A.F.R.

Neutral Citation No. - 2023:AHC-LKO:49918

Court No. - 7
Case :- WRIT - A No. - 5351 of 2023
Petitioner :- Mahendra Pal
Respondent :- State Of U.P. Thru. Prin. Secy. Cooperative Lko. And 5 Others
Counsel for Petitioner :- Vaibhav Srivastava
Counsel for Respondent :- C.S.C.,Gaurav Mehrotra

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the petitioner, learned Standing Counsel for the respondent no. 1 and Shri Gaurav Mehrotra, learned counsel for the respondents no. 2 to 6.

2. The instant writ petition has been filed praying for the following main reliefs:

> *"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 18.04.2023 passed by opposite party no. 4 contained as Annexure No. 1 to the writ petition.*
>
> *(ii) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 15.02.2008 passed by opposite party no. 5 contained as Annexure No. 2 to the writ petition.*
>
> *(iii) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 23.05.2007 (so far as it relates to the imposition of punishments) passed by opposite party no. 3 contained as Annexure no. 3 to the writ petition.*
>
> *(iv) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to remove / delete the censure entry given to the petitioner in his service book vide impugned order dated 23/05/2007 (Annexure No. 3 to the writ petition), within specified time.*
>
> *(v) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to grant full arrears of salary and other allowances due during the period of suspension with interest as applicable till the date of actual payment, within specified time.*

> *(vi) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to provide / grant one increment with all consequential benefits due to the petitioner which was held back vide impugned order dated 23.05.2007 (Annexure No. 3 to the writ petition), within specified time."*

3. The case set forth by the petitioner is that the petitioner is an employee of respondent no. 2 Bank. The petitioner had been proceeded against departmentally and a punishment order dated 23.05.2007, a copy of which is annexure 3 to the petition, had been passed whereby following punishments were awarded namely:

(a) an adverse entry and

(b) stoppage of one increment cumulatively.

4. Being aggrieved, the petitioner filed an appeal which was rejected vide the order dated 15.02.2008, a copy of which is annexure 2 to the petition, on the ground of the same having been filed beyond time. The petitioner claims that subsequent thereto he continued to represent to the respondents and also claims to have filed a review on 12.03.2008. After repeated representations, the said review has been decided vide the impugned order dated 18.04.2023, a copy of which is annexure 1 to the petition. The review has been rejected on the ground that there is no provision in the service rules for filing of a review after the appeal has been decided.

5. Raising a challenge to all three orders namely the order dated 18.04.2023, the order dated 15.02.2008 as well as the punishment order dated 23.05.2007, the instant writ petition has been filed.

6. A preliminary objection has been taken by Shri Gaurav Mehrotra, learned counsel appearing for the respondent Bank that the writ petition is barred by laches and delay in as much as simply because the authorities have proceeded to pass an order dated 18.04.2023 whereby it has been indicated that there is no power of review under the service rules for entertaining of a review and the said review filed by the

petitioner has been rejected, the same would not give rise to a fresh cause of action to the petitioner to challenge the stale orders of the years 2007 and 2008 and thus the writ petition deserves to be dismissed on this ground alone.

7. Replying to the aforesaid, the argument of Sri Vaibhav Srivastava, learned counsel for the petitioner is that keeping in view the law laid down by Hon'ble Supreme Court in the case of **M. R. Gupta vs Union of India and others** reported in **1995 (5) SCC 628** and the judgement of Hon'ble Supreme Court in the case of **Union of India and another vs Tarsem Singh** reported in **2008 (8) SCC 648** there is continuing cause of action to the petitioner to file the writ petition in as much as one of the punishment that has been imposed to the petitioner is stoppage of one increment cumulatively which continues to affect him even as of date and hence there being a continuing cause of action, he is perfectly entitled to file a writ petition as and when the respondents pass an order, even on the review which was not maintainable at the first instance.

8. Responding to that, the argument of Sri Gaurav Mehrotra, learned counsel for the respondents is that admittedly a punishment order was passed against the petitioner on 23.05.2007. The petitioner filed a belated appeal against the same which has been rejected vide the order dated 15.02.2008 on the ground that the same has been filed beyond time. Even though the petitioner has filed a review, which was not maintainable under the service rules and under the rules governing the disciplinary proceedings pertaining to the respondent Bank, yet the Bank in its wisdom has proceeded to reject the review of the petitioner by means of the impugned order dated 18.04.2023 on the ground that the said review itself is not maintainable. Consequently the same would not give rise to any fresh cause of action to the petitioner in as much as once review itself was not maintainable, even if the petitioner might have filed the same and would have continued to represent to the respondents for a decision on his review application, the same would not give rise to any

fresh cause of action in as much as the orders under challenge are deemed to be those orders which have been passed after disciplinary proceedings against the petitioner i.e. the punishment order dated 23.05.2007 and the appellate order dated 15.2.2008 and the writ petition having been filed after a lapse of 15 years merits to be dismissed on this ground alone.

9. In this regard reliance has been placed on the judgments of Hon'ble Supreme Court in the cases of **State of Tripura and others vs Arabinda Chakraborty and others** reported in **(2014) 6 SCC 460, Naresh Kumar and others vs Government (NCT of Delhi)** reported in **(2019) 9 SCC 416, Union of India and others vs M. K. Sarkar** reported in **(2010) 2 SCC 59** and **State of Uttar Pradesh and others vs Rajmati Singh** reported in **2022 SCC OnLine SC 1785**.

10. Placing reliance on the aforesaid judgments, the argument of Shri Gaurav Mehrotra is that even when an order has been passed on the basis of a representation preferred by an employee, the same would not give life to a stale claim and consequently once the instant writ petition has been filed primarily against the punishment order and the appellate order passed way back in the years 2007 and 2008, consequently the writ petition deserves to be dismissed on this ground alone.

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

12. From perusal of record it emerge that after disciplinary proceedings were initiated against the petitioner, a punishment order dated 23.05.2007 was passed against him whereby he was awarded with an adverse entry and a punishment of withholding of one increment on cumulative basis. Initially the petitioner was not aggrieved by the said order in as much as the appeal was not filed by him within the stipulated time as per rules. He filed a belated appeal against the punishment order which was rejected by the appellate authority vide order dated 15.02.2008 on the ground of it having been filed beyond the time specified under the rules. The

petitioner appears to have sat silent in the matter and did not challenge it before the competent court of law. It is contended that he filed a review against both, the punishment order and the appellate order on 12.03.2008. It is alleged that the said review remained pending with the respondents and the petitioner continued to represent for a decision to be passed on his review. An order in this regard has only been passed by the competent authority on 18.04.2023 whereby the review filed by the petitioner has been rejected by contending that there is no power in the service rules for filing of review. Now challenging all three orders i.e. punishment order, the appellate order as well as the order passed on review, which itself was not maintainable, the instant petition has been filed.

13. In order to explain laches, reliance has been placed on judgements of Hon'ble Supreme Court in the cases of **M. R. Gupta (supra)** as well as **Tarsem Singh (supra)**.

14. The Court proceeds to consider the judgments of **Tarsem Singh (supra)** wherein the earlier judgement of **M. R. Gupta (supra)** has been considered.

15. Hon'ble Apex Court in the case of **Tarsem Singh (supra)** has held as under:"

> *"5. 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 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 re-opening 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. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, 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. "*

16. A perusal of judgement of Hon'ble Apex Court in the case of **Tarsem Singh (supra)** would indicate that Hon'ble Apex Court has held that a belated service claim can be rejected on the ground of delay and laches where remedy is sought by filing of writ petition or limitation where a remedy is sought by application to the administrative tribunal but one of the exception to the said rule would be relating to a continuing wrong where the service related claim is based on a continuing wrong. Relief can be granted even if there is long delay in seeking remedy with reference to the date on which continuing wrong commenced, if such continuing wrong creates a continuing source of injury. The Hon'ble Supreme Court has carved out certain exceptions to the principle of 'continuing wrong' of which one of the exception which has been argued by learned counsel for the petitioner is that if the issue relates to payment or re-fixation of pay and pension then the relief may be granted in spite of delay as it does not affect the right of third parties.

17. At the first blush, the argument of learned counsel for the petitioner appears to have some force in as much as the punishment of withholding of one increment with cumulative effect continues to have effect even after lapse of several years, consequently he may be entitled to prefer the instant petition even after a period of 15 years. However a careful perusal of the judgement of Hon'ble Apex Court in the case of **Tarsem Singh (supra)** would indicate that the exemptions carved out, so far as the

instant case is concerned, is where there has been wrong fixation of pay or pension on account of certain administrative decisions. In the instant case it is not on account of administrative decisions that the pay of the petitioner may have been fixed wrongly, rather it was after disciplinary proceedings that a punishment order was consciously and deliberately passed against the petitioner whereby the punishment of withholding of one increment with cumulative effect was passed. The petitioner, in his own wisdom, filed a belated appeal which was rejected way back in the year 2008 and thereafter pursued a remedy which was not permissible under the service rules i.e. the remedy of review. Even when the review was filed in the year 2008, it could have been a case that in the year 2008 the petitioner may have approached this Court praying for a decision being taken on a review (which itself was not maintainable) but the petitioner continued to sit over the matter and it is only when the authorities themselves indicated to the petitioner vide the order dated 18.04.2023 that the review itself is not maintainable as there is no provision under the Rules that the petitioner has woken up and chosen to challenge all the three orders.

18. Considering the aforesaid discussion, the principles of law laid down in **Tarsem Singh (supra)** would not be applicable.

19. So far as the judgment as cited on behalf of the respondents are concerned namely in the case of **Arabinda Chakraborty (supra)** Hon'ble Apex Court has held as under:

> "*15. In our opinion, the suit was hopelessly barred by law of limitation.* ***Simply by making a representation, when there is no statutory provision or there is no statutory appeal provided, the period of limitation would not get extended. The law does not permit extension of period of limitation by mere filing of a representation. A person may go on making representations for years and in such an event the period of limitation would not commence from the date on which the last representation is decided.*** *In the instant case, it is a fact that the respondent was given a fresh appointment order on*

22.11.1967, which is on record. The said appointment order gave a fresh appointment to the respondent and therefore, there could not have been any question with regard to continuity of service with effect from the first employment of the respondent.

18. It is a settled legal position that the period of limitation would commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the respondent and if the respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision with regard to any statutory appeal. The respondent kept on making representations one after another and all the representations had been rejected. ***Submission of the respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be accepted. If accepted, it would be nothing but travesty of the law of limitation. One can go on making representations for 25 years and in that event one cannot say that the period of limitation would commence when the last representation was decided.*** *On this legal issue, we feel that the courts below committed an error by considering the date of rejection of the last representation as the date on which the cause of action had arisen. This could not have been done.*"

(emphasis by Court)

20. Likewise Hon'ble Apex Court in the case of **Naresh Kumar (supra)** has held as under:

"*13.* ***It is settled law that the power of Review can be exercised only when the statute provides for the same. In the absence of any such provision in the concerned statute, such power of Review cannot be exercised by the authority concerned.*** *This Court in the case of Kalabharati Advertising vs Hemant Vimalnath Narichania (2010) 9 SCC 437, has held as under:*

"...12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasijudicial orders. In

the absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is ultra vires, illegal and without jurisdiction.

(Vide Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar [AIR 1965 SC 1457] and Haribhajan Singh v. Karam Singh [AIR 1966 SC 641] .)

13. In Patel Narshi Thakershi v. Pradyuman Singhji Arjunsinghji [(1971) 3 SCC 844 :AIR 1970 SC 1273], Major Chandra Bhan Singh v. Latafat Ullah Khan [(1979) 1 SCC 321], Kuntesh Gupta (Dr.) v. Hindu Kanya Mahavidyalaya [(1987) 4 SCC 525 : 1987 SCC (L&S) 491 : AIR 1987 SC 2186], State of Orissa v. Commr. of Land Records and Settlement [(1998) 7 SCC 162] and Sunita Jain v. Pawan Kumar Jain [(2008) 2 SCC 705 : (2008) 1 SCC (Cri) 537] this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in the absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in the absence of any statutory provision for the same is a nullity, being without jurisdiction.

14. Therefore, in view of the above, ***the law on the point can be summarised to the effect that in the absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification /modification/ correction is not permissible****.*

(emphasis supplied)"

21. Similarly Hon'ble Apex Court in the case of **M. K. Sarkar (supra)** has held as under:

"*14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob vs Director of Geology and Mining & Anr - 2009 (10) SCC 115 :*

> *"The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to `consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."*

15. ***When a belated representation in regard to a `stale' or `dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the `dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance***

with such direction, will extend the limitation, or erase the delay and laches."

(emphasis by Court)

22. Likewise Hon'ble Apex court in the case of **Rajmati Singh (supra)** has held under:

"*19. Close to the facts of this case, in "C. Jacob versus Director of Geology and Mining And Other" (2008) 10 SCC 115, this Court, having found that the employee suddenly brought up a challenge to the order of termination of his services after 20 years and claimed all consequential benefits, held that the relief sought for was inadmissible. The legal position in this regard was laid out in the following terms:*

"*10. Every representation of the Government for relief, may not be applied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars.* ***The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.***

11. When a decision is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience. ***When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of "acknowledgement of a jural relationship" to give rise to a fresh cause of action.***"

23. From careful perusal of judgements of Hon'ble Apex Court as referred to above, it clearly emerges that merely because representations have been submitted by an employee which came to be decided, the

decision would not entail revival of stale claim. Even otherwise, in the instant case, the petitioner, as per his own accord, has filed a review which was not itself maintainable as per the service rules in the year 2008 and it is only when the authorities informed him in the year 2023 that the review is not maintainable as per service rules that the petitioner has challenged all the orders including the punishment order of the year 2007 and the appellate order of the year 2008. Thus merely because the authorities informed about the non maintainability of the review through an order dated 18.04.2023 the same would not entail revival of a stale claim as in the instant writ petition.

24. Considering the aforesaid, the preliminary objection as raised by Shri Gaurav Mehrotra, learned counsel for the respondents is upheld and the writ petition is **dismissed** on the ground of laches.

Order Date :- 28.7.2023
J.K. Dinkar