

Harish Chandra Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Oct-12-1999

Reported in : 2000(1)AWC45

Judge : O.P. Garg, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. Nos. 36875 of 1994, 29411 of 1998 and 28699 of 1999

Appellant : Harish Chandra

Respondent : State of U.P. and Others

Advocate for Def. : Senior Counsel

Advocate for Pet/Ap. : H.P. Dube and ;Ashok Khare, Advs.

Judgement :

O. P. Garg, J.

1. These are three connected writ petitions, raising common questions of fact and law and, therefore, they are being disposed of by this common judgment. Harish Chandra-Petitioner was appointed as clerk-cum-Cataloguer on 10th March, 1980. He was posted in Government Public Library. Allahabad. On 4.6.1994, he was transferred from Allahabad to Rajkiya Mahila Maha Vidyalaya. Banda, in the

capacity of clerk. The petitioner dubbed the same as an order reverting him from the post of clerk-cum-cataloguer to clerk. According to the petitioner in the absence of any Rules governing the service conditions of the petitioner. Government orders issued from time to time were applicable in his case. The petitioner was clerk-Cataloguer in the pay scale of Rs. 950-1.500. which was upgraded to the pay scale of Rs. 1.200-2.040 by Government order dated 19.8.1989 and the nomenclature of the post was changed from that of clerk-cum-cataloguer to Cataloguer. A copy of G. O. dated 19.8.1989 is Annexure-2 to Writ No. 36875 of 1994. By virtue of subsequent G. O. dated 20.12.1991. Annexure-3 to the said writ petition. the pay scale of cataloguer was revised to Rs. 1,350-2,200. The petitioner made representation after representations to various authorities, including the Chief Minister against his transfer from Allahabad to Banda and ultimately the order of transfer was cancelled under the order of the Chief Minister on 28.6.1994. Thus, in Writ Petition No. 36875 of 1994, the petitioner confined his relief to the extent that a writ in the nature of mandamus be issued commanding the respondents to permit the petitioner to continue on the post of cataloguer in Government Public Library, Allahabad, since he fulfils all the essential qualifications for the post of cataloguer and his initial appointment was made to the said post. On 23.11.1994, an interim mandamus was issued to the respondents to permit the petitioner to join on the post of cataloguer in Government Public Library. Allahabad, or to show cause within three weeks.

2. By means of Writ Petition No. 29411 of 1998, the petitioner sought a writ of mandamus commanding the respondents, particularly, respondent No. 4 Sri Amit Yadav, Librarian, Rajkiya Public Library Allahabad, to pay the entire payment towards arrears of salary, increments, revised pay scale, selection grade, promotional scale, bonus and other subsidiary relief together with interest at the rate of 24 per cent per annum w.e.f. 14.3.1984 till the date of payment.

3. Civil Misc. Writ No. 28699 of 1999 is the latest one. This writ petition challenges the impugned order dated 30.6.1999 passed by the Director of Education (Higher Education) U. P., Allahabad, transferring the petitioner from Allahabad to Government Women Degree College. Fatehpur, on the post of Junior clerk. The case of the petitioner is that similar efforts were made by the respondents in 1994,

resulting in institution of Writ Petition No. 36875 of 1994, wherein an interim order was passed by this Court on 23.11.1994 which was confirmed on 4.1.1995. Thus, by virtue of aforesaid interim order, the petitioner is still continuing on the post of cataloguer and he cannot be reverted to an inferior post of clerk so long the matter is sub judice.

4. Counter and rejoinder-affidavits have been exchanged. Heard Sri Ashok Khare, learned counsel for the petitioner, Sri S. S. Chauhan, learned counsel for the respondent No. 4 and the learned standing counsel. After the conclusion of arguments on 10.8.1999, with a view to ascertain the correctness or otherwise of Annexure-C. A. 5 to the counter-affidavit filed on behalf of respondent Nos. 1 to 3. Joint Director of Education was directed to appear before this Court on 12.8.1999. In compliance thereof, Sri Sant Bux Singh, Joint Director of Education appeared, in person, and stated that the counter-affidavit filed by Sri Amit Yadav, respondent No. 3 was on behalf of respondent Nos. 1 and 2 as well and that there are three posts of cataloguer at Rampur, Gyanpur and Rishikesh. He specifically pointed out that no post of cataloguer has been sanctioned by the State Government for Government Public Library, Allahabad. The aforesaid statement was disputed by Sri Ashok Khare, learned counsel for the petitioner by placing a zerox copy of note dated 4.11.1998 followed by further note dated 7.11.1998. This Court, therefore, directed Sri Singh, Joint Director to produce the original notes and connected record on 13.8.1999. On 13.8.1999, Sri Singh again appeared with the original record.

