

Claim Petition NO. 45/DB /2022

Dated: 01.10.2022

Present: Ms. Devika Tiwari, Advocate for the petitioner.(online)
Sri V.P.Devrani, A.P.O., for Respondent No. 1.

By means of present claim petition seeks the following reliefs:

- i. Issue an order or direction for quashing point no.2 of the impugned order dated 04.01.2019 (Annexure: 1 to the claim petition) passed by respondent no.1; in so far as it states that salary to the post of Headmaster will be payable to petitioner.
- ii. Issue an order or direction commanding respondents to pay the petitioner his rightful arrears of salary for his service as Principal, Government Inter College, Pathri, Haridwar; from the date of his joining i.e. 19.01.2019 till his retirement i.e. 31.03.2021.
- iii. Issue an order or direction commanding respondents to provide all consequential benefits to the petitioner on the pay scale of Principal; including increment and pension as already given to junior persons.
- iv. Issue an order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- v. Award the cost of the claim petition in the favour of the petitioner.

At the very outset, Ld. A.P.O. objected to the maintainability of the claim petition, *inter alia*, on the ground that the same is barred by limitation.

Ld. A.P.O. drew attention of this Tribunal towards Section 5(10 (b) (i) of the Uttar Pradesh Public Services (Tribunal) Act, 1976, which reads as below:

“notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year.”

Written objections have also been filed on behalf of the respondents on maintainability.

Ld. A.P.O. also drew attention of this Tribunal towards Paragraphs 3 and 4 of the objections, pleading that there is delay in filing the claim petition and the delay has not been explained.

Reply to such objections has been filed by the petitioner.

Ld. Counsel for the petitioner drew attention of this Tribunal towards the decision rendered by Hon'ble Apex Court in M.R.Gupta vs. Union of India, (1995) 5 SCC 628, relevant part of which reads as below:

“The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct

salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind.”

Ld. Counsel for the petitioner also drew attention towards another decision rendered by Hon’ble Apex Court in Union of India and others vs. Tarsem Singh, (2008) 8 SCC 648, relevant portion of which reads as below:

“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.”

According to Ld. Counsel for the petitioner, the period of limitation will start running from 31.03.2021, when the petitioner retired.

The claim petition requires further probe on the aspect of limitation. The petitioner has an arguable case. Issue of limitation is, therefore, left open to be decided at the time of final hearing.

Admit.

Ld. A.P.O. accepts notice on behalf of Respondent No.1. He seeks and is granted 6 weeks’ time to file C.A./W.S. on behalf of such respondent.

In addition, issue notices to Respondents No. 2 & 3, for which the petitioner shall take steps within a week by registered post acknowledgement due. Notices shall be returnable on 24.11.2022.

List on 24.11.2022 for further orders.

RAJEEV GUPTA
VICE CHAIRMAN (A)

[Virtually from Nainital]

VM

JUSTICE U.C.DHYANI
CHAIRMAN