

Before Rajesh Bindal, J.

HARBHAJAN SINGH BIR—Petitioner

versus

**PUNJAB STATE POWER CORPORATION
LIMITED AND OTHERS—Respondents**

CWP No. 21072 of 2012

November 6, 2012

A. Constitution of India, 1950 - Art. 226 - Code of Civil Procedure 1908 - O. II RL 2 - Service Law - Counting of service period - Increments - Petitioner Lower Division Clerk with erstwhile Punjab State Electricity Board (PSEB) - Earlier Writ Petition filed by Petitioner for counting of service prior to regularization for purpose of retiral benefits allowed - Second Writ Petition by Petitioner to decide representation for grant of increments and arrears also allowed - Present Writ Petition filed on failure of employer to grant

increments for service rendered before regularization - Held, Petitioner not entitled to any relief at this stage - Present Writ also suffers from delay and laches - also barred by Order II Rule 2, Code of Civil Procedure 1908 - Litigant has to be alive to his rights - Cannot be permitted to revive stale cause of action - No continuing cause of action - Writ Petition dismissed.

Held, that not only this, the petitioner had earlier filed CWP No. 18588 of 2009 claiming that service rendered by him from 4.2.1969 to 17.6.1971 should be counted towards his retiral benefits which was allowed. As a consequence the petitioner was granted the relief. Even at that stage, the petitioner never thought of claiming relief as is sought in the present writ petition but filed CWP No. 8362 of 2012 subsequently for claiming the relief in question. The same was disposed of with a direction to the respondents to consider the case which has been considered and declined.

(Para 9)

Further held, that considering the aforesaid factual matrix, in my opinion, at this stage the petitioner is not entitled to any relief whatsoever. The writ petition deserves to be dismissed on account of delay and laches only. Repeated representations or even filing writ petition belatedly in this court for a direction to the respondents to decide the representation and passing of the order in terms thereof will also not revive a stale cause of action. A litigant has to be alive of his rights. The issue in the present case is sought to be raised nine years after the retirement of the petitioner, after rendering 34 years of service. The benefit sought is for the period when the petitioner was initially appointed in the service. Even the complete service record of the petitioner may not be available at this stage considering the fact that he retired nine years back and there are no disciplinary proceedings pending against him. The claim made by the petitioner by filing the subsequent writ petition is to be treated as barred in terms of provisions of Order II Rule 2 CPC, as the petitioner was entitled to this very relief when he filed the earlier writ petition but thought to keep silent thereon. Accordingly, the writ petition deserves to be dismissed on this score alone.

(Para 10)

B. Constitution of India, 1950 - Art. 226 - Service Law - Delay and laches - Aggrieved person has to approach Court within reasonable time from the arising of cause of action - Judgment in

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another case does not give cause of action to file Writ Petition at a belated stage seeking same relief - Discretionary reliefs in writ jurisdiction available only to party alive to its rights and which enforces the same in Court within reasonable time.

Held, that it has been clearly laid down that discretionary relief in a writ jurisdiction is available to a party who is alive of his rights and enforces the same in court within reasonable time. The judgment in another case does not give a cause of action to file a writ petition at a belated stage seeking the same relief. Such petitions can be dismissed on account of delay and laches. As has already been noticed above in the present case as well, the petitioner joined service in the year 1974 and retired in the year 2008, but raised the issue regarding fixation of his pay from the date of joining more than two years after his retirement referring to a judgment of this court and filed the petition claiming the same relief.

(Para 12)

Rajeshwar Singh Thakur, Advocate, *for the petitioner.*

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(1) The petitioner, who retired as Upper Division Clerk from the erstwhile the Punjab State Electricity Board, has approached this court seeking a direction to the respondents to count his service from 4.2.1969 till 17.6.1971, for the purpose of increments.

(2) The petitioner retired from service on 28.2.2003. The present writ petition was filed in October, 2012.

(3) Learned counsel for the petitioner submitted that the petitioner was appointed as Lower Division Clerk on 4.2.1969, however, no appointment letter was issued and the same was given to him on 4.5.1969. The services of the petitioner were regularised vide order dated 17.6.1971. He ultimately retired after rendering 34 years of service on 28.2.2003. The submission is that though at the time of initial appointment on 4.2.1969, the petitioner was given the pay scale of Rs. 110-200, however, at the time of regularisation on 18.6.1971, again the petitioner was given basic pay of Rs. 110/- in the pay scale of ' 110-250. More than two years of service rendered by the petitioner prior to his regularisation was not counted for increments.