5. The case of the respondents as is disclosed from the various counter-affidavits is that the petitioner was originally appointed on the post of Junior clerk-cum-cataloguer and after the revision of the pay scales, at different stages, he continues to be a junior clerk and is liable to be transferred from Government Public Library to other Government Degree Colleges on the inter changeable post of junior clerk. The contention of the petitioner, on the other hand, is that though he was appointed as Junior clerk-cum-cataloguer, he came to be appointed on the upgraded post of cataloguer which is far superior in rank and pay scale than the post of junior clerk and, therefore, he cannot be posted in any Government Degree College or, for that matter, in any Department under Director of Education (Higher

Education), U. P. Allahabad on the post of junior clerk which is inferior in rank and emoluments.

6. In view of the countervailing allegations raised on behalf of the parties, the petitioner would swim or sink with the finding whether he is holding the post of cataloguer in the Government Public Library or he is still a junior clerk.

7. Since the dispute is with regard to the post of cataloguer in the Government Public Library, it would be proper to have a look at the historical retrospect of the establishment of the State Library. Allahabad Public Museum and Library was established in the year 1863-64 by the then North-Western Provinces Government. By Government Order dated 18.2.1874, a Committee of Management was constituted to run the State Museum/Library. In the year 1878, Museum was separated and the management of Government Public Library continued to be governed by the Managing Committee. The term of the Committee was extended from time to time and lastly by Government Order dated 29.9.1973, its term was extended for a period of three years. Ultimately, by order dated 31.7.1975, the State of U.P. entrusted the management and control of the Government Public Library to the Director of Education (Higher Education) U. P.. Allahabad. A copy of this G. O. is Annexure-C. A. 14 to the counter-affidavit filed in Civil Misc. Writ No. 28699 of 1999 (All Annexures. referred to hereinafter shall relate to Civil Misc. Writ No. 28699 of 1999). The said G. O. indicates that four posts of Clerk-cum-Cataloguer (including one post of Typist) were sanctioned in the pay scale of Rs. 200-320. It is an indubitable fact that the petitioner, who belongs to Scheduled Caste and is a Graduate holding a certificate in Library Science, was appointed as clerk-cum-cataloguer on 10.3.1980 in Government Public Library as per Annexure-1. The post of Routine Clerk-cum-Typist also carried the same scale of pay of Rs. 200-320. By G. O. dated 27.8.1982, the scale of junior clerk was upgraded to Rs. 354-550 w.e.f. 1.7.1979 and by subsequent G. O. dated 19.8.1989, it was revised to Rs. 950-1,500, w.e.f. 1.1.1986 and now the pay scale of junior clerk has further been revised w.e.f. 1.1.1996 to Rs. 3,050-4,590. The case of the respondents is that though the petitioner was appointed as clerk-cum-cataloguer, he is. for all practical purposes, junior clerk in the pay scales of Rs. 950-1,500 effective from 1.1.1986 and, therefore, he is liable to be posted in

any establishment, or college under the Director of Education (Higher Education), U. P., Allahabad.

