

**IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 1st OF FEBRUARY, 2024

WRIT PETITION No. 3440 of 2020

BETWEEN:-

**SATENDRA SHARMA S/O ASHOK SHARMA
OCCUPATION: INSPECTOR (SPECIAL ARMS
FORCE) 15 BATALIYAN KILA MAIDAN ROAD
INDORE AND R/O NGO QUARTER 4 DRP LINE
DRP LINE INDORE (MADHYA PRADESH)**

....PETITIONER

(BY SHRI MANISH KUMAR SANKHALA – ADVOCATE)

AND

- 1. HOME DEPARTMENT PRINCIPAL
SECRETARY VALLABH BHAWAN, BHOPAL
(MADHYA PRADESH)**
- 2. SUPERINTENDENT OF POLICE DIST DHAR
(MADHYA PRADESH)**
- 3. SUPERINTENDENT OF POLICE DIST
INDORE (MADHYA PRADESH)**
- 4. ADDITIONAL INSPECTOR GENERAL OF
POLICE, ADMINISTRATION POLICE HEAD
QUARTER, BHOPAL (MADHYA PRADESH)**
- 5. ADDITIONAL INSPECTOR GENERAL OF
POLICE, POLICE HEAD QUARTER BHOPAL
(MADHYA PRADESH)**

6. **SHRI SENANI MAHODAY 15TH BATALIYA
KILA MAIDAN ROAD, INDORE (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI AMAY BAJAJ – G.A./P.L.)

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*This petition coming on for admission this day, the court passed
the following:*

ORDER

Heard finally, with the consent of the parties.

2] This petition has been filed by the petitioner under Article 226 of the Constitution of India against the inaction on the part of the respondents to grant the pensionary benefits under old pension scheme to the petitioner, holding him to be an appointee prior to 01.01.2005.

3] In brief, the facts of the case are that the petitioner participated in an advertisement dated 19.06.2004, and was selected on the post of Guard and was allotted District Dhar vide letter dated 24.08.2004. Subsequent to his selection, the petitioner also submitted his documents for verification before the respondent No.2 Superintendent of Police – Dhar, who, vide his letter dated 25.08.2004 directed the petitioner to submit all the relevant documents within three days time and also fill up the verification Form and submit it before the Authority. The aforesaid Form was submitted by the petitioner in the Office of Superintendent of Police, Dhar on 02.09.2004 and subsequently, petitioner's character verification report was also submitted to the Office of S.P. Dhar on

12.09.2004. However, as the petitioner was also residing at District Bhind, hence, the S.P. Dhar also sent a letter dated 03.09.2004 to S.P. Bhind for verification of the petitioner's character. However, S.P. Bhind, did not file the character verification report and, hence, reminder was also sent to him on 27.12.2004 and 13.01.2005. However, S.P. Bhind vide his letter dated 18.01.2005, informed the S.P. Dhar that he has not even received the documents referred in his letter. Thus, another set of documents were sent by S.P. Dhar to S.P. Bhind for verification on 20.01.2005, and S.P. Bhind subsequently sent the character verification report on 31.01.2005 and thereafter the appointment order was issued to the petitioner on 16.02.2005.

4] The grievance of the petitioner is that during this period upto 16.02.2005, all the other selected candidates for post of Constable have already been issued the appointment letter in the months of November and December, 2004 itself, and such candidates already joined their duties in the months of November and December, 2004 and have been granted the benefits of Madhya Pradesh Civil (Pension) Rules, 1976 (in short 'the Pension Rules of 1976'). However, as the petitioner's appointment was made on 16.02.2005, i.e., after more than 6 months time from the initial date of his selection, he is not granted the benefit of the Pension Rules of 1976. The petitioner has also brought on record the Circular dated 13.04.2005, regarding implementation of Scheme of Contributory Pension Scheme in place of the Pension Rules of 1976.

5] Counsel for the petitioner has drawn the attention of this

Court to the Clarification issued by the State Government vide order dated 17.10.2006, directing all the concerned Department that those persons, who have been appointed prior to 01.01.2005 shall be entitled to get the benefits under the Pension Rules of 1976, and the benefit shall also be extended to such persons, who were already in service of the State Government, however, their appointments have been made after 01.01.2005 and on such employees, the Contributory Pension Scheme shall not be applicable as per the Circular dated 13.04.2005???. Counsel has also drawn the attention of this Court to the query, which was made by the respondents vide their letter dated 18.03.2005, as to whether the petitioner shall be entitled to get the benefits of Old Pension Scheme (OPS).

6] Counsel has submitted that the petitioner has been deprived of the old pension scheme only because his appointment letter has been issued on 16.02.2005, despite the fact that the petitioner had already submitted his documents for verification on 02.09.2004 and subsequent documents were also sent by the S.P. Dhar, to S.P. Bhand on 03.09.2004. Thus, from 03.09.2004 to 01.01.2005 there were around 5 months available to the respondents to verify the aforesaid documents, however, as they failed to verify the documents in time, and the other persons were appointed whereas, the petitioner was deprived of the old pension scheme.

7] It is submitted that in sending the documents to the S.P. Bhand, the negligence was on the part of the S.P. Dhar, as despite the fact that various documents were sent on 03.09.2004, the S.P. Bhand informed that the documents have not been received by him

vide his letter dated 18.01.2005. Thus, it is submitted only because of the delay caused on the part of the respondents, in which the petitioner has no role to play, he is being deprived of the old pension scheme, which is already being availed by other candidates, who were selected along with the petitioner.

