

(2022) 12 SHI CK 0037

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 3743 Of 2019

Union Of India & Anr

APPELLANT

Vs

Ajay Bhatti & Ors

RESPONDENT

Date of Decision : 06-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 32, 226
Pension Rules Of 1995, — Rule 31
Limitation Act, 1963 — Section 19, 20(2)(a), 20(2)(b), 21(1), 21(1)(a), 21(1)(b),
21(2), 21(3), 22, 23
Drugs And Cosmetics Act, 1940 — Section 23, 25, 26
Administrative Tribunals Act, 1985 — Section 21

Citation : (2022) 12 SHI CK 0037

Hon'ble Judges : Tarlok Singh Chauhan, J;Virender Singh, J

Bench : Division Bench

Advocate : Balram Sharma, P. P. Chauhan

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

1. Aggrieved by the order passed by the Central Administrative Tribunal whereby it allowed the petition filed by the petitioners (respondents herein), the petitioners have filed the instant petition.

2. The claim of the respondents relates to the grant of Special Compensatory (Remote Locality) Allowance (for short 'SCA'). According to the case set up by the respondents, it was averred that all the respondents were/are posted at the Air Force Station, Kasauli (for short 'AFS') in different trades. After the Fifth Pay Commission Report, the Central Government allowed Special Compensatory (Remote Locality) Allowance against Hill Compensatory Allowance for its employees including the one's posted at Shimla. On being denied the benefit, the employees posted at AFS Kasauli and Central Research Institute, approached the Tribunal by filing O.A. No. 92-HP-1998, titled Central Research Institute

Employees Associations, vs. Union of India & Ors., claiming benefit of such allowance and the same was allowed vide order dated 19.05.1989. But when it got down to the respondents, the same had illegally been denied to them on the pretext that the benefit of SCA was allowed only to those of the employees, who were party to the aforesaid case.

3. The petitioner contested the petition and submitted that AFS, Kasauli was authorised SCA as per letter dated 29.08.2008 and accordingly SCA had been paid to all employees of the Station as per Policy till 30.06.2017 before implementation of the Seventh Pay Commission recommendations, except employees, who had been arrayed as party in OA. No. 1072-HP-1990, titled as Mukesh Gautam and Ors. vs. Union of India and & Ors. decided on 19.10.1990.

4. The defence of the respondents therein was that since the applicants therein were not party to the case relied upon by them, the same benefit therein could not be extended to them as it was judgment in rem.

5. The learned Tribunal allowed the petition by observing as under:-

8. Once the issue has been set at rest by a co-ordinate Bench of this Tribunal, we see no earthly reason with the respondents to deny the benefit of the decision to identically placed person like the applicants herein. In the case of K. C. Sharma vs. UoI etc. 1997 (3) SCT 341, the apex Court and in Satbir Singh vs. State of Haryana etc. 2000 (2) SCT 54, the jurisdictional High Court have held that benefit of a judgment cannot be denied to similarly situated employees. Similarly, in Union of India & Anr. vs. Lalita S. Rao & Ors, AIR 2001 SC 1972, it was held that an order of a court should be implemented for similarly situated employees whether party or not instead of forcing each and every individual to approach the court of law for similar relief.

9. In the wake of the aforesaid factual position and legal principles laid down by courts, we are of the firm view that this O.A. merits acceptance and is allowed accordingly. The respondents are directed to extend the benefit of indicated decision to the applicants also in same terms as given to applicants in the case of Mukesh Gautam etc. (supra) within a period of three months from the date of receipt of a certified copy of this order. However, the parties are left to bear their own costs.

6. Aggrieved by the order passed by the learned Tribunal, the petitioners (respondents therein) have filed the instant petition reiterating all the grounds that were raised before the learned Tribunal. However, interestingly, the petitioners (respondents therein) would now seek the question of maintainability of the petition filed by the respondents on the grounds of delay and laches on the strength of the judgment rendered by the Hon'ble Supreme Court in D.C.S. Negi vs. Union of India and Ors. (2018) 16 SCC 721, wherein it was held that the Tribunal cannot admit application unless the same is made within the specified period or an order is passed in terms of sub section (3) for entertaining application after prescribed period. It is further held that Section 21(1) is

couched in negative form, it is the duty of the Tribunal to consider the issue of limitation and only thereafter admit same if found to have been made within a period of limitation or sufficient cause is shown for not doing so or an order is passed under Section 21(3).

