REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4134 OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 2946 OF 2020)

RUSHIBHAI JAGDISHBHAI PATHAK ..... APPELLANT

VERSUS

BHAVNAGAR MUNICIPAL CORPORATION ..... RESPONDENT

W I T H

CIVIL APPEAL NO. 4136 OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 2947 OF 2020)

CIVIL APPEAL NO. 4137 OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 2948 OF 2020)

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CIVIL APPEAL NO. 4135 OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 2949 OF 2020)

J U D G M E N T

SANJIV KHANNA, J.

Leave granted.

2. This common judgment decides the afore-stated appeals filed by the employees of the Bhavnagar Municipal Corporation[1] who have

1 Hereinafter the 'respondent-Corporation'.

challenged the judgment dated 13th June 2019 of the Division Bench of the High Court of Gujarat at Ahmedabad, whereby the appeal filed by the respondent-Corporation was partially allowed, in view of delay and laches on the part of the appellants in approaching the court, by restricting the grant of higher pay-scale of Rs.5,000-8,000/-[2] with consequential benefits from the date of the judgment of the Single Judge on 31st July 2018. Prayer of the appellants for recovery of arrears from 2010 was declined. The respondent-Corporation, it has been held, would not be required to refund any amount that they have recovered from the appellants pursuant to the order dated 28th October 2010.

3. The appellants, who were initially appointed to the post of 'Junior Clerk' on an *ad hoc* basis, were made permanent on the post of 'Data Entry Operator' in the Computer Department of the respondent-Corporation in the pay-scale of Rs.4,000-6,000/- on different dates.

4. On 19th February 2007, the respondent-Corporation, *vide* order no. Mahekam/1/223, adopted and implemented in a modified form the Scheme of the Government of Gujarat[3] to, *inter alia*, deal with the problem of ... *'absence or restricted chances of promotion to*

2 Revised to 9,300-34,800 in terms of the 6th Pay Commission

3 Scheme of Higher Grade Scale dated 16th August 1994 (Government resolution No. PAY-1194/(44)/M), hereinafter referred to as the 'Scheme'

the Government employees'. The Scheme, *inter alia*, envisaged grant of pay-scale of the next promotional post on completion of 9, 18 or 27 years of service. The Scheme had also stipulated that in case of '*employees on posts having more than one promotional post in different scales of pay, their pay of Higher Grade Scale shall be considered the pay of the pay-scale of the lowest of the promotional posts*'.

5. The appellants were granted the higher pay-scale of the next promotional post of Rs.5,000-8,000/- from different dates upon furnishing undertakings in favour of the respondent-Corporation. One of the clauses in the undertaking stipulated that the appellants shall give up the benefit made available under the Scheme in case of denial of regular promotion accessible to the employee. In such a scenario, the employee shall accept the original downgraded pay and salary in the original pay-scale. Further, the appellants had agreed that the arrears were payable to them only from 1st January 2006.

6. However, pursuant to the order dated 28th October 2010, the benefit provided under the Scheme was revised by the respondent-Corporation observing that the appellants and others employees were erroneously granted benefit of the higher grade pay-scale of the next promotional post instead of the next stage in

the hierarchy of pay-scales, that is, the first higher pay-scale. Consequently, the employees who were in the pay-scale of Rs.4,000-6,000/- had been wrongly granted the higher pay-scale of Rs.5,000-9,000/-, in accordance with the pay-scale of the next promotional post, instead of the pay-scale of Rs.4,500-7,000/- , the next stage in the hierarchy of pay-scales. The order dated 28th October 2010 states that the anomaly had arisen as the respondent-Corporation had not appropriately fixed the pay-scales and thereby, excessive and unintended benefits had been given to the employees. As a result, the respondent-Corporation had to bear improper and excessive financial burden of the higher pay-scales. Pursuant to the order, the pay-scales of the appellants were appropriately revised to the first higher pay scale and the excess payments made were recovered from the appellants.

7. After nearly seven years, in September 2017, the appellants filed Writ Petitions before the High Court of Gujarat at Ahmedabad challenging the order dated 28th October 2010 whereby the higher pay-scales of the promotional post granted to them were withdrawn and a direction was sought against the respondent-Corporation to avail the pay-scale of the next higher promotional post and to pay the arrears. In support of their contention, the appellants had relied upon the interpretation of the Scheme

rendered in the judgment dated 16th August 2016 passed in a Writ Petition, SCA No. 14370 of 2011, that was preferred by one Mukeshbhai Jaswantrai Joshi, an employee of the respondent-Corporation. In this case, on interpretation of the relevant clauses of the scheme, it has been held that on financial upgradation, Mukeshbhai Jaswantrai Joshi would be entitled to the pay-scale applicable to the next promotional post of Rs.8,000-13,500/-, notwithstanding the fact that it was not the next higher pay-scale in the hierarchy of pay-scales. The respondent-Corporation was further directed to recompense the difference of arrears of pay with interest at the rate of 9% per annum from the date on which the benefit was withdrawn until the date of payment. This interpretation of the Scheme has been accepted and not challenged by the respondent-Corporation.

8. By way of background, it is noted that Mukeshbhai Jaswantrai Joshi had challenged the impugned order dated 28th October 2010 in a Writ Petition, SCA No. 14857 of 2010, which was filed in the year 2010. He had partly succeeded as the respondent-Corporation was directed to pass a fresh reasoned order in accordance with law after affording an opportunity of personal hearing to Mukeshbhai Jaswantrai Joshi. However, on 12th September 2011, the respondent-Corporation issued a second

order reiterating their earlier decision that Mukeshbhai Jaswantrai Joshi was entitled to the higher pay-scale of Rs.6,500-10,500/- only, and not the pay-scale of the next promotional post of Rs.8,000-13,500/-. It can be seen that Mukeshbhai Jaswantrai Joshi, unlike the appellants before us, approached the court with diligence and without any delay.

9. The doctrine of delay and laches, or for that matter statutes of limitation, are considered to be statutes of repose and statutes of peace, though some contrary opinions have been expressed.[4] The courts have expressed the view that the law of limitation rests on the foundations of greater public interest for three reasons, namely, (a) that long dormant claims have more of cruelty than justice in them; (b) that a defendant might have lost the evidence to disapprove a stale claim; and (iii) that persons with good causes of action (who are able to enforce them) should pursue them with reasonable diligence.[5] Equally, change in *de facto* position or character, creation of third party rights over a period of time, waiver, acquiesce, and need to ensure certitude in dealings, are equitable public policy considerations why period of limitation is prescribed by law. Law of limitation does not apply to writ

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4 See *Nav Rattanmal and Others* v. *State of Rajasthan*, AIR 1961 SC 1704

5 *State of Kerala and Others* v. *V. R. Kalliyanikutty and Another*, (1999) 3 SCC 657 relying on *Halsbury's Laws of England*, 4th Edn., Vol. 28, para 605; *Halsbury's Laws of England*, Vol. 68 (2021) para 1005

petitions, *albeit* the discretion vested with a constitutional court is exercised with caution as delay and laches principle is applied with the aim to secure the quiet of the community, suppress fraud and perjury, quicken diligence, and prevent oppression.[6] Therefore, some decisions and judgments do not look upon pleas of delay and laches with favour, especially and rightly in cases where the persons suffer from adeptness, or incapacity to approach the courts for relief. However, other decisions, while accepting the rules of limitation as well as delay and laches, have observed that such rules are not meant to destroy the rights of the parties but serve a larger public interest and are founded on public policy. There must be a lifespan during which a person must approach the court for their remedy. Otherwise, there would be unending uncertainty as to the rights and obligations of the parties.[7] Referring to the principle of delay and laches, this Court, way back in ***Moons Mills Ltd.*** v. ***M.R. Mehar, President, Industrial Court, Bombay and Others***,[8] had referred to the view expressed by Sir Barnes Peacock in ***The Lindsay Petroleum Company*** AND. ***Prosper Armstrong Hurd, Abram Farewell, and John Kemp***,[9] in the following words:

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6 See *Popat and Kotecha Property* v. *State Bank of India Staff Association*, (2005) 7 SCC 510

7 See *N. Balakrishnan* v. *M. Krishnamurthy*, (1998) 7 SCC 123

8 AIR 1967 SC 1450

9 (1874) LR 5 PC 221

> "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 limitations, 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."

10. At the same time, the law recognises a 'continuing' cause of action which may give rise to a 'recurring' cause of action as in the case of salary or pension. This Court in ***M.R. Gupta*** v. ***Union of India and Others***,[10] has held that so long as the employee is in service, a fresh cause of action would arise every month when they are paid their salary on the basis of a wrong computation made contrary to the rules. If the employee's claim is found to be correct on merits, they would be entitled to be paid according to the properly fixed pay-scale in future and the question of limitation would arise for recovery of the arrears for the past period. The

10 (1995) 5 SCC 628

Court held that the arrears should be calculated and paid as long as they have not become time-barred. The entire claim for the past period should not be rejected.

