



1

WP-14178-2019

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 29th OF JULY, 2026WRIT PETITION No. 14178 of 2019*ASHOK KUMAR SAXENA**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

.....
Appearance:

Mr. Rahul Patel - Advocate for petitioner.

Ms. Shraddha Tiwari - Panel Lawyer for State.

.....

ORDER

The present petition has been filed by the petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

"1. This Hon'ble Court may kindly be pleased to call for the relevant records, examine the same and quash the order dt. 19.03.2019 (Annexure-5) passed by respondent no.2.

2. To issue direction to the respondents be issuance of the Writ of mandamus to give to the petitioner the pay scale equivalent given to similar situated employees A.L. Thakur (supra) Rs 515-800 from 01.04.1982, Rs.950-1530 from 01.01.1986, Rs.3050-4590 from dt. 01.01.1996 and corresponding revised pay scale including arrears from way back and interest 8 % per annum in the interest of justice.

3. Any other order/orders/writ/writs direction/directions this



Hon'ble Court may deem fit and proper, may also be granted in favour of the petitioner.

4. That the cost of petition Rs.20,000/- may also be awarded to the petitioner."

2. The brief facts of the case are that the petitioner was initially appointed as a Time Keeper in the Work-Charged and Contingency Paid Establishment under the Water Resources Department, Government of Madhya Pradesh, and rendered approximately forty years of unblemished service before attaining the age of superannuation on 31.08.2013. During his service tenure, the petitioner was extended the pay scales of Rs.445-635 with effect from 01.04.1982, Rs.825-1220 with effect from 01.01.1986, Rs.2750-4400 with effect from 01.01.1996 and the corresponding revised pay scales. The Hon'ble High Court, in the case of *A.L. Thakur and Others v. State of Madhya Pradesh and Others*, directed the respondents to extend higher revised pay scales to similarly situated Work-Charged and Contingency Paid employees. The said judgment was duly implemented by the respondents in respect of several similarly situated employees. The petitioner, being identically situated to the employees who were granted the aforesaid benefit, submitted representations seeking extension of the same pay scales. Upon failure of the respondents to consider his claim, the petitioner approached this Hon'ble Court by filing a writ petition. This Hon'ble Court, by order dated 06.03.2017, directed the respondents to consider the petitioner's claim and to grant him the benefit if his case was found to be fully covered by the judgment rendered in *A.L. Thakur (supra)*. Despite the aforesaid direction,



the respondents failed to decide the petitioner's claim in its true perspective, compelling the petitioner to initiate contempt proceedings. However, the contempt petition came to be disposed of on the statement made on behalf of the respondents that the order of this Hon'ble Court had been complied with. Thereafter the petitioner again approached this Hon'ble Court by filing W.P. No.685/2019, wherein this Hon'ble Court directed the respondents to pass a reasoned order. Pursuant thereto, respondent No.2 passed an order dated 19.03.2019 rejecting the petitioner's claim for parity with similarly situated employees. The petitioner has challenged the order dated 19.03.2019 on the ground that the same is arbitrary, discriminatory, contrary to the binding judgments of this Hon'ble Court and violative of Articles 14 and 16 of the Constitution of India.

3. It is submitted that the post of Time Keeper was re-designated as Field Assistant (Sthal Sahayak) in the year 1996 and that the service conditions of Time Keepers are governed by the M.P. Work Charged and Contingency Paid Employees Pay Rules, as amended from time to time. According to the petitioner, under the Pay Revision Rules of 1984, 1990, and 1998, he was entitled to the higher revised pay scales but was wrongly continued in the lower scales. The petitioner further submits that the issue regarding the pay scale of Time Keepers has already been decided in favour of similarly situated employees in T.A. No. 993/1988, W.P. No. 16054/2003 (A.L. Thakur v. State of M.P.), and W.P. No. 17326/2003 (G.P. Shriwas v. State of M.P.). The judgment in A.L. Thakur has been affirmed by the Division Bench, and the Special Leave Petition filed by the State has also



been dismissed by the Hon'ble Supreme Court. It is contended that the post of Amin carries the same pay scale as that of Time Keeper and that similarly situated employees have already been granted the higher pay scales on the principle of "equal pay for equal work" in terms of the judgment rendered in A.L. Thakur (W.P. No. 16054/2003 arising out of O.A. No. 5178/2000, decided on 27.06.2012). Being identically situated, the petitioner claims entitlement to the same benefit under Articles 14 and 16 of the Constitution of India. Accordingly, the petitioner prays that the order dated 19.03.2019 be quashed and the respondents be directed to grant him the pay scales applicable to the post of Amin, along with all consequential monetary benefits, including revision of pension and payment of arrears.

