

Court No. - 29

Case :- SPECIAL APPEAL No. - 973 of 2024

Appellant :- Ram Kishor Dixit

Respondent :- State Of U.P. And 7 Others

Counsel for Appellant :- Gyanesh Kumar, Manoj Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Vivek Kumar Birla, J.

Hon'ble Dr. Yogendra Kumar Srivastava, J.

(Per : Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri Manoj Kumar Singh, learned counsel for the appellant and Sri Ankit Gaur, learned Standing Counsel appearing for the State-respondent.
2. The present *intra* court appeal is directed against the judgment and order 23.08.2024 passed by the learned Single Judge in Writ-A No.12140 of 2024 (Ram Kishor Dixit Vs. State of UP and others), in terms of which the writ petition has been dismissed on the ground of the delay.
3. The records of the case indicate that the writ petition had been filed with the assertion that the petitioner was initially appointed as Assistant Teacher in the CT Grade in a recognized and aided educational institution on 01.09.1973, and was regularized by an order dated 30.06.1975. He was awarded revised pay scale vide order dated 03.06.1989 and the benefit of selection grade after 10 years' service in the LT Grade.
4. It is stated that the petitioner was subsequently promoted as Lecturer (Sociology) on a vacant post in the

institution by the Committee of Management with the approval of the District Inspector of Schools by an order dated 20.11.1997. The petitioner subsequently superannuated on 30.06.2009.

5. Certain representations by the petitioner raising claims for arrears of salary from CT Grade to LT Grade and promotional pay scale were said to have been submitted.

6. The petitioner thereafter preferred a writ petition being Writ-A No.12140 of 2024 seeking a direction to the Director, Secondary Education, UP, Allahabad to take appropriate action for payment of arrears due to him from CT Grade to LT Grade and promotional pay scale together with interest, and to decide the representations stated to be pending in this regard.

7. The writ petition was opposed by the counsel appearing for the State-respondents on the ground of the same was barred by delay and laches.

8. The writ Court, upon examining the facts of the case, particularly that the petitioner had superannuated in the year 2009, held that his claim for payment of arrears from CT Grade to LT Grade and also promotional pay scale, could not be entertained, particularly as he had been given the LT Grade in the year 1989, and the promotional pay scale in the year 1996.

9. The learned Single Judge upon taking note of the fact that the petitioner had not raised the issue for the last 35 years, and the writ petition having been filed without

explaining laches, proceeded to dismiss the writ petition on the ground of delay.

10. Counsel appearing for the appellant has pressed the appeal by arguing that the relief sought being with regard to arrears of salary, pertains to a recurring cause of action arising from month to month, and therefore the same could have been rejected on the ground of delay. It has been further urged that reliance placed by the learned Single Judge on the decision in the case of **Union of India and others Vs. Tarsem Singh**¹, is misplaced, and the said judgment would not be applicable in the facts of the case.

11. Learned Standing Counsel appearing for the State-respondents has supported the reasoning given by the learned Single Judge, and has contended that the claim which had been sought to be raised by the appellant-petitioner was highly time barred and that the same has rightly been rejected.

12. Counsel appearing for the appellant, despite specific queries made by the Court, could not point out from the records the basis on which the claim was being made for arrears from CT Grade to LT Grade and the promotional pay scale. The averments in the writ petition and the documents which have been annexed alongwith the same also are not very clear in this regard.

13. There is no specific mention in the pleadings of the writ petition regarding the date on which the benefit of LT Grade was granted to the petitioner and also the period for which the arrears in this regard has been sought to be

1 (2008) 8 SCC 648

claimed. The only mention in this regard is in a representation dated 25.05.2023 said to have been submitted by the appellant, wherein it is sought to be asserted that the petitioner was placed in the LT Grade on 01.01.1986. In the representation also, no details have been mentioned regarding the period for which arrears were sought to be claimed.

14. It is the own case of the petitioner that he was substantively appointed against the post of Assistant Teacher in the CT Grade and that consequent to the decision of the State Government declaring CT Grade to be the dying cadre, his services stood merged in the LT Grade.

15. The order dated 19.11.1997, a copy whereof is on record as annexure no.2 to the writ petition, and in terms of which the petitioner was given *ad hoc* promotion against the vacant post of Lecturer in the institution, is also indicative that the petitioner had been holding the substantive post in the CT Grade.

16. There is no material on record which may suggest that upon merger of the CT Grade into LT Grade, any arrears in regard to the same became due to the petitioner, and that the same had remained unpaid. There is also no material available on record which may suggest that any arrears were due to the petitioner in regard to the promotional pay scale.

17. The petitioner raised his claim for the first time, upon attaining the age of superannuation, by a representation stated to have been submitted on 25.05.2023 and thereafter sought to agitate his claim by preferring a writ petition in

the year 2024. The significant delay raises concerns as to whether the claims would be barred by laches.

