been given that pay scale, whereas, similarly situated others were given the said pay scale. We are in a welfare State. It is the duty of every authority under the welfare State to treat all the like people in the same scale. While some were allowed the higher pay scale w.e.f. particular date why other should be deprived. It is settled by the Court of law that the Industrial workers who approached the Court were entitled to pay scale of Rs.240-440/- w.e.f. 01.04.1979. So the benevolent Government would grant the similar relief to the others also. However, it is an admitted position that the petitioners of subsequent writ petitions were also granted the similar relief. It is in respect of pay scale to which the petitioners were entitled. The case law which has been referred by the respondents in their counter affidavit i.e. a judgment of this Court dated 25.06.2015 in WP(C) 368 of 2010 is completely on a different context and that is not related to pay scale rather, it was in respect of the status of the petitioner of that writ petition while he was in service.

16. The Supreme Court in the case of State of Madhyapradesh v. Jogendra Shrivastava, reported in (2010) 12 SCC 538 has clearly observed in Para 18 of the judgment thus-

"18. We cannot agree. 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 v. Union of India (1995) 5 SCC 628, and Union of India v. Tarsem Singh (2008) 8 SCC 648]"

17. The present case of the petitioners is well covered by the above observation of the Apex Court.

18. In view of the above discussion, it is hereby ordered that the petitioners are entitled to the pay scale of Rs.240-440/- w.e.f. 01.04.1979 and the respondents are directed to grant the same to the petitioners accordingly. In respect of payment of arrears, it is restricted to the period of three years prior to the date of writ petition filed by the petitioners of the present batch of writ petitions. They are not entitled to the arrears for more than three years prior to the date of their writ petition.

19. The writ petitions are accordingly allowed and disposed of.

20. Parties to bear their own costs.