

mouth of the respondents to say that the petitioner had an opportunity to withdraw this amount from March 29, 1995, to April 3, 1995. On April 3, 1995, the respondents got this amount attached in the execution proceedings.

(13) No doubt, the provisions of section 60 CPC are not applicable in this case, but the general principle laid down therein is applicable in this case also. Subsistence allowance is meant for the subsistence of the suspended employee and his family members. Thus, in my considered view, this amount of subsistence allowance was not liable to attachment in execution of the said award. The trial Court has fallen into an error in attaching this amount of subsistence allowance simply on the ground that amount of subsistence allowance is not attached but the amount lying in his Saving Bank Account is attached. There is no other amount deposited in his Saving Bank Account. Only this amount of Rs. 1,51,656 is deposited in his Saving Bank Account. Its character cannot be converted into any other amount. It was deposited as subsistence allowance and it will remain subsistence allowance. If the respondents would have paid subsistence allowance to the petitioner every month as per the aforementioned Rules, there would have been no such huge amount accumulated to be deposited like this.

(14) Considering the above facts, not only the impugned order is set aside, but the order by which this amount of subsistence allowance is attached, is also set aside, while accepting this petition.

R.N.R.

Before Hon'ble M. L. Koul and Sat Pal, JJ.

RAM CHANDER.—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS.—*Respondents.*

L.P.A. 478 of 1995

July 31, 1996

Constitution of India, 1950—Arts. 14, 16, 226 and 300—Petitioner alongwith other Zilledars, reverted in 1986 to the post of Assistant Revenue Clerks—Several reverted candidates challenged reversion

in 1986—Reversion orders set aside by High Court and withdrawn by the Government in 1992—Petitioner not having sought legal remedy against reversion orders—Petitioner making representation for grant of relief which was allowed to similarly situated Zilledars—Petitioner filing writ petition in 1993—Learned Single Judge dismissed the petition as barred by delay and laches—In appeal the orders passed by Single Judge set aside on the ground that the petitioner as a matter of right entitled to same relief by the Government which has been granted to other similarly situated persons—Delay and laches cannot be set up by the respondents to deny the relief to the petitioner.

Held that the petitioner has fully established and proved the fact that he has been discriminated by the authorities in the manner that the reversion orders of Zilledars who were equally placed during the employment of their service have been withdrawn by the Government (no doubt on the intervention of this Court) but no equal treatment has been provided to the petitioner who is similarly situated or in the same category as others were placed and even some of them who were junior to him have been posted as Zilledars. In such circumstances the delay in filing the writ petition does not debar him to seek withdrawal of his reversion when other officials similarly situated in the same category of service have been brought back to their original position of Zilledars after their reversion orders have been withdrawn including his juniors against whom no relief is sought by him that he should be made senior to them. It is a just case where the extraordinary writ jurisdiction can be exercised.

(Paras 12 & 13)

Further held that the persons who were similarly placed were entitled to the same treatment and those who got the relief on the basis of the Court judgment could not be treated to form and constitute any special category warranting different treatment from those who though being similarly placed had not approached the Court for this purpose.

(Para 9)

S. K. Sud, Advocate, *for the appellant.*

Mahesh Grover, Advocate, *for the State of Haryana.*

JUDGMENT

M. L. Koul, J.

(1) This Letters Patent Appeal has arisen out of the judgment of the learned Single Judge dated January 4, 1995 whereby the petition filed by the appellant (hereinafter referred to as the petitioner) was dismissed mainly on two grounds :—

- (a) on the basis of delay and laches that the writ petition was filed by the petitioner after a lapse of seven years ; and

(b) that the persons who have been promoted and are junior to the petitioner have not been impleaded as parties in the writ petition.

(2) Briefly, the facts of the case giving rise to this appeal are that the petitioner who was promoted as a Zilledar on 19th November, 1981 was reverted to the post of Assistant Revenue Clerk on 25th January, 1986 on the ground that he had been appointed on that post against the permissible direct quota. On the same basis some other Zilledars stood reverted who preferred Civil Writ Petition No. 1384, 1208, 1302, 1393, 1395, 1439, 1574, 1799, 3346 and 3743 of 1984 and 4381 of 1986. In these Civil Writ Petitions the Court held that reversions were made in violation of the law and the writ petitions were allowed. Consequent upon the judgment of this Court the reversion orders of number of Zilledars were withdrawn,—*vide* orders dated 31st July, 1992 and 28th December, 1992 as contained in Annexures P-3 and P-4. The petitioner who was senior to number of petitioners in those writ petitions made a representation to the authorities for withdrawal of his reversion order on 12th December, 1992. The petitioner submitted another representation on 4th January, 1993 but his reversion order was not withdrawn. Thereafter the petitioner filed Civil Writ Petition No. 3161 of 1993, out of which the present Letters Patent Appeal has arisen.

(3) It is an admitted fact that the petitioner was appointed as Zilledar on a post permissible against the direct quota and was reverted along with other Zilledars,—*vide* order dated 25th January, 1986. Some other Zilledars on the same analogy had been reverted and they filed writ petitions before this Court which were allowed and the reversion orders were withdrawn. The reversion order of the petitioner who was likely situated was not withdrawn for he had not filed any writ petition against his reversion order. Therefore the learned Single Judge found that the case of the petitioner was barred by delay and laches and for non-joinder of parties.

(4) Mr. Sud, learned counsel for the petitioner argued that as the petitioner was standing on the same footing on which the reversion orders of his colleagues were withdrawn, therefore, the stand of the respondents that the petitioner is not entitled to such relief is belied for he is seeking the relief on the basis of a covered judgment passed by this Court whereby the writ petitions of most of the reverted Zilledars have been allowed and they have been promoted along with some of his juniors.

(5) In support of his argument, learned counsel for the petitioner laid reliance on the authority of the Apex Court in *Lt. Governor of Delhi and others v. Const. Dharampal and others* (1), wherein the judgment and order dated November 26, 1987 of the Tribunal was confirmed after considering the facts and circumstances as well as the judgment rendered by the Delhi High Court in C.W.P. Nos. 270 and 937 of 1978. The matrix of the case in short in that case was that services of some Constables in Delhi police appointed in the years 1964 to 1966 were terminated because of their participation in the agitation along with other Constables in April, 1967. Due to hue and cry in the Parliament, dismissed Constables were reinstated into service but some of the Constables who were not reinstated filed Civil Writ Petition Nos. 29 of 1969 and 106 of 1970 in the High Court of Delhi, which,—*vide* its order dated 1st October, 1975 quashed the orders of termination and the petitioners in that case were declared to be through out in service. The Administration preferred appeals which were dismissed. Subsequently, some other Constables whose services were terminated but were not reinstated in service filed writ petitions in the High Court of Delhi. These writ petitions were subsequently transferred to the Central Administrative Tribunal, Delhi. The Tribunal while rejecting the plea of the respondents that the petitioners should be denied any relief because of delay and laches held that the claims of the petitioners (respondents in these appeals) was identical to the claim of the petitioners in C.W.P. Nos. 270 and 937 of 1978 whose petitions were allowed by the High Court of Delhi. The Tribunal further held that the petitioners were entitled to the same relief as was granted to the petitioners in C.W.P. Nos. 270 and 937 of 1978.

(6) On the basis of the said case law the learned counsel for the petitioner argued that once the claim of the petitioner was identical to those of other Zilledars whose reversion orders have been withdrawn and they have been posted as Zilledars including some of his juniors, the argument of the respondents that the petitioner is not entitled to such relief because of delay and laches does not merit any consideration and that the petitioner is entitled to the same relief which has been granted to the likely placed Zilledars.

(7) In this behalf he referred to a Single Bench authority of this Court entitled *Harbhajan Singh Bains v. State of Punjab and others* (2). It says that when it had been held by the Court that the Government was duty bound to fix the pay of teachers in accordance with

(1) 1991 (3) S.L.R. 1.

(2) I.L.R. (1986) 2 Punjab and Haryana 348.

the principles laid down in the government order, it was incumbent upon the authorities to fix the pay of such teachers in the same manner. Those who had filed petition under Article 226 of the Constitution of India 1950 in this behalf do not thereby form or constitute any special category warranting different treatment from those who though being similarly placed had not approached the Court for this purpose.

(8) The counsel for the respondents could not deny the fact that the petitioner was entitled to such a relief which has been granted to his other colleagues who were similarly placed but contended that he did not invoke the extraordinary writ jurisdiction in time therefore such a relief was not granted to him. Such defence raised by the State appears to be useless because as per Annexure P-1 the petitioner along with 24 other Zilledars was reverted and most of them have been restored back to their position after their reversion orders having been withdrawn in view of the judgment of this Court mentioned above. The petitioner as a matter of right was entitled to such relief from the government but as the State did not do so, he therefore preferred representations. When the State did not act upon representations, When the State did not act upon his representations, he filed the writ petition which has been dismissed on the grounds of delay and laches.

(9) The principle of law laid down in *Constable Dharampal's case* (supra) and Single Bench authority of this Court manifestly makes it clear "that the persons who were similarly placed were entitled to the same treatment and those who got the relief on the basis of the Court judgment could not be treated to form and constitute any special category warranting different treatment from those who though being similarly placed had not approached the Court for this purpose."

(10) In the instant case the petitioner seeks the revocation of his reversion order on the basis of the orders of his colleagues who were similarly placed and the case of the petitioner is fully covered by the judgment mentioned above by which the reversion of his colleagues has been withdrawn and they have been restored back to their original position as Zilledars.

(11) A cardinal principle of law as enunciated by the Apex Court in *Anvrit Lal Berry's case* (3), says that in the cases the fundamental

rights alleged to be violated could only be the general ones embraced by Article 16(1) of the Constitution which reads : "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State". Where a petitioner alleges that he has been denied equality of opportunity for service, during the course of his employment as a Government servant, it is incumbent upon him to disclose not only the rule said to be infringed but also how his opportunity was unjustifiably denied on each particular occasion. The equality of opportunity in a matter relating to employment implies equal treatment to persons similarly situated or in the same category as the petitioner. It postulates equality of conditions under which a number of persons belonging to the same category compete for the same opportunities and a just and impartial application of uniform and legally valid standards in deciding upon competing claims. It does not exclude justifiable discrimination.

(12) In the instant case the petitioner has fully established and proved the fact that he has been discriminated by the authorities in the manner that the reversion orders of other Zilledars who were equally placed during the employment of their service have been withdrawn by the Government (no doubt on the intervention of this Court) but no equal treatment has been provided to the petitioner who is similarly situated or in the same category as others were placed and even some of them who were junior to him have been posted as Zilledars. In such circumstances the delay in filing the writ petition does not debar him to seek withdrawal of his reversion when other officials similarly situated in the same category of service have been brought back to their original position of Zilledars after their reversion orders have been withdrawn including his juniors against whom no relief is sought by him that he should be made senior to them.

(13) It is a just case where the extraordinary writ jurisdiction can be exercised. Therefore, we allow this appeal and set aside the order passed by the learned Single Judge thereby allowing the writ petition as well. The authorities concerned are directed that while withdrawing the orders of reversion passed against the petitioner, they shall not disturb the seniority of his juniors who have already been promoted. The respondent State is directed to withdraw the reversion order of the petitioner within a month from today and restore him back to the original position of a Zilledar within the said period with all other consequential benefits which his juniors were allowed.

R.N.R.