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SooperKanoon Citation : sooperkanoon.com/432447

Court : Andhra Pradesh

Decided On : Feb-22-1999

Reported in : 1999(2)ALD304; 1999(2)ALT316

Judge : Y.V. Narayana, J.

Acts : Tirumala Tirupati Devasthanam Employees Service Rules - Rules 4 and 9;
[Constitution of India](#) - Article 226

Appeal No. : WP No. 14784 of 1993

Appellant : A. Vasudevaiah

Respondent : Executive Officer, Tirumala Tirupati Devasthanams and Another

Advocate for Def. : Mrs. P. Sarada, SC for TTD

Advocate for Pet/Ap. : Mr. O. Manohar Reddy, Adv.

Judgement :

1. The petitioner was appointed as Instructor (Welder) in the 2nd respondent-Institute as per the proceedings issued by the 1st respondent dated 27-3-1983 and he joined duty on the next day i.e., 28-3-1983 to discharge the duties of an instructor in the trade of 'Welder'. His services were regularised with effect from

28-3-1983 and later, his probation was also declared with effect from 27-3-1985. The 2nd respondent-Institute was established in the year 1983 itself. It runs under the control of the 1st respondent-Devasthanams. The service conditions of the employees of the Institute are governed by the Rules called -Tirumala Tirupathi Devasthanams Employees Service Rules, 1989, which were published in GO Ms. No.1060, Revenue (Endowments-I) Department, dated 24-10-1989. Under Rule 4, the rules issued by the Government of Andhra Pradesh in respect of the employees of the State Government and other orders issued from time to time by the Government insofar as they relate to Pay and Allowances, are applicable to the employees of the respondents insofar as they are not inconsistent with the said Rules.

2. In the beginning, the Institute used to train handicapped students in some vocational trades like Welder, Fitter, Turner, Commercial Practice, Stationery, Cane Weaving, Basket Making, Tailoring etc., but no certificates were issued to such trained students. Thereafter, having realised that training without issuing any certificate to the candidate would not serve any useful purpose to the candidate because no financial institution would come forward to render any assistance to such student who does not possess any valid certificate issued by any competent authority, the Institute applied for grant of affiliation to the Institute and the Director General of Employment and Training (DGET), the competent authority, granted provisional affiliation to the Institute on 1-12-1984. Thereafter, permanent affiliation was also granted in respect of the Engineering trades - Welder, Fitter and Turner, with effect from 14-8-1987. From then onwards, training is being given to the candidates in three engineering trades as per the syllabus prescribed by the Director General of Employment and Training. It is submitted that for the trade of Welder, the syllabus prescribed in the Institute as well as the syllabus in the Government Industrial Training Institutes (ITIs), which are run under the control of DGET, are one and the same. Similarly, when coming to the academic qualifications of the Instructors, it is submitted that the qualifications prescribed for the post of Junior Craft Instructor in the Government ITIs, who discharges similar duties as that of the Instructor in the 2nd respondent-Institute, and the qualifications prescribed for the post of Instructor (Welder) are one and the same. Therefore, the petitioner contends that the post of Instructor (Welder) in the 2nd

respondent-Institute is comparable to the post of Junior Craft Instructor (Welder) in the Government ITIs, and that the scale of pay fixed for the post of Junior Craft Instructor is applicable to the post of Instructor (Welder) in the Institute. The grievance of the petitioner is that the pay scale fixed for the post of Instructor (Welder) is lesser than the pay scale attached to the post of Junior Craft Instructor. The pay scales fixed for the two posts in PRC, 1986 are given hereunder:

Name of the Post	Scale of Pay fixed in PRC 1986	Scale of Pay fixed in the pre-revised scales of PRC 1986
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Instructor (Welder)	Rs. 1010-1800	Rs. 530-850
Junior Craft Instructor	Rs. 100-2050	Rs. 575-950

The petitioner brought the above said anomaly in pay scale to the notice of the respondents and requested them, by way of number of representations, to revise his pay scale on par with the Pay Scale of the post of Junior Craft Instructor (Welder) in the Government ITIs. When the respondents failed to respond to his requests, he approached this Court by way of the present writ petition, praying for a direction to the respondents to fix the pay scale of the petitioner on par with the pay scale attached to the post of Junior Craft Instructor from the date of his appointment i.e., 28-3-1983 and for other consequential benefits.

3. The respondents filed a counter in the year 1994 vaguely denying the claim of the petitioner. They denied the contention of the petitioner that the post of Instructor (Welder) is comparable to the post of Junior Craft Instructor in Government ITIs. It is the contention of the respondents that there cannot be any equation between the two posts as there is enormous difference in the volume of work and the strength of candidates in both the institutions.

4. Having taken a plea in counter that there is no comparison between the post of Instructor (Welder) and Junior Craft Instructor, recently i.e., during the pendency of the writ petition, the respondents voluntarily issued orders (vide proceedings Roc. No.B3/I 1174 of 1993 dated 13-5-1998) fixing the scale of pay for the post of Instructor (Turner/Welder/Fitter) in the 2nd respondent-Institute on par with the scale of pay attached to the post of Junior Craft Instructor in the training wing

of Employment and Training Department. Thus, by issuing the above stated proceedings, the respondents without further disputing the issue, accepted that the post of Instructor (Welder) is comparable to the post of Junior Craft Instructor and agreed to fix the scale of pay of the present post on par with the post in Government ITI. Therefore, insofar as the fixation of pay scale is concerned, the petitioner shall not have any grievance. However, when coming to the date of applicability of the new pay scale, the respondents in their proceedings dated 13-5-1998 ordered as under:

'The pay shall be fixed in the revised scales assigned in 1986 pay scales under F.R.22 (a) r/w F.R.31 (2) with effect from the date from which the revised scales came into force notionally with effect from 1-4-1992 with monetary benefit from 1-4-1993 in terms of GO Ms. No.140 Finance and Planning (F.W.PC-I) Department dated 29-3-1994.'