7. Strong reliance is placed on the observations as contained in paras 12 to 14, which read as under:-

12. Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the applications filed under Section 19 of the Act in complete disregard of the mandate of Section 21, which reads as under:-

"21. Limitation.-(1) A Tribunal shall not admit an application-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b) of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

13. A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is

the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3).

14. In the present case, the Tribunal entertained and decided the application without even advertg to the issue of limitation. The learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicate its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non-applicant is not at all relevant.

8. We have heard learned counsel for the parties and have gone through the material placed on record.

9. At the outset, it needs to be observed that there cannot be any quarrel with the proposition as expounded by the Hon'ble Supreme Court in D.C.S. Negi's case (supra), However, the moot question is whether the ratio laid down therein would apply to the cases of the respondents herein.

10. It is not in dispute that it was the petitioners herein themselves, which granted the benefit of the Special Compensatory (Remote Locality) Allowance to the employees posted at AFS, Kasauli and the Central Research Institute, but same for so no apparent reason was denied to the similarly situated persons.

11. Once that be so, obviously, no exception can be taken to the order of the Tribunal when it directed the release of the similar benefits to the respondents.

12. The learned Deputy solicitor General of India would argue that, be that as it may, the respondents are fence-sitters and, therefore, not entitled to the reliefs as claimed for. However, we find no merit in this contention for the simple reason that it is the case where the petitioners themselves took conscious decision to grant certain benefits like Hill Compensatory Allowance to its employees and even granted the same to certain sections withholding those grants in the cases of the respondents, would amount the petitioners being unduly enriched, which is neither permissible nor can be upheld.

13. Undue enrichment is often advanced to resist acceptance of claim for refund. Roots of such plea are embeded in morality, the very foundation of a social structure. All action of the individual or State must confirm to honestly and fairness. The Constitution visualise a Society based on rule of law. Therefore, any State action, which contravene, it cannot be upheld. If theory of undue enrichment is placed into service in favour of the State, it shall encourage compulsive exaction, erode the rule of law and the shake the moral fabric.

14. Thus, to keep this in check and maintain balance between individual and State, that illegal levy of collection has been prohibited by the Constitution and on the same analogy, it is the duty of the court to ensure that the benefits as

announced by the government itself are paid to the beneficiaries, the same are not made illusory by simple refusal.

15. Another contention raised by the petitioners, to resist the claim and entitlement of the respondents, is the plea of delay and laches which though was not raised either before the Tribunal or in the pleadings before this Court, however, we still examine the said plea.

16. According to the learned Deputy Solicitor General of India, the respondents are fence-sitters and, therefore, not entitled to even maintain the petition before the learned Tribunal.

17. Strong reliance in support of such contention has been placed upon the judgment of the Hon'ble Supreme Court in *State of Uttar Pradesh & Ors. vs. Arvind Kumar Srivastava & Ors.* (2015) 1 SCC 347, wherein the Hon'ble Supreme Court after taking into consideration the host of judgments laid down the following principles, which read as under:-

22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1 Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2 However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3 However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like

scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

18. Support is further sought to be drawn from a very recent judgment of the Hon'ble Supreme Court in Rushibhai Jagdishbhai Pathak vs. Bhavnagar Municipal Corporation (2022) 8 Scale 345, wherein observations made in State of Uttar Pradesh's case (supra) have been reiterated.

19. We are not at all impressed by the arguments made by the learned Deputy Solicitor General of India.

20. Even though that there is no limitation provided for proceedings under Articles 32 and 226 of the Constitution, nevertheless, such rights cannot be enforced after unreasonable lapse of time. Fence-sitter cannot be allowed to barge into courts and cry for their rights at their convenience and vigilant citizens ought not to be treated alike with mere opportunists.