18. In the judgment in the case of **Union of India Vs. Tarsem Singh** (supra), which has been relied upon by the writ Court, and upon which counsel for the appellant has also sought to place reliance, it was held that claims based on 'continuing wrong' would not be barred by delay, but in respect of relief for recovery of arrears for a past period, the principles relating to 'recurring/successive wrongs' would apply.

19. The position in this regard was summarized as follows:-

"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 reopening 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 refixation 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. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the 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."

(emphasis supplied)

20. The principle underlying 'continuing wrongs' was explained in an earlier decision in the case of **Balakrishna**

Savalram Pujari Waghmare Vs. Shree Dhyaneshwar Maharaj Sansthan², wherein it was observed as follows:-

"31. In other words, did the cause of action arise *de die in diem* as claimed by the appellants? In dealing with this argument it is necessary to bear in mind that Section 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that Section 23 can be invoked."

(emphasis supplied)

21. The distinction between a claim with regard to monthly salary and a claim for recovery of arrears for a past period, was considered in the case of **M.R. Gupta Vs. Union of India³**, and it was held that as long as the person concerned is in service, fresh cause of action arises every month when he is paid his salary on the basis of a wrong computation made contrary to the rules whereas in respect of a claim for recovery of arrears for a past period, the question of limitation would arise. It was further held that any claim for recovery of arrears calculated on the basis of difference in pay which has become time barred would not be recoverable. The observations made in this regard are as follows:-

"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

² AIR 1959 SC 798

³ (1995) 5 SCC 628

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."

(emphasis supplied)

22. The question of delay or laches in approaching the High Court under Article 226 of the Constitution of India was examined in **Shiv Dass Vs. Union of India and others**⁴, and it was held that in a case of pension though the cause of action continues from month to month, the same cannot be a ground to overlook delay in filing the petition. It was stated thus:-

"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* [(1969) 1 SCC 185 : AIR 1970 SC 769] . Of course, the discretion has to be exercised judicially and reasonably.

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."

4 (2007) 9 SCC 274

23. The concept of what would constitute 'continuing wrong' has been evolved through legal pronouncements, based on the factual context of the cases. In **State of Bihar Vs. Deokaran Nenshi**⁵, the distinction between an '**act or omission which constitutes an offence once and for all**' and an '**act or omission which continues, and therefore constitutes a fresh offence every time**', was pointed out and it was observed as follows:-

"5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and re-occurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues."

(emphasis supplied)

24. The distinction between a '**continuing wrong**' and a '**wrong or default which is complete when it is committed**', was again pointed out in the case of **Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth**⁶, in the following words:-

"11. ...The distinctive nature of a continuing wrong is that the law that is violated makes the wrongdoer continuously liable for penalty. A wrong or default which is complete but whose effect may continue to be felt even after its completion is, however, not a continuing wrong or default.

17. The true principle appears to be that where the wrong complained of is the omission to perform a positive duty requiring a person to do a certain act the test to determine whether such a wrong is a continuing one is whether the duty in question is one which requires him to continue to do that act..."

(Emphasis supplied)

5 (1972) 2 SCC 890

6 (1981) 2 SCC 790

25. The basis of the doctrine of laches and the factors which are to be considered where delay and laches would be sufficient to deny relief to the petitioner, were examined in **UP Jal Nigam and another Vs. Jaswant Singh and another**⁷ and referring to the statement of law in **Halsbury's Laws of England**, para 911, p. 395, it was stated thus:-

“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.”

26. The differential treatment between a continuing wrong and an accrued wrong was subject matter of consideration in **State of MP and others Vs. Yogendra Shrivastava**⁸, and it was held that in regard to claim for higher allowances prospectively from the date of application, the bar of limitation or the principle of delay or laches would not be applicable since denial of benefit of higher allowance is a continuing wrong and cause of action arises every month at time of payment of salary; however, for consequential relief of payment of arrears for past period, principle of

7 (2006) 11 SCC 464

8 (2010) 12 SCC 538

successive or recurring wrong would apply and arrears would not be granted for any period beyond three years prior to the date of original application. The observations made in this regard in the aforesaid decision are as follows:-

“18. ...Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application. (See M.R. Gupta v. Union of India [(1995) 5 SCC 628] and Union of India v. Tarsem Singh, [(2008) 8 SCC 648]”

(emphasis supplied)

27. The proposition of law laid down in the case of **Union of India Vs. Tarsem Singh** (supra) was examined in **Prahlad Rout Vs. All India Institute of Medical Sciences**⁹, and the same was held to be unexceptionable. It was reiterated that where there is a ‘continuing wrong’ in relation to a service related claim, relief may be granted notwithstanding delay, provided the granting of the relief does not unsettle matters settled and affect third parties. It was further observed that where the cause of action is not a continuing one, the Court may refuse monetary claim on the ground of delay, specially in respect of arrears. The observations made in this regard are being reproduced below:-