Thus, as per the order of the respondents, the new pay scales will come into force notionally with effect from 1-4-1992 and the monetary benefit would accrue with effect from 1-4-1993 onwards. The contention of the petitioner on this score is that since he has been discharging similar duties as that of the Junior Craft Instructor right from the date of his appointment, i.e., 28-3-1983, as Instructor (Welder), the pay scale ought to have been revised with effect from 28-3-1983 itself and not from 1-4-1992. Learned Counsel for the respondent, however, contends that the claim of the petitioner is barred by delay and laches in approaching the Court lately.

5. In the light of the above rival contentions, the only question that falls for consideration in this writ petition is whether the petitioner is entitled for pay fixation in the new pay scale with effect from the date of his appointment or not.

6. By now, it is well settled that the law of [imitation is not applicable to the proceedings initiated under Article 226 of the Constitution as no period of limitation is prescribed under the Constitution for approaching the writ Court. However, the trend of decisions rendered by the Supreme Court on this aspect clearly indicates that the party aggrieved must approach the writ Court at the earliest possible time and that if there is any semblance of delay, he must be able to explain the delay to

the satisfaction of the Court so as to have the writ petition entertained. It is further held by the Supreme Court that the High Court may refuse to exercise its power of discretion and entertain a writ petition which is filed with inordinate and unexplained delay. In a case where the aggrieved party approached the High Court after a long long delay of 30 years complaining that the action taken by the governmental authorities is in total disregard to the statutory provisions and that the same is colourable exercise of power by the authority, the Supreme Court in appeal excused the delay on the ground that if the impugned order is allowed to be continued for indefinite period, it would deprive the very fundamental right of the citizen and the petition filed complaining violation of such a fundamental right cannot be rejected at the threshold itself on the ground of delay. (See *Vora v. State of Maharashtra*, : [1984]2SCR693 . But, on the contrary, in a case where the delay was just two months, the Allahabad High Court dismissed the petition on the ground of delay and laches as entertaining of such a petition would upset the position which was already settled by then. (See *Sri Niwas v. Election Tribunal*, : AIR1955 All251 . Thus, in these matters, the High Court must exercise its discretion in a most judicious manner by taking into account all the facts and circumstances of the given case. When coming to service law, the Supreme Court in *P.L. Shah v. Union of India*, : 1967 CriLJ1390), held that if the cause of action is continuous in nature and the injury caused to the aggrieved party subsists till it is remedied or some relief is granted, the Court may entertain the petition and decide it on merits. Recently, in a case reported in *MR. Gupta v. Union of India*, 1995 (5) SLR 221, the Supreme Court held that the petitioner's right of fixation of pay in accordance with the Rules cannot be barred by any limitation. The observations of the Supreme Court are apposite here, which are extracted thus:

'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 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 no 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.'

The Supreme Court further held as under:

'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 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...'

Thus, as per the law declared by the Supreme Court in the above case, there is no limitation insofar as the claim for pay fixation is concerned. Because, in the words of the Supreme Court, so long as the employee is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong assumption which is made contrary to Rules. In the case on hand, there is a specific provision (Rule 9) which speaks about the payment of pay and allowances to the teaching staff of the educational institutions of the Devasthanams. Rule 9 of TTD Employees Service Rules is extracted hereunder:

'9. Appointment and method of recruitment :--(1) The method of recruitment for appointment, qualifications and the age prescribed for various posts shall be as specified against each post in Annexure-II to these rules :

Provided that in case of teaching staff of Educational Institutions affiliated to any University or any Government, the rules of such University or such Government as the case may be, in respect of qualifications, age, method of recruitment, pay and allowances, vacation, leave salary, travelling allowance and age of retirement shall apply.'

Thus, as per the Proviso to Rule 9, the Devasthanam is bound to apply to its teaching staff such pay and allowances etc., which are payable to the staff of the University or Government, if the educational institution in which such teaching staff are employed is affiliated to such University or Government. In this case, admittedly, the 2nd respondent-institute was affiliated to the DGET and, therefore, the respondents are bound to pay to its teaching staff of the Institute on par with the teaching of the institutions which are running under the control of DGET. Therefore, following the decision of the Supreme Court, I hold that the petitioner is entitled to have his pay fixed on par with the scale of pay attached to the post of Junior Craft Instructor in the Government ITIs from the date when the Institute was granted permanent affiliation.

7. When coming to the payment of arrears of salary, I am not inclined to grant any relief in favour of the petitioner as I am of the view that the claim of the petitioner is hit by delay and laches. The petitioner having been appointed in the year 1983 and having known fully about the institution getting affiliation in the year 1987 itself, no steps were taken by the petitioner till the end of 1993 to question the disparity in his pay scale. In fact, there is no explanation whatsoever in the affidavit filed by the petitioner for delay in approaching the Court. Even the representation filed by the petitioner before the authorities is of the year 1993. That means, he had slept over the issue for exactly six years. I am not inclined to exercise the discretion vested in this Court in exercise of its jurisdiction under Article 226 of the Constitution to condone the long delay in this case. Therefore, the relief prayed for by the petitioner for grant of arrears of pay is refused.

8. In the result, the writ petition is allowed in part and the respondents are directed to notionally fix the pay of the petitioner on par with the scale of pay attached to the post of Junior Craft Instructor (Welder) in the Government ITIs, from the date when

the 2nd Respondent-Institute was granted permanent affiliation. No costs.

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