21. The rule of delay and laches, is not a rigid rule which can be cast in a strait jacket formula. The High Court in its discretionary jurisdiction can decline to exercise the discretionary writ jurisdiction on the ground of delay in approaching the court. It is only a rule of discretion by exercise of self-reliance evolved by the court in exercise of its discretionary equitable jurisdiction and not a mandatory requirement that every delayed petition must be dismissed on the ground of delay. The Limitation Act *stricto sensu* does not apply to the writ jurisdiction. This was so held by the three-Judge Bench of the Hon'ble Supreme Court in *Vetindia Pharmaceuticals Limited vs. State of Uttar Pradesh and Anr.* (2021) 1 SCC 804, wherein it was observed as under:-

15. That brings us to the question of delay. There is no doubt that the High Court in its discretionary jurisdiction may decline to exercise the discretionary writ jurisdiction on ground of delay in approaching the court. But it is only a rule of discretion by exercise of self-restraint evolved by the court in exercise of the discretionary equitable jurisdiction and not a mandatory requirement that every delayed petition must be dismissed on the ground of delay. The Limitation Act *stricto sensu* does not apply to the writ jurisdiction. The discretion vested in the court under Article 226 of the Constitution therefore has to be a judicious exercise of the discretion after considering all pros and cons of the matter, including the nature of the dispute, the explanation for the delay, whether any third party rights have intervened etc. The jurisdiction under Article 226 being equitable in nature, questions of proportionality in considering whether the impugned order merits interference or not in exercise of the discretionary

jurisdiction will also arise. This Court in *Basanti Prasad vs. Bihar School Examination Board and others*, (2009) 6 SCC 791, after referring to *Moon Mills Ltd. vs. Industrial Court*, AIR 1967 SC 1450, *Maharashtra SRTC vs. Balwant Regular Motor Service*, AIR 1969 SC 329 and *State of M.P. and Others vs. Nandlal Jaiswal and others*, (1986) 4 SCC 566, held that if the delay is properly explained and no third party rights are being affected, the writ court under Article 226 of the Constitution may condone the delay, holding as follows:

“18. In the normal course, we would not have taken exception to the order passed by the High Court. They are justified in saying that a delinquent employee should not be permitted to revive the stale claim and the High Court in exercise of its discretion would not ordinarily assist the tardy and indolent person. This is the traditional view and is well supported by a plethora of decisions of this Court. This Court also has taken the view that there is no inviolable rule, that, whenever there is delay the Court must refuse to entertain a petition. This Court has stated that the writ court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution may condone the delay in filing the petition, if the delay is satisfactorily explained.”

16. The contention of the respondents that they have acted in accordance with the provisions of the Drugs Act pursuant to the report of the analyst for misbranded product under Section 9 is devoid of substance and merits no consideration. It is not the case of the respondents that the procedure prescribed under Sections 23, 25 and 26 of the Drug Act has been followed. The feeble attempt to show compliance with provisions of the Drugs Act by alleged purchase of the samples under Form 14A at Annexure R5 to the counter affidavit dated 21.07.2008 from an unknown source and date must be rejected outright as an attempt to create evidence where none exists.

17. The aforesaid discussion, therefore, leads us to the conclusion that the writ petition was not barred by unexplained delay as the appellant had been pursuing the matter with the authorities and it is they who sat over it, triggering rejection of appellants tender by the Rajasthan Government on 05.07.2019 leading to the institution of the writ petition on 24.07.2019. The High Court therefore erred in dismissing the writ petition on grounds of delay. The illegality and the disproportionate nature of the order dated 08.09.2009, with no third party rights affected, never engaged the attention of the High Court in judicious exercise of the discretionary equitable jurisdiction. Consequently, the impugned order of the High Court as well as order dated 08.09.2009 of the respondents are set aside, and the appeal is allowed.

22. It would be noticed from the aforesaid exposition of law that the courts are normally more liberal in condoning delay where no third party rights are being effected.

23. Admittedly, in the instant case, no third party rights would be effected in case the petition is allowed. Therefore, in such circumstances, when substantial

justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim a vested right in injustice being done. It must be grasped, the judiciary is respected not only not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

24. To say the least, the stand taken by the petitioners to extend benefit of notifications dated 15.11.1985 and 23.09.1986 is totally unfair and as observed above amounts to the respondents being unduly enriched, which has to be avoided at all costs.

25. It also needs to be noticed that the respondents were only recently posted and are from the lower echelons of service and are employed as cooks, helpers, MTS etc. and came to be transferred to AFS, Kasauli only recently.