(4) First representation for claiming the relief was made by the petitioner on 27.7.2003. As the same was not responded to, the petitioner filed CWP No. 18588 of 2009 claiming that service rendered by the petitioner from 4.2.1969 to 17.6.1971 be counted towards his retiral benefits. The same was allowed on 29.9.2010 and the respondents were directed to redetermine the pension and other retiral benefits of the petitioner by taking into consideration the service rendered by the petitioner from 4.2.1969 to 17.6.1971. For the first time, vide letter dated 19.8.2011, the petitioner was informed that his case has been sent to the Senior Executive Engineer, Civil Works, Jalandhar. The petitioner submitted representations on 29.3.2011 and 13.9.2011 for deciding his case. Though in compliance to the aforesaid order, the pension of the petitioner has been refixed, however, till date increments and arrears on that account have not been granted to him. The petitioner again filed CWP No. 8362 of 2012, which was disposed of on 7.5.2012 with a direction to the respondents therein to decide the representation made by the petitioner for claiming the relief prayed for. However, the same has now been rejected by the respondents by passing a totally illegal order which was conveyed to the petitioner vide office order dated 7.9.2012.

(5) Learned counsel for the petitioner further submitted that once the petitioner had been working with the respondents without any break, the service rendered before regularisation was required to be counted for grant of increments. At the time of regularisation of his service, his pay should have been fixed accordingly. But even at the time of regularisation, though the petitioner at that stage had more than two years of service to his credit, was placed at the initial basic stage of the scale on account of which the petitioner continued suffering throughout his service carrier.

(6) To explain the delay in filing the writ petition, learned counsel for the petitioner submitted that the relief prayed for is continuing cause of action, hence, the delay is not fatal.

(7) Heard learned counsel for the petitioner and perused the paper book.

(8) The pleaded facts are that the petitioner joined service on 4.2.1969 on temporary basis. His services were regularised vide order

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dated 17.6.1971, as a consequence of which he submitted his joining report on 18.6.1971. He retired from service on 28.2.2003. At the time of initial appointment, he was placed in the pay scale of Rs. 110-200, whereas at the time of regularisation again he was granted pay scale of Rs. 110-250. The grievance of the petitioner is that though prior to his regularisation, he had rendered more than two years of service on the same post. This period should have been counted for grant of increments. The facts remains that the issue was not raised by the petitioner throughout of his service carrier of 34 years. Even as per the pleaded case, first representation for the purpose was made on 27.7.2003 after the petitioner had already retired.

(9) Not only this, the petitioner had earlier filed CWP No. 18588 of 2009 claiming that service rendered by him from 4.2.1969 to 17.6.1971 should be counted towards his retiral benefits which was allowed. As a consequence the petitioner was granted the relief. Even at that stage, the petitioner never thought of claiming relief as is sought in the present writ petition but filed CWP No. 8362 of 2012 subsequently for claiming the relief in question. The same was disposed of with a direction to the respondents to consider the case which has been considered and declined.

(10) Considering the aforesaid factual matrix, in my opinion, at this stage the petitioner is not entitled to any relief whatsoever. The writ petition deserves to be dismissed on account of delay and laches only. Repeated representations or even filing writ petition belatedly in this court for a direction to the respondents to decide the representation and passing of the order in terms thereof will also not revive a stale cause of action. A litigant has to be alive of his rights. The issue in the present case is sought to be raised nine years after the retirement of the petitioner, after rendering 34 years of service. The benefit sought is for the period when the petitioner was initially appointed in the service. Even the complete service record of the petitioner may not be available at this stage considering the fact that he retired nine years back and there are no disciplinary proceedings pending against him. The claim made by the petitioner by filing the subsequent writ petition is to be treated as barred in terms of provisions of Order II Rule 2 CPC, as the petitioner was entitled to this very relief when he filed the earlier writ petition but thought to keep silent thereon. Accordingly, the writ petition deserves to be dismissed on this score alone.

(11) Further the plea of continuing cause of action is merely to be noticed and rejected as it is not in dispute that the fact of grant of increments to the petitioner, if he is found entitled thereto, would be revision of his pay in terms of the pay scales applicable from time to time which may have effect on his last pay drawn. However, in case any grievance has to be raised on the last pay drawn, the same could be within a period of limitation thereafter and not at any time whenever a person thinks. The petitioner stopped drawing pay on his retirement as thereafter he is getting pension fixed on the basis of last pay drawn. For the purpose of grant of pensionary benefits the period in question has already been counted in terms of direction given by this court.

(12) Still further the issue regarding belated claim made by an employce to the benefits, which other similarly situated persons have been granted, in terms of judgment of the court, was considered by this court in CWP No. 18498 of 2011 *Bal Krishan vs State of Punjab and others* decided on 4.9.2012. In the aforesaid case, the petitioner had approached the court more than three years after the retirement and was seeking benefits of some scale for the period he was in service. The relief was sought to be raised on the basis of judgment rendered in the case of other employce, who thought of raising the issue while in service. It was held therein that the judgment in the case of another similarly situated person does not give a cause of action to seek the same relief at a belated stage. Any one aggrieved has to approach the court within a reasonable time when the cause of action arose. The relevant paras thereof are extracted below:-