4. *Per contra*, learned counsel for the respondent has taken objection in regard to delay and laches as the petition has been filed after five years of retirement. Petitioner stood retired on 31.08.2013 and the petition has been filed by the petitioner in the year 2019 for monetary benefits akin to the similarly situated persons in the light of the various orders passed by this Court in various different writ petitions.

5. Heard learned counsel for the parties and perused the record.

6. The Hon'ble Apex Court in the case of *State of Orissa and Another Vs. Mamata Mohanty, (2011)3 SCC 436*, in paragraph no.36 has held as under:

"53. Needless to say that [Limitation Act](#) 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are



applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the respondent claimed the relief from 1.1.1986 by filing a petition on 11.11.2005 but the High Court for some unexplained reason granted the relief w.e.f. 1.6.1984, though even the Notification dated 6.10.1989 makes it applicable w.e.f. 1.1.1986.

54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time."

7. It is settled law that fence-sitters cannot be allowed to take advantage of persons who have rigorously pursued their matters before the Courts and, after obtaining favourable orders, approach the Court after a considerable delay to claim similar benefits.

"7. Article 7 of Schedule of the Limitation Act, 1963 provides as



under:-

For wages in the case of any other person	Three years	When the wages accrue due
---	-------------	---------------------------

8. Thus, Article 7 of Scheduled of the Limitation Act, 1963 clearly prescribes that the period of limitation for recovery of money/salary is three years from the date when it became due. It is true that for filing a writ petition under Article 226 of the Constitution of India, no period of limitation is provided.

9. It is submitted by the counsel for the petitioner that merely because the petitioner could not approach this Court at the earliest, would not mean that he was not entitled for the benefit of pay scales applicable to the post of Amin, along with all consequential monetary benefits, including revision of pension and payment of arrears and relied upon a judgment passed by the Supreme Court in the case of *M.R. Gupta Vs. Union of India and Others*, 1995 (5) SCC 628 in paragraph no.5 has held as under:-

"5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if



on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action."

10. So far as the judgment passed by the Hon'ble Apex Court in the case of ***M.R. Gupta (supra)*** is concerned, it was in relation to recurring cause of action due to non-payment of correct pay scale for current and future payment but it has been categorically held that the arrears are subject to the period of limitation, therefore, when a particular pay scale accrued in favour of an employee, then from that date, the arrears are to be counted and if they are not falling within that time period as provided under Article 7 of the Limitation Act, 1963 i.e. three years, then those are not recoverable in the light of the judgment passed by the Hon'ble Apex Court in the case of ***M.R. Gupta (supra)***.

11. The Supreme Court in the case of ***Karnataka Power Corpon. Ltd. Vs. K. Thangappan*** reported in (2006) 4 SCC 322 has held as under :

"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party.



Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad v. Chief Controller of Imports and Exports. Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd (PC at p. 239) was approved by this Court in Moon Mills Ltd. v. M.R. Meher and Maharashtra SRTC v. Shri Balwant Regular Motor Service. Sir Barnes had stated:

“Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.”

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in Rabindranath Bose v. Union of India that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It



was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay. It was stated in State of M.P. v. Nandlal Jaiswal that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

12. The Supreme Court in the case of *M.P. Ram Mohan Raja Vs. State of T.N.* reported in (2007) 9 SCC 78 has held as under :

"11. So far as the question of delay is concerned, no hard-and-fast rule can be laid down and it will depend on the facts of each case. In the present case, the facts stare at the face of it that on 8-10-1996 an order was passed by the Collector in pursuance of the order passed by the High Court, rejecting the application of the writ petitioner for consideration of the grant of mining lease. The writ petitioner sat tight over the matter and did not challenge the same up to 2003. This on the face of it appears to be very serious. A person who can sit tight for such a long time for no justifiable reason, cannot be given any benefit."