9 (2021) 14 SCC 472

"28. The proposition of law laid down by this Court in Union of India v. Tarsem Singh, (2008) 8 SCC 648 is unexceptionable. It is well settled that where there is a continuing wrong in relation to a service related claim, relief may be granted notwithstanding delay, provided the granting of the relief does not unsettle matters settled and affect third parties. The judgment was, however, rendered in the context of discretionary relief in proceedings under Article 226 of the Constitution of India, for which there is no limitation prescribed. Where the cause of action is not a continuing one the High Courts refuse monetary claim on the ground of delay, specially arrears. In this context it would be pertinent to refer to the concluding part of paras 7 and 8 of the judgment of this Court in Tarsem Singh."

(emphasis supplied)

28. The principles relating to the effect of discretion under Article 226 of the Constitution to interfere in cases of the undue delay, laches and acquiescence were summarised in **Union of India Vs. N. Murugesan**¹⁰ and the following observations were made:-

“Delay, laches and acquiescence

20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the court.

Laches

21. The word “laches” is derived from the French language meaning “remissness and slackness”. It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires

while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.

22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.

23. A defence of laches can only be allowed when there is no statutory bar. The question as to whether there exists a clear case of laches on the part of a person seeking a remedy is one of fact and so also that of prejudice. The said principle may not have any application when the existence of fraud is pleaded and proved by the other side. To determine the difference between the concept of laches and acquiescence is that, in a case involving mere laches, the principle of estoppel would apply to all the defences that are available to a party. Therefore, a defendant can succeed on the various grounds raised by the plaintiff, while an issue concerned alone would be amenable to acquiescence.

Acquiescence

24. We have already discussed the relationship between acquiescence on the one hand and delay and laches on the other.

25. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to

hold that the concept of acquiescence is to be seen on a case-to-case basis.”

29. Having regard to the foregoing discussion, the legal position that emerges, may be summarised as follows:

29.1. A ‘continuing wrong’ arises from a wrongful act that creates a continuous source of injury. The wrongdoer remains liable as long as the injury continues. A ‘completed wrong’ results in a one-time injury, even if its effects persist.

29.2. Claims based on a ‘**continuing wrong**’ (e.g, incorrect pay fixation or pension) are not barred by delay if they involve ongoing injury. Relief for monetary arrears in ‘recurring wrongs’ is generally limited to three years prior to the filing of a writ or application, and Courts would refuse relief where granting it disturbs settled rights or impacts third parties.

29.3. **Recurring cause of action** or fresh cause of action arises each month when an employee receives a salary based on wrongful pay computation. Relief for pay fixation can be sought at any time while in service whereas recovery of arrears is subject to the limitation period and does not extend beyond three years.

29.4. Pension claims are treated as ‘**recurring wrongs**’, with a fresh cause of action arising each month. Courts limit retrospective relief to three years before filing the claim unless the delay significantly prejudices the opposite party or public interest.

29.5. Relief for ‘**continuing wrongs**’ in service-related claims may be granted despite delay, provided it does not

disturb settled rights. In cases of **'completed wrongs'**, delay or laches often bars monetary claims, especially arrears.

29.6. A **'continuing wrong'** arises out of failure to comply with a rule, leading to ongoing liability until compliance and fresh periods of limitation arise as long as the wrongful act or breach persists, provided there is a positive duty to perform an act. A **'completed wrong'** is a one-time act or omission with persistent effect and does not qualify as a 'continuing wrong'.

30. In the instant case, as we have already noted above, no material has been placed before us to substantiate the basis of the claim for arrears on account of the merger of CT Grade into LT Grade, as also on account of the benefit of promotional pay scale which had been granted to the petitioner subsequently.

31. Even otherwise, the arrears on account of the petitioner having been placed in the LT Grade, as also on account of the benefit of the promotional pay scale, would have become due on the dates when the aforesaid benefits had been granted i.e. in the year 1986 and the year 1996 respectively. Any cause of action in regard to the same could be said to have arisen on the said dates, and would constitute a **'one-time cause of action'** and not a **'recurring cause of action'**.

32. The claim in regard to the aforesaid arrears having not been agitated by the petitioner while being in service and the same having raised by submitting a representation in the year 2023 and thereafter filing a writ petition in the

year 2024, much after the petitioner had superannuated in the year 2009, we do not find any patent error or illegality in the order passed by the learned Single Judge dismissing the writ petition on the ground of delay/laches.

33. The appeal lacks merit and is accordingly **dismissed**.

Order Date :- 22.11.2024

Shahroz

(Dr. Y.K. Srivastava,J.) (V.K. Birla,J.)