“Before this court proceeds to deal with the merits of the controversy, the issue regarding delay, which is quite material, is required to be considered. As is evident from the facts, which have been referred above, the petitioner in the present case served the department for 34 years, i.e., from 1974 to 2008, but never raised a finger about the scale of pay granted to him. Even during his service career, certain employees had filed writ petition disputing the scale of pay granted to them. The base for the same was the report of Punjab Pay Commission of the year 1968. Some of the petitioners before this court in the writ petition already decided, were appointed prior to submission of the aforesaid report of Pay Commission. For the first time, the petitioner in the present case sought to raise the issue after

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the judgment was delivered by this court in Rajinder Pal Gautam's case (supra) on 30.5.2008, but as is evident from a perusal of the aforesaid judgment (Annexure P-5), the writ petition was initially allowed on 13.5.2005 in terms of earlier judgment in LPA No. 950 of 1992—Haryana State and others v. Amar Singh and others, decided on 21.11.2000. However, the same was challenged in LPA No. 192 of 2005, which was dismissed as withdrawn with liberty to file review application. In the review application, the order dated 13.5.2005 was re-called on 2.11.2007 and the writ petition was heard again and decided on 30.5.2008. The issue was never raised by the petitioner when the writ petition filed by Rajinder Pal Gautam and others was initially allowed.

The issue regarding delay in invoking extraordinary jurisdiction was considered by Hon'ble the Supreme Court in U. P. Jal Nigam and another v. Jaswant Singh and another, (2006) 11 SCC 464. It was a case in which certain employees raised the issue that they were not liable to be retired at the age of 58 years but should be permitted to continue in service till they attain the age of 60 years. They were still in service when the writ petitions were filed. The writ petitions were ultimately allowed. Placing reliance upon that judgment, some of the employees, who already stood retired, filed writ petitions claiming same benefit. The writ petitions were allowed by the High Court in terms of its earlier judgment. The judgment of the High Court was impugned before Hon'ble the Supreme Court, wherein while referring to earlier judgments of Hon'ble the Supreme Court in Rup Diamonds v. Union of India, (1989) 2 SCC 356; State of Karnataka v. S. M. Kotrayya, (1996) 6 SCC 267; Jagdish Lal v. State of Haryana, (1997) 6 SCC 538 and Government of West Bengal v. Tarun K. Roy, (2004) 1 SCC 347, it was opined that the persons who approach the court at a belated stage placing reliance upon an order passed in some other case earlier, can be denied the discretionary relief on account of delay and laches. Relevant paragraphs thereof are extracted below:

“5. So far as the principal issue is concerned, that has been settled by this court. Therefore, there is no quarrel over the legal proposition. But the only question is grant of relief to such other persons who

were not vigilant and did not wake up to challenge their retirement and accepted the same but filed writ petitions after the judgment of this court in Harwindra Kumar v. Chief Engineer, Karmik, (2005) 13 SCC 300. Whether they are entitled to same relief or not? Therefore, a serious question that arises for consideration is whether the employees who did not wake up to challenge their retirement and accepted the same, collected their post-retirement benefits, can such persons be given the relief in the light of the subsequent decision delivered by this court?

6. The question of delay and laches has been examined by this court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that about 9 writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 30.6.2005 and 31.7.2005. Two writ petitions were filed wherein no relief of interim order was passed. They were granted interim order. Thereafter a spate of writ petitions followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 and 2006 much after their retirement. Whether such persons should be granted the same relief or not?

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16. Therefore, in case at this belated stage if similar relief is to be given to the persons who have not approached the court that will unnecessarily overburden the Nigam and the Nigam will completely collapse with the liability of payment to these persons in terms of two years' salary and increased benefit of pension and other consequential benefits. Therefore, we are not inclined to grant any relief to the persons who have approached the court after their retirement. Only

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those persons who have filed the writ petitions when they were in service or who have obtained interim order for their retirement, those persons should be allowed to stand to benefit and not others.”
[*Emphasis supplied*]

In A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala and others, (2007) 2 SCC 725 as well, same issue was considered and following the earlier judgment in U. P. Jal Nigam’s case (*supra*), it was opined as under:

“40. The benefit of a judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ petitioner had chosen to sit over the matter and then wake up after the decision of this court. If it is found that the appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief.

(See *Chairman, U. P. Jal Nigam v. Jaswant Singh*, (2006) 11 SCC 464). (*Emphasis supplied*)

In the aforesaid judgments, it has been clearly laid down that discretionary relief in a writ jurisdiction is available to a party who is alive of his rights and enforces the same in court within reasonable time. The judgment in another case does not give a cause of action to file a writ petition at a belated stage seeking the same relief. Such petitions can be dismissed on account of delay and laches. As has already been noticed above in the present case as well, the petitioner joined service in the year 1974 and retired in the year 2008, but raised the issue regarding fixation of his pay from the date of joining more than two years after his retirement referring to a judgment of this court and filed the petition claiming the same relief.

(13) For the reasons mentioned above, I do not find any merit in the present writ petition. The same is accordingly dismissed.

S. Gupta