26. Here, it also needs to be mentioned that prior to the filing of the petition, the respondents have sought information under Right to Information Act, 2005, on various issues. However, only the information as sought for in the application at Clause (d), is relevant for our purpose and the same reads as under:-

(d) Details of all the employees stationed at Air Force Station, Kasauli, Solan after 1992 has been denied the benefit of Special Compensatory Allowance (Remote Locality) Allowances.

27. The petitioners replied to the application by filing reply, relevant portion whereof reads as under:-

(d) Reply to Para 2(d) above. It is informed that there is no question of denying Special Compensatory (Remote Locality) allowance o the employees posted at Air Force Station, kasauli after 1992, as grant of Special Compensatory (emote Locality) Allowance was sanctioned to the petitioners (Shri Mukesh Gautam and 84 others) only who approached CAT, Chandigarh as mentioned in MoD letter No. Air HQ/24081/266/PP&R-2 dated 24 Jan. 91 (copy annexed).

28. Thus, it would be noticed that even as per the claim of the petitioners themselves, they had not denied the Special Compensatory (Remote Locality) Allowance to the employees posted at AFS, Kasauli after 1992, in papers but this was only to be found in paper but not in reality. This acknowledgement of the claim of the petitioners has been made in July, 2017. Thus, by no stretch of imagination can the OA filed by the petitioners in the year, 2017 itself said to be time barred.

29. However, the moot question still remains whether the claim of the respondents could have been granted in its entirety, more particularly, in view of the judgment rendered by the Hon'ble Supreme Court in Jai Dev Gupta vs. State of H.P. & Anr., (1997) 11 SCC 13, wherein the Hon'ble Supreme Court even after holding the entitlement of the employee where he has approached the court belatedly to the arrears but the same have been confined to three years prior to the filing of the writ petition.

30. It shall be apt to reproduce paras 2 and 3 of the same which reads as under:-

1. The appellant approached the central Administrative Tribunal for the relief that he is entitled to the pay-scale of Lecturer in Commercial arts though he was appointed to the post of 'Studio Artist'. In addition to that he claimed the difference in the salary from the year 1971. He approached the Tribunal for this relief in May, 1989. The Tribunal accepted the claim of the appellant that he should be paid the salary of Lecturer in Commercial Arts though he was appointed to the post of 'Studio Artist' in View of the fact that he was performing the duties of Lecturer in Commercial Arts. However, the Tribunal granted the relief of difference in backwages from May, 1988 only on the ground that under Section 21 of the Administrative Tribunals Act the period of one year is prescribed for redressal of grievances. Against the decision of the Tribunal that the appellant is entitled to be paid the salary of Lecturer in Commercial Arts though he was appointed as 'Studio Artist' the respondents have not filed any appeal. The appellant has preferred this appeal claiming the difference in backwages from the date of his posting as Lecturer in Commercial Arts.

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 & Ors. Vs. 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 by backwages by one year.

31. The Hon'ble Supreme Court in its subsequent judgment in Union of India vs. Tarsem Singh (2008) 8 SCC 648, has laid down the same proposition of law and has held that the arrears should be restricted to three years prior to filing of the writ petition.

32. It is apt to reproduce the relevant observations contained in paras 4 to 8, which read as under:-

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 vs. Shree Dhyaneshwar Maharaj Sansthan* - [AIR 1959 SC 798], 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 vs. Union of India* [1995 (5) SCC 628], 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 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....."

6. In *Shiv Dass vs. Union of India* - 2007 (9) SCC 274, 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.

33. Similar reiteration of law can be found in the judgment of the Hon'ble Supreme Court in Asgar Ibrahim Amin vs. Life Insurance Co. Ltd. (2015) 9 JT 329, relevant portion where reads as under:-

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 v. Tarsem Singh, (2008) 8

SCC 648 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.

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 instalment 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.

34. In view of the aforesaid discussion, the petition is partly allowed and consequently, the petitioners are though held entitled to the Compensatory allowance but such arrears, shall be restricted to three years prior to the filing of the petition. The remaining benefits as granted by the Tribunal are upheld and shall remain intact.

35. The petition stands disposed of in the aforesaid terms, so also pending applications, if any.