8. The petitioner has vehemently challenged the stand taken by the respondents and it is asserted by him that he is holding the post of cataloguer for which educational qualifications and pay scale were prescribed in the letter of the State Government dated 18.3.1988, a copy of which is Annexure-R. A. 1 to the rejoinder-affidavit. A perusal of the said Government order indicates that the pay scale of Rs. 450-735 has been prescribed for the post of cataloguer in the Libraries of State Universities and affiliated/associate Degree Colleges. It further prescribes that the post of cataloguer shall be filled by a candidate who is Graduate with certificate in Library Science. On account of the anomaly in the pay scales, the State Government constituted a Pay Equalization Committee (Samta Samiti), which recommended the revised pay scales applicable for different posts under the supervision and control of the Director of Education (Higher Education) and Government Degree Colleges. On the basis of the recommendations made by Samta Samiti, the State Government issued an order dated 19.8.1989 and at item No. 7 of the posts under the Director of Education (Higher Education) and Government Degree Colleges, the post of cataloguer has been specified and the pay scale of cataloguer has been revised from Rs. 470-735 to 1,200-2,040. In the Government Order dated 19.8.1989, six sanctioned posts of cataloguer have been shown under the control of Director of Education (Higher Education), By another order dated 20.12.1991, the pay scale of cataloguer was revised from 1,200-2,040 to 1,350-30-1,440-40-1,800-EB-50-,200. Ultimately, by order dated 23,12,1997. all the posts in the pay scale of Rs. 1,350-2,200 have been placed in the pay scale of Rs. 4,500-7,000 w.e.f. 1.1.1996.

9. Sri Ashok Khare, learned counsel for the petitioner pointed out that there is a letter of Director Education [Higher Education) to the Principals of the Degree Colleges dated 26.12.1989, a copy of which is Annexure-7 to the writ petition which indicates that the posts of clerk-cum-cataloguer in the Degree Colleges have been re-designated as cataloguer in the pay scale of Rs. 470-735 w.e.f. 1.1.1984 and subsequently the raised pay scale of Rs. 1,200-2,040 was made effective from 1.1.1986. It was urged that since the post of junior clerk-cum-

cataloguer existing in the Degree Colleges in the pay scale of Rs. 200-320 came to be upgraded in the pay scale of Rs. 470-735. the post of clerk-cum-cataloguer in Government Public Library also came to be re-designated as cataloguer. It was pointed out that the circular letter dated 26.12.1989 of Director of Education (Higher Education) took within its sweep the posts sanctioned in Government Public Library, Allahabad also, but at some level and on account of certain manipulations and machinations, the words 'Government Public Library' were scored out from it. It is on this point that the parties are at loggerheads. According to the petitioner, out of six posts of cataloguer which were sanctioned by G. O. dated 19.8.1989. three pertained to Government Degree Colleges of Rampur. Gyanpur and Rishikesh. while the remaining three posts of cataloguer were sanctioned and meant for Government Public Library, Allahabad. Though the respondents admitted that three posts of cataloguer in the pay scale of Rs. 470-735 (subsequently raised to Rs. 1,200-2,040) were sanctioned for the Government Degree Colleges of Rampur. Gyanpur and Rishikesh, it was mentioned that no post of cataloguer in the aforesaid pay-scale was created in Government Public Library with the result the clerk-cum-cataloguer continued to work as junior clerks.

10. In order to resolve the controversy. as said above, departmental file was summoned. Various orders available on the note sheet, particularly dated 7.11.1989 at pages 9 and 10 of the departmental file of the Director of Education(Higher Education) indicate that three posts of clerk-cum-cataloguer in the Degree Colleges and three posts in Government Public Library, Allahabad were re-designated as cataloguer and accordingly, it was suggested that the pay fixation of clerk-cum-cataloguer of Government Public Library be made in the revised scale of cataloguer and there was no necessity to make any reference to the State Government. The Director of Education (Higher Education) approved the office note on 21.10.1989 with the remark that a circular be issued for determination/ fixation of the salary of cataloguers in the Degree Colleges as well as Government Public Library. It was in pursuance of this approval by the Director that a circular letter dated 26.12.1989, referred to above, was issued. It is not understandable under what circumstances and at which stage and level, the reference to the posts of Government Public Library was scored out and deleted from the circular letter.

11. The minimum educational qualifications for the post of cataloguer are quite distinct and different from the post of junior clerk. Though originally the pay scale of the junior clerk and clerk-cum-cataloguer was identical, i.e., 354-550. the fact remains that for the post of cataloguer, an incumbent should be Graduate and must possess the certificate in Library Science. In order to fill the post of Junior clerk, a person need not be a graduate. In the order by which the pay scale of clerk-cum-cataloguer from Rs. 200-320 was revised, there is a specific mention of the post of clerk-cum-cataloguer and other posts of Typist. