



**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

205

CWP-9982-2018

Date of Decision: **August 22, 2025**

Baljeet Singh

.....Petitioner

**VERSUS**

State of Punjab and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present : Mr. Samrath Sagar, Advocate for the petitioner.

Mr. Vikas Arora, DAG Punjab-State.

Mr. Sanjeev Soni, Advocate and Mr. Sarthak, Advocate for respondents No.3 and 4.

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**HARPREET SINGH BRAR, J. (Oral)**

1. The present writ petition has been filed under Article 226/227 of the Constitution of India with a prayer for issuance of an appropriate writ or order in the nature of *certiorari* for quashing the orders dated 21.09.2017, 25.10.2017 and 18.12.2017 (Annexure P-1 to P-3) passed by respondent No.4, wherein the annual increment has been declined and petitioner's probation period was not cleared retrospectively. Further prayed for issuance of a writ in the nature of *mandamus* directing respondents No.3 and 4 to release the arrears of all annual increments which were stopped with future effect and further directing the respondents to re-fix the pay from the year 1998 and notional benefits w.e.f 17.09.1998 to 01.02.2001 in terms of directions issued by this Court in **CWP-16356-1998** vide order dated 29.11.2000 (Annexure P-4). The petitioner also prays for the issuance of a



writ in the nature of *mandamus* directing the respondent No.3 and 4 to clear all the arrears of pension benefits along with re-fixation of pension from the date of retirement of the petitioner.

### **CONTENTIONS**

2. Learned counsel for the petitioner contends that petitioner was appointed as clerk in the respondent-Board on 14.02.1992. Since the petitioner was passed over for promotion to the post of Senior Assistant, he moved this Court vide **CWP no. 16356-1998**. The said petition was decided in favour of the petitioner vide order dated 29.11.2000 (Annexure P-4) and the petitioner was promoted to the post of Senior Assistant w.e.f. 17.09.1998. However, as per the order of this Court, petitioner was to be given only notional benefits regarding pay fixation and seniority from 1998 till 2001. Ultimately, vide order dated 11.09.2014 (Annexure P-5) passed by Respondent no. 3, the petitioner was imposed with the penalty of pre-mature retirement from the service of Punjab Mandi Board. The petitioner challenged the said order by filing **CWP-16269-2017** which was dismissed by this Court on 26.09.2017 (Annexure P-8). Since the petitioner did not wish to litigate the matter further, he did not challenge the order dated 26.09.2017 and the same attained finality. The petitioner wrote representations dated 12.10.2017 (Annexure P-9), 21.11.2017 and 27.11.2017 to the Respondent no. 4 in order to release all annual increments which had been stopped without future effect along with fixation of pay from the year 1998, and also notional benefits as per the directions of this Court in **CWP no. 16356-1998**. However, the respondent no. 4 vide orders



dated 25.10.2017 (Annexure P-2) and 18.12.2017 (Annexure P-3) denied the petitioner his annual increments.

3. Learned counsel for the petitioner submits that the impugned orders seek to impose an additional penalty on the petitioner in the shape of stoppage of all annual increments for an offence or irregularity for which he has already been punished by way of compulsory retirement. Any further punishment is unconstitutional and requires a fresh enquiry, which was not conducted in the present case. The learned counsel contends that the petitioner was not afforded any opportunity of hearing and therefore, the impugned orders are in violation of the principle of natural justice.

4. On the other hand, learned counsel for the respondent-Board submits that the present writ petition is being filed by the petitioner on the same grounds which have been taken in the earlier petitions. Further, he refers to order passed by this Court on 26.09.2017 (Annexure P-8), wherein it has been noticed that the petitioner was awarded various punishments and his annual increments were stopped. Further, five annual increments with future effect and seven annual increments without future effect were forfeited. As such, the present petition would be barred by the principle of Constructive *Res Judicata*. Further petitioner was obligated to have pressed for his reliefs in the earlier writ petitions and he cannot be allowed to file separate writ petitions for the same cause of action.

5. *Per contra*, learned counsel for the petitioner submits that in the present writ petition, the petitioner has not specifically challenged the order vide which he was awarded punishment with regard to stoppage of his



annual increments without cumulative effect and that he is only praying for the consequential relief/benefits.

