

P.S. Bajwa

Before Rajesh Bindal, J.

BAL KRISHAN—Petitioner

versus

STATE OF PUNJAB AND OTHERS—Respondents

CWP No. 18498 of 2011

September 4, 2012

Constitution of India, 1950 - Art. 226 - Writ jurisdiction - Petitioner seeking re-fixation of pay after retirement and after other employees have been granted similar benefit - Stale claim - Delay and laches in invoking extraordinary writ jurisdiction - Writ Petition dismissed - Persons who approach the Court at a belated stage placing reliance upon an order passed in some other case earlier,

can be denied discretionary relief on account of delay and laches - Discretionary relief in writ jurisdiction is only available to a party alive of its rights and which enforces the same in Court within reasonable time - Judgment in another case does not give cause of action to file a writ petition at a belated stage seeking the same relief.

Held, that the issue regarding delay in invoking extra-ordinary 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.

(Para 9)

Further held, 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 11)

Mandeep K. Sajjan, Advocate, *for the petitioner*.

Satish Bhanot, Addl. Advocate General, Punjab.

K. V. Aggarwal, Advocate for respondent No. 4.

RAJESH BINDAL J.

(1) The petitioner, who retired as Junior Technician on 31.7.2008, has filed the present petition challenging the order dated 15.7.2011, whereby the representations dated 3.9.2010 and 10.11.2010 (Annexures P-6 and P-7) filed by him claiming higher scale of pay, were rejected.

(2) Briefly, the facts are that the petitioner was appointed as Pump Operator on 1.8.1974 in the Department of Public Health on regular basis. On superannuation, he retired on 31.7.2008. After his retirement, he represented to the authorities vide letters dated 3.9.2010 and 10.11.2010 seeking re-fixation of his pay from the date he joined service. Thereafter, he approached this court by filing CWP No. 364 of 2011. The petition was disposed of on 10.1.2011 with a direction to the respondents therein for considering the representations of the petitioner. It is the order passed on the representations, which is impugned before this court.

(3) Learned counsel for the petitioner submitted that in terms of the report of Punjab Pay Commission for the year 1967-68, the petitioner, being Matriculate with two years diploma, was entitled to higher scale of pay of ' 140-300 as against ' 110-180 at the time of his appointment, but the same was not given to the petitioner. Some other employees challenged the action of the State before this court by filing CWP No. 10759 of 1990—Rajinder Pal Gautam and others v. State of Punjab and others. The same was allowed on 30.5.2008. When the petitioner came to know about the same, a representation was made on 3.9.2010. Another representation was made on 10.11.2010, however, the same have been arbitrarily rejected by mentioning that the petitioner was not having qualification prescribed for higher scale at the relevant time, as he was merely middle pass with one year ITI course, which is factually incorrect. He further submitted that the cause of action arose to the petitioner only after the judgment was given by this court granting similar benefits to other employees. He further submitted that in CWP No. 21394 of 2010—Harbans Singh and others v. The State of Punjab and others, decided on 28.1.2011, this court directed grant of similar benefits to some other employees in terms of the judgment of this court in Rajinder Pal Gautam's case (supra).

(4) On the other hand, learned counsel for the respondents submitted that the petitioner cannot be permitted to raise a stale claim after his retirement seeking re-fixation of his pay from the date of his appointment way back in the year 1974. The petitioner retired after rendering 34 years of service raising no finger at the scales of pay granted to him. He thought of raising the issue by filing a writ petition in this court in the year 2011. The petition deserves to be dismissed on account of delay and laches.

(5) As far as the merits are concerned, learned counsel for the State submitted that the State has already passed the order in terms of Rajinder Pal Gautam's case (*supra*) and no further action is required on their part, whereas learned counsel for respondent No. 4 submitted that as has already been referred to in the impugned order, the petitioner, being not eligible even as per the scheme on the date of appointment, was rightly not granted the scale which he is seeking.

(6) Heard learned counsel for the parties and perused the paper book.

(7) The facts, which are not in dispute, are that the petitioner was appointed as Pump Operator on 1.8.1974 in a particular scale. Accepting the terms and conditions, the petitioner joined service. On superannuation, the petitioner retired from service on 31.7.2008. During entire service career, no grievance was ever raised by the petitioner regarding the scales of pay granted to him at different stages. The first representation seeking higher scales of pay from the date of initial appointment was made on 3.9.2010, i.e., more than two years after his retirement claiming that he was entitled to the scale of '140-300 as against 110-180. Reliance was sought to be placed upon the judgment of this court in Rajinder Pal Gautam's case (*supra*), where the relief was granted to the Pump Operators having qualification of two years ITI diploma course with Matriculation.

(8) 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 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.

(9) The issue regarding delay in invoking extra-ordinary jurisdiction was considered by Hon'ble the Supreme Court in *U. P. Jal Nigam and another versus Jaswant Singh and another (1)*. It was a case in which certain employces 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 employces, 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 versus Union of India (2)*, *State of Karnataka versus S. M. Kotrayya (3)*, *Jagdish Lal versus State of Haryana (4)* and *Government of West Bengal versus Tarun K. Roy (5)*, it was opined

(1) (2006) 11 SCC 464

(2) (1989) 2 SCC 356

(3) (1996) 6 SCC 267

(4) (1997) 6 SCC 538

(5) (2004) 1 SCC 347

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?

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 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]

(10) In *A.P. Steel Re-Rolling Mill Ltd. versus State of Kerala and others* (6), 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)

(11) 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.

(12) Considering the enunciation of law by Hon'ble the Supreme Court, as referred to above, in my opinion, the petitioner herein is not entitled to the relief prayed for and the petition deserves to be dismissed merely on account of delay and laches.

(13) Accordingly, the writ petition is dismissed.