8] Counsel for the State has opposed the prayer and it is submitted that no case for interference is made out, and in reply the only ground which is raised by the respondents is that the petitioner has been appointed on 16.02.2005, i.e., subsequent to 01.01.2005, and apart from that it is also stated that the petition itself is filed after a delay of 14 years.

9] In rebuttal, counsel for the petitioner has submitted that the delay was on the part of the respondents only so far as the verification of the documents is concerned, and so far as the delay in filing the petition is concerned, it is submitted that the petitioner is still in service and is due to retire after attaining the age of superannuation i.e. 62 years. Thus, it is submitted that it is a continuing cause of action, and no delay can be said to have been caused by the petitioner in filing the petition. In support of his submission regarding the grant of benefits of old pension scheme, Shri Manish Kumar Sankhala, learned counsel for the petitioner has also relied upon a decision of the Division Bench of Delhi High Court rendered by Hon'ble Indira Banerjee, J.(as her Lordship then was) in the case of **Inspector Rajendra Singh & Ors. Vs. UOI and Ors.** passed in **W.P. (C) No.2810 of 2016** dated 27.03.2017 in which also the benefits under the Old Pension Scheme were not

provided to the petitioner on account of the delay on the part of the respondents and the Delhi High Court has allowed the petition holding that the petitioner was not at fault.

10] Heard counsel for the parties and perused the record.

11] From the record, it is apparent that the petitioner was selected through advertisement dated 19.06.2004, and he had already submitted his documents for verification on 02.09.2004, and S.P. Dhar had sent the same on 03.09.2004 to S.P. Bhind and, admittedly, after they were resent to S.P. Bhind due to negligence on the part of S.P. Dhar, the documents could be verified only on 30.01.2005, and thereafter the appointment letter was issued to the petitioner on 16.02.2005, meaning thereby that the delay was attributable to the respondents only to verify the documents filed by the petitioner within a reasonable period of time, as the respondents had four months to verify the documents and also had all the resources at their disposal.

12] In the decision rendered by the Delhi High Court in the case of **Inspector Rajendra Singh & Ors (supra)**, the Division Bench has held as under:-

“**13.** Having regard to the facts and circumstances of this case, where advertisements for recruitment to the posts of Sub Inspectors in CAPFs were issued in November, 2002, written examinations were held on 12.01.2003, Physical Efficiency Test had been held in or before April, 2003, and the petitioners appeared before the Medical Board between April, 2003, to June, 2003, and declared fit upon medical re-examination by Review Medical Board in December, 2003, it would be grossly unjust and arbitrary to deny the petitioners the benefit of the Old Pension Scheme, applicable at the time

when the posts were advertised, only because of the fortuitous circumstance of their joining service after the enforcement of the New Pension Scheme, for reasons not attributable to them.

14. As observed above, the authorities concerned took six months' time to decide the appeal against the decision of the Medical Board, declaring the petitioners medically unfit. The petitioners were found fit by other Medical institutions of repute and ultimately found fit by a Review Medical Board constituted by the respondent authorities themselves on 28.12.2003. The respondent authorities unnecessarily delayed constitution of a Review Medical Board. Had the respondent authorities and in particular Staff Selection Commission acted with diligence, the petitioners could have been appointed within 31.12.2003.

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31. In our considered opinion, there can also be no discrimination between batchmates, only because some were, at the time of appointment, informed that the New Pension Scheme would apply, while others were not.

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37. In *H.D Vora v. State of Maharashtra* reported in (1984) 2 SCC 337, the Supreme Court condoned delay of 30 years in approaching the court where it found violation of substantive legal rights of the applicant in that case.

38. In this case, the petitioners have not retired from service. After persons similarly circumstanced, if not identically circumstanced, as the petitioners were, given the benefit of the Old Pension Scheme, may be, pursuant to orders of this Court, the petitioners approached this Court for relief. Rejection of the writ petition only on the ground of delay, would perpetrate discrimination between persons similarly circumstanced.

39. It is well settled that relief under Article 226 of the Constitution of India is discretionary. When there is acquiescence and laches and delay in approaching this Court, discretionary relief might be declined. However, delay is no bar to entertaining a writ petition. If entertaining a delayed writ petition entails the consequence of unsettling things already settled, relief may be declined. However, flagrant

discrimination cannot be allowed to continue, only because of delay. Illegality must be redressed. In this case grant of relief would not result in unsettling things already settled. We are not inclined to reject the writ petition on the ground of delay.

40. The writ petition is allowed. The respondent shall treat the petitioners as members of the Old Pension Scheme under the Central Civil Services (Pension) Rules 1972.”

(emphasis supplied)

13] In view of the aforesaid dictum of the Division Bench of Delhi High Court as propagated by Delhi High Court, this Court is of the considered opinion that the respondents have clearly erred in not providing the benefits of the old pension scheme under the Pension Rules of 1976, despite the fact that the delay in issuing the appointment letter was on their part only, coupled with the fact that all the identically placed persons, who were selected along with the petitioner, are already availing the benefits of the old pension scheme. Thus, the petitioner’s case cannot be discriminated.

14] Accordingly, the petition *stands allowed*, and the respondents are directed to accord all the benefits of the old pension scheme under the Madhya Pradesh Civil (Pension) Rules, 1976 to the petitioner.

15] With the aforesaid, the petition stands *disposed of*.

(SUBODH ABHYANKAR)
JUDGE