### **OBSERVATION and ANALYSIS**

6. I have heard the learned counsel for the parties and gone through the case file with their able assistance. It is trite law that the delay in approaching this Court under Article 226 of the Constitution of India may be condoned, if sufficient cause is indicated or a reasonable explanation is provided for the same. However, the facts of the matter at hand indicate otherwise. Learned counsel for the petitioners has failed to specify any compelling or extenuating circumstance, which prevented them from approaching this Court for such a long time. Reference in this regard may be made to the judgment rendered by a three-Judge Bench of the Hon'ble Supreme Court in *Chairman/Managing Director, U.P. Power Corporation Limited and Others Vs. Ram Gopal, (2021) 13 SCC 225*, wherein, the following was held:

*“16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into Courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In *SS Balu v. State of Kerala*, this Court observed thus:*

*“17. It is also well settled principle of law that "delay defeats equity". .... It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.”* (emphasis supplied)



7. Further, in *Union of India and others v. M. K. Sarkar, (2010) 2 SCC 59*, a two-Judge Bench of the Hon'ble Supreme Court has ruled that when a belated representation with regards 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 cannot 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.

8. Moreover, with regards to issues regarding fixation of pay, the position of law has been settled by a two-Judge Bench Hon'ble Supreme Court in *M.R. Gupta v. Union of India, (1995) 5 SCC 628* and has been reaffirmed by a full bench decision of this Court in *Saroj Kumari v. State of Punjab, 1998(3) SCT 664*. Accordingly, so long as an employee *is in service*, a petition claiming re-fixation of pay 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. Such a case is not a case of one time action like the case of termination or dismissal from service. However, payment of arrears can be restricted to a reasonable period. Three years and two months has been considered to be a reasonable period as that is the period for which a person



can ask for the payment of arrears before a civil Court. In *M.R. Gupta (supra)*, the Hon'ble Supreme Court speaking through Justice. J.S verma made the following observation

*"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.*

*6. 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. (See *Thota China Subba Rao and others v. Mattapali Raju and others*, AIR 1950 Federal Court 1)." (emphasis supplied)*

9. Indubitably, once an employee *ceases to be in service*, the wrong fixation of pay can no longer be treated as a continuing wrong.



Consequently, a petition seeking such fixation, if instituted after cessation of service and with substantial delay, is liable to be dismissed on the ground of delay and laches. Reliance can be placed on the judgement of the coordinate bench of this Court in *Prem Nath v. State of Punjab, 2018(2) SCT 687*, wherein the petitioners approached this Court seeking correct fixation of pay much subsequent to their superannuation. While dismissing the petition on the ground of delay and laches, the Court held as follows:

*“10. The reliance placed by counsel upon the judgment in Saroj Kumar's case, is wholly misplaced. The observations and aspect of delay in Saroj Kumar's case, were in the light of the judgment of the Supreme Court in M.R. Gupta v. Union of India and others, 1996(1) S.C.T 8 : 1995(4) RSJ 502. In M.R. Gupta's case (supra), it had been categorically held that so long as an employee "is in service" a fresh cause of action arises every month when he is getting his monthly salary on the basis of a wrong calculation made contrary to rules. It was further held that the claim to be awarded the correct salary on the basis of a proper pay fixation "is a right which subsists during the entire tenure of service"*

*11. In the present case, however, the petitioners choose not to agitate their claim while in service. It is much subsequent to their superannuation that they have woken up and seek to gain impetus from certain decisions that may have been rendered in the case of similarly situated employees.” (emphasis supplied)*

10. Further, a Division Bench of this Court in *Mithan Lal Gupta v. State of Haryana, 2021 SCC OnLine P&H 4546* has held that in light of Rule 32 of Writ Jurisdiction (Punjab & Haryana) Rules, 1976, the principle enshrined in Order II Rule 2 of Code of Civil Procedure, 1908 (in short ‘CPC’) shall be applicable *mutatis mutandis* to writ proceedings. Said Rule reads as under:

*“32. In all matters for which no provision is made by these rules, the provisions of the Code of Civil Procedure 1908, shall apply mutatis mutandis, in so far as they are not inconsistent with these rules.”*



11. In the present case, the Petitioner has approached this Court after a considerable lapse of time from the date of his retirement. Repeated representations made will not keep the issues alive and no plausible explanation has been offered by learned counsel for the petitioner for the delay in filing the present petition. Moreover, the present petition is clearly hit by the bar contained under Order II Rule 2 CPC, as the petitioner failed to agitate or press the reliefs now sought in the present petition. Having omitted to claim such reliefs in the earlier proceedings, the petitioner cannot be permitted to split his claims and file successive petitions for the same subject matter.

12. In view of the foregoing discussion, the petitioner is not entitled to any relief as prayed for and the petition deserves to be dismissed.

13. Pending miscellaneous applications, if any, shall also stand disposed of.

**(HARPREET SINGH BRAR)**  
**JUDGE**

**August 22, 2025**

*P.C*

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No