11. Relying upon the aforesaid ratio, this Court in the case of ***Union of India and Others*** v. ***Tarsem Singh***,[11] while referring to the decision in ***Shiv Dass*** v. ***Union of India and Others***,[12] quoted the following passages from the latter decision:

> "8...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.
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> 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. … 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."

In ***Tarsem Singh*** (supra), reference was also made to Section 22 of the Limitation Act, 1963, and the following passage from ***Balakrishna Savalram Pujari Waghmare and Others*** v.

11 (2008) 8 SCC 648

12 (2007) 9 SCC 274

Shree Dhyaneshwar Maharaj Sansthan and Others,[13] which had explained the concept of continuing wrong in the context of Section 23 of the Limitation Act, 1908, corresponding to Section 22 of the Limitation Act, 1963, observing that:

> "31...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."

Accordingly, in ***Tarsem Singh*** (supra) it has been held that principles underlying 'continuing wrongs' and 'recurring/successive wrongs' have been applied to service law disputes. A 'continuing wrong' refers to a single wrongful act which causes a continuing injury. 'Recurring/successive wrongs' are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. Having held so, this Court in ***Tarsem Singh*** (supra) had further elucidated some exceptions to the aforesaid rule in the following words:

> "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

13 AIR 1959 SC 798

> 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."

12. In ***Tarsem Singh*** (supra), the delay of 16 years in approaching the courts affected the consequential claim for arrears and thus, this Court set aside the direction to pay arrears for 16 years with interest. The Court restricted "*the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser*". Further, the grant of interest on arrears was also denied.

13. The aforesaid ratio in ***Tarsem Singh*** (supra) has been followed by this Court in ***State of Madhya Pradesh and Others*** v. ***Yogendra Shrivastava***[14] and ***Asger Ibrahim Amin*** v. ***Life Insurance Corporation of India***.[15]

14. In the facts of the present case, it is accepted that the respondent-Corporation had accepted the interpretation rendered by the High Court of Gujarat to the Scheme whereby the appellants, on financial upgradation, would be entitled to the higher grade pay-scale of the next promotional post, which is Rs.5,000-8,000/- in the present case. As noted above, the impugned judgment of the Division Bench accepts the said position and grants the appellants the said pay-scale but restricts the benefit from the date of the judgment of the Single Judge in the Writ Petitions filed by the appellants, that is, with effect from 31st July 2018. The Division Bench should not have taken the date of the decision/judgment of the Single Judge for grant of the said benefit in view of the decision and ratio in ***Tarsem Singh*** (supra) which has been followed in several other decisions. That apart, the date of the decision of the Single Judge is a fortuitous circumstance. Only the date of filing of the writ petition is relevant while examining the question of delay and laches or limitation. The appellants would, in

14 (2010) 12 SCC 538

15 (2016) 13 SCC 797

consonance with the case law referred to above, be entitled to the arrears for three years before the date of filing of the Writ Petitions.

15. We are also inclined to grant interest to the appellants on the arrears at the rate of 7% per annum, which would be payable with effect from 1st September 2017. We have fixed the said date for grant of interest as the respondent-Corporation has accepted the interpretation of the Scheme rendered on 16th August 2016 in the Writ Petition preferred by Mukeshbhai Jaswantrai Joshi. Normally, and as a model employer, on accepting the said decision, the respondent-Corporation should have uniformly applied and granted the benefit to all its similarly situated employees affected by the order dated 28th October 2010. This would have avoided unnecessary litigation before the courts, as was held in ***State of Uttar Pradesh and Others*** v. ***Arvind Kumar Srivastava and Others***:[16]

> "22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule

16 (2015) 1 SCC 347

would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma* v. *Union of India*). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

16. In view of the aforesaid discussion, the prayer of the appellants that they should be given arrears right from 2010 has to be rejected. We also reject the prayer of the appellants that they

should be refunded the entire amount which had been collected by the respondent-Corporation in terms of the order dated 28th October 2010.

17. Recording the aforesaid, we partly allow the present appeals with a direction that the appellants would be entitled to arrears in the pre-revised pay-scale of Rs.5,000-8,000/- for three years prior to the date of filing of the Writ Petitions along with interest at the rate of 7% per annum with effect from 1st September 2017. The arrears, with interest, would be paid within a period of four months from the date of pronouncement of this judgment. A computation sheet/statement of accounts on the basis of which payment is made by the respondent-Corporation shall be furnished to the appellants. The impugned judgment is, accordingly, partly set aside and the Writ Petitions filed by the appellants would be treated as allowed in the aforesaid terms. There would be no order as to costs.

.....J.
(AJAY RASTOGI)

.....J.
(SANJIV KHANNA)

NEW DELHI;
MAY 18, 2022.