

(2015) 12 SHI CK 0048
In the High Court Of Himachal Pradesh
Case No : LPA No. 132 of 2009

Suresh Chander Chauhan

APPELLANT

Vs

Himachal Pradesh State Electricity Board

RESPONDENT

Date of Decision : 01-12-2015

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21
Limitation Act, 1963 — Section 22, 23

Citation : (2015) 12 SHI CK 0048

Hon'ble Judges : Mansoor Ahmad Mir, C.J. and Sureshwar Thakur, J.

Bench : Division Bench

Advocate : Sunita Sharma, Advocate, for the Appellant; Vivek Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.

1. Challenge in this Letters Patent Appeal is to the judgment and order dated 24.3.2009, made by the learned Single Judge of this Court in CWP(T) No. 2534/2008, (OA No. 1283/1996) titled Suresh Chander Chauhan versus H.P.S.E.B., for short "the impugned judgment", whereby the writ petition came to be partly allowed with direction to the respondent to consider the petitioner's case for promotion to the post of UDC w.e.f. 30.3.1989, on the basis of his seniority and pay consequential benefits for a period of three years prior to the filing of the petition, on the grounds taken in the memo of appeal.

2. Respondent-Board has not questioned the impugned judgment. Thus, the impugned judgment has attained finality so far as the same relates to it.

3. The petitioner has questioned the impugned judgment only to the extent that the Writ Court has fallen in an error in restricting the back-wages to three years, prior to filing of the writ petition.

4. Heard.

5. The learned counsel for the appellant has argued that the petitioner was entitled to arrears right from the date he was entitled to promotion, i.e., w.e.f. 30.3.1989 but the respondent, without any rhyme or reason, has not considered his case for promotion despite the fact that the petitioner has made so many representations and was projecting his case regularly and ultimately order Annexure A3 dated 24.4.1996, came to be passed, was subject matter of the writ petition and which stands quashed by the Writ Court. Hence, the petitioner cannot be deprived of his right on the ground of limitation. The argument though attractive, is devoid of any force, for the following reasons.

6. The Limitation Act, 1963, for short "the Act" provides for some mechanism or period within which an aggrieved person can seek the redressal of his grievances.

7. The question arose for the first time before the apex Court in case *Jai Dev Gupta Vs. State of H.P. and Another*, , whether the arrears can be restricted only for three years prior to the filing of the writ petition, in terms of the mandate of Limitation Act. The question was answered in affirmative by the apex Court. It is apposite to reproduce paras 2 and 3 of the said judgment herein.

"2. Learned Counsel appearing for the appellant submitted that before approaching the Tribunal the appellant was making number of representations to the appropriate authorities claiming the relief and that was the reason for not approaching the Tribunal earlier than May, 1989. We do not think that such an excuse can be advanced to claim the difference in backwages from the year 1971. In *Administrator of Union Territory of Daman and Diu v. R.D. Valand*, 1995 Supp (4) SCC 593, this Court while setting aside an order of Central Administrative Tribunal has observed that the Tribunal was not justified in putting the clock back by more than 15 years and the Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way. In the light of the above decision, we cannot entertain the arguments of the learned Counsel for the appellant that the difference in backwages should be paid right from the year 1971. At the same time we do not think that the Tribunal was right in invoking Section 21 of the Administrative Tribunals Act for restricting the difference in backwages by one year.

3. In the facts and circumstances of the case, we hold that the appellant is entitled to get the difference in backwages from May, 1986. The appeal is disposed of accordingly with no order as to costs."

[emphasis supplied]

8. In the case in hand, which was subject matter of the above writ petition, the petitioner had approached for the redressal of his grievances in the month of March, 1989 though his right has accrued in the year 1978, thus, the arrears was rightly restricted only for a period of three years prior to filing of the writ petition.

9. The apex Court in another judgment delivered in case *Union of India (UOI)*

and Others Vs. Tarsem Singh, , has laid down the same propositions of law and held that arrears should be restricted to three years prior to filing of writ petition. It is apt to reproduce paras 4 to 8 of the said judgment herein.

"4. The principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. A continuing wrong refers to a single wrongful act which causes a continuing injury. Recurring/successive wrongs are those which occur periodically each wrong giving rise to a distinct and separate cause of action. This Court in Balakrishna S.P. Waghmare v. Shree Dhyaneswar Maharaj Sansthan, explained the concept of continuing wrong (in the context of Section 23 of Limitation Act, 1908 corresponding to section 22 of Limitation Act, 1963): It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. 5. In M.R. Gupta v. Union of India, the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1.8.1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held:

"5.....The appellants 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 appellants 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 appellants 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....

6. In Shiv Dass Vs. Union of India (UOI) and Others, , this Court held:

"8.....The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition.... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years.

7. 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 re-opening 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 re-fixation 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. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, 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.

8. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances."

10. The apex Court in a latest judgment delivered in case Asger Ibrahim Amin Vs. Life Insurance Corporation of India has also laid down the same principles of law. It is profitable to reproduce paras 4, 4.1 and 16 of the said judgment herein.

"4. As regards the issue of delay in matters pertaining to claims of pension, it has already been opined by this Court in Union of India (UOI) and Others Vs. Tarsem Singh, that in cases of continuing or successive wrongs, delay and laches or limitation will not thwart the claim so long as the claim, if allowed, does not have any adverse repercussions on the settled third-party rights. This Court held:

7. 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.

[emphasis is ours]

4.1 We respectfully concur with these observations which if extrapolated or applied to the factual matrix of the present case would have the effect of restricting the claim for pension, if otherwise sustainable in law, to three years previous to when it was raised in a judicial forum. Such claims recur month to month and would not stand extinguished on the application of the laws of prescription, merely because the legal remedy pertaining to the time barred part of it has become unavailable. This is too well entrenched in our jurisprudence, foreclosing any fresh consideration.

5 to 15..... ..

16. We thus hold that the termination of services of the Appellant, in essence, was voluntary retirement within the ambit of Rule 31 of the Pension Rules of 1995. The Appellant is entitled for pension, provided he fulfils the condition of refunding of the entire amount of the Corporation's contribution to the Provident Fund along with interest accrued thereon as provided in the Pension Rules of 1995. Considering the huge delay, not explained by proper reasons, on part of

the Appellant in approaching the Court, we limit the benefits of arrears of pension payable to the Appellant to three years preceding the date of the petition filed before the High Court. These arrears of pension should be paid to the Appellant in one installment within four weeks from the date of refund of the entire amount payable by the Appellant in accordance of the Pension Rules of 1995. In the alternative, the Appellant may opt to get the amount of refund adjusted against the arrears of pension. In the latter case, if the amount of arrear is more than the amount of refund required, then the remaining amount shall be paid within two weeks from the date of such request made by the Appellant. However, if the amount of arrears is less than the amount of refund required, then the pension shall be payable on monthly basis after the date on which the amount of refund is entirely adjusted."

[emphasis supplied]

11. Having said so, the Writ Court has rightly made the impugned judgment, needs no interference.

12. Accordingly, the appeal is dismissed along with pending applications, if any.