13. The Supreme Court in the case of *Shiv Dass Vs. Union of India* reported in (2007) 9 SCC 274 has held as under :

"6. Normally, in the case of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be



borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad v. Chief Controller of Imports and Exports. Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd, PC at p. 239 was approved by this Court in Moon Mills Ltd. v. M.R. Meher and Maharashtra SRTC v. Balwant Regular Motor Service. Sir Barnes had stated:

“Now the doctrine of laches in courts of equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, if founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable.



Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

8. *It was stated in State of M.P. v. Nandlal Jaiswal that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.”*

14. The Supreme Court in the case of *Nadia Distt. Primary School Council Vs. Sristidhar Biswar* reported in (2007) 12 SCC 779 has held as under :

"11. In the present case, the panel was prepared in 1980 and the petitioners approached the court in 1989 after the decision in Dibakar Pal. Such persons should not be given any benefit by the court when they allowed more than nine years to elapse. Delay is very significant in matters of granting relief and courts cannot come to the rescue of the persons who are not vigilant of their rights. Therefore, the view taken by the High Court condoning the delay of nine years cannot be countenanced."

15. The Supreme Court in the case of *U.P. Jal Nigam Vs. Jaswant Singh* reported in (2006) 11 SCC 464 has held as under :

"12. The statement of law has also been summarised in Halsbury's



Laws of England, para 911, p. 395 as follows:

“In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

- (i) acquiescence on the claimant’s part; and*
- (ii) any change of position that has occurred on the defendant’s part.*

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.”

16. The Supreme Court in the case of ***Jagdish Lal Vs. State of Haryana*** reported in ***(1997) 6 SCC 538*** has held as under :

"18. That apart, as this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or Article 32 of the Constitution."

17. The Supreme Court in the case of ***NDMC Vs. Pan Singh*** reported in ***(2007) 9 SCC 278*** has held as under :

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the



Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. (See Govt. of W.B. v. Tarun K. Roy, U.P. Jal Nigam v. Jaswant Singh and Karnataka Power Corpn. Ltd. v. K. Thangappan.)

17. Although, there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily, writ petition should be filed within a reasonable time. (See Lipton India Ltd. v. Union of India and M.R. Gupta v. Union of India.)

18. In Shiv Dass v. Union of India this Court held: (SCC p. 277, paras 9-10) “9. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in K.V. Rajalakshmiah Setty v. State of Mysore. There is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In State of Orissa v. Pyarimohan



Samantaray making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. (See also State of Orissa v. Arun Kumar Patnaik.) 10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit the appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

19. We, therefore, are of the opinion that it was not a fit case where the High Court should have exercised its discretionary jurisdiction in favour of the respondents herein."

18. From a bare reading of the provision of law, it is clear that an employee is entitled to seek monetary benefits only for the preceding three years and not beyond that. The analogy of a recurring cause of action will come into play only when the petitioner is to be benefited by the grant of such monetary benefits in present and future. Since the petitioner has already retired, he is not entitled to arrears on the basis of the pay scale that has accrued to him on the basis of identical matters. At the most, the petitioner



can be granted the benefit of notional fixation for the purpose of pensionary benefits.

19. Therefore, the petition is partly allowed and the impugned order dated 19.03.2019 (Annexure-P/5) is hereby quashed. Insofar as the arrears of the monetary benefits of the pay scale, which could have been granted or were denied during the petitioner's service prior to his retirement, are concerned, the petitioner shall be entitled only to notional fixation for the purpose of pension.

20. Accordingly, the respondents are directed to re-fix the petitioner's pay on a notional basis and revise his pensionary benefits in accordance with law.

21. With the aforesaid, petition stands disposed of.

(DEEPAK KHOT)
JUDGE

julie