

THE HIGH COURT OF MADHYA PRADESH 1
WP 11480/2020 (S)
Dr. Subhash Kakkad vs. State of MP

Gwalior, Dated : 29/08/2020

Shri Alok Kumar Sharma, counsel for the petitioner.

Shri Abhishek Singh Bhadoriya, Panel Lawyer for the respondents/ State.

Heard finally through Video Conferencing.

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

"7(i) That, this Hon'ble Court may kindly be pleased to allow the petition issuing the necessary writ of mandamus to the respondents.

(ii) That, the respondents may kindly be directed to grant the benefit of increment to the petitioner on 01.07.2015 with a further direction to recalculate the pension, Gratuity and other retiral dues of petitioner.

(iii) That, respondents may further be directed to pay the arrears of retiral dues and revised pension with 12% interest thereupon from the date of retirement till the date of actual payment."

It is submitted by the counsel for the petitioner that the petitioner stood retired on 30/06/2015, whereas the next increment was payable from 01/07/2015 which has not been paid. It is submitted by the counsel for the petitioner that the judgment dated **15/09/2017** passed by the Madras High Court in the case of **P. Ayyamperumal vs. The Registrar, Central Administrative Tribunal & Others** passed in **W.P.No. 15732/2017** was upheld by the the Supreme Court in **SLP (Civil) Diary No.(s) 22283/2018**. Review Petition (C) No.1731/2019 was also dismissed by order dated 02/08/2019. Further, the **Division Bench (Principal Seat)** of this Court in the case of **State of MP & Others vs. Rajendra Prasad Tiwari (Writ Appeal No.363/2020)** by judgment dated **06/03/2020**, has dismissed the writ appeal filed by the State and has held that the employee retiring on 30th June of a particular year is also entitled for the increment which was payable from 1st of July of the said

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year. Further, it is submitted that the petitioner has retired on 30/06/2015, but the increment which was payable from 01/07/2015, has not been paid and accordingly, he is entitled for the arrears as well as for re-fixation of his pension.

Per contra, the petition is opposed by the counsel for the State on the ground of delay and laches. It is submitted that the petitioner had retired on 30/06/2015, whereas the petition has been filed in the year 2020, therefore, the petition is liable to be dismissed on the ground of delay and laches.

Heard the learned counsel for the parties.

So far as the question of delay and laches is concerned, it is the case of the petitioner that since, a petition arising out of similar circumstances was allowed by the Madras High Court in the case of **P. Ayyamperumal (Supra)** in the year 2017 and the S.L.P. filed by the State was dismissed in the year 2018, therefore, it cannot be said that there was any delay on the part of the petitioner. It is further submitted that the petitioner decided to challenge the non-grant of increment which was payable to him w.e.f. 1-7-2015, only after coming to know that a similar claim has been allowed by the Supreme Court. Thus, it is submitted that this petition doesnot suffer from delay and laches.

As per Article 7 of Indian Limitation Act, 1963, the period of limitation for recovery of wages is three years. Although the period of limitation doesnot apply to the writ jurisdiction, but a litigant cannot wake up belatedly and claim benefits from the judgment in cases where some diligent person had approached the Court within a reasonable time. The submissions made by the Counsel for the petitioner cannot be accepted. The cause of action doesnot mean that when the claim of a similarly

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situated litigant is allowed. The cause of action means a fact or bundle of facts that enable a person to bring an action against another. A judgment passed in the case of another litigant cannot be said to be a cause of action. The Supreme Court in the case of **State of Karnataka Vs. S.N. Katrayya**, reported in **(1996) 6 SC 267** has held as under :

9. Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-sections (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay.

(underline supplied)

Thus, the petitioner cannot claim that he woke up only after the claim of a diligent litigant was allowed by the Court, therefore, there was no delay on the part of the petitioner.

Now the only question which requires consideration is that whether the question of pension would ever become barred by time or not?

The Supreme Court in the case of **Union of India v. Tarsem Singh**, reported in **(2008) 8 SCC 648** has held as under :

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

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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 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. 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.

(underline supplied)

Thus, so far as the question of pension is concerned, any deficiency in the same would result in recurring cause of action. Therefore, it cannot be said that the petition suffers from delay and laches because the petitioner has a recurring cause of action, as the re-fixation of pension would certainly affect the pension which the petitioner is currently receiving. However since, the petition has been filed after five years of accrual of cause of action i.e., 1-7-2015, therefore, he would not be entitled for arrears for a period beyond three years.

Accordingly, it is directed that the pension of the petitioner be re-fixed after adding increment which was payable from 01/07/2015. However, it is directed that the petitioner shall be entitled for the arrears of last three years and shall not be entitled for the arrears for the period prior to three years. Since the petitioner is found to be entitled for his increment which was payable from 01/07/2015,

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therefore, the arrears of three years shall carry interest @ 6% per annum till the final payment is made.

With aforesaid observations, this petition is **finally disposed of.**

(G.S. Ahluwalia)
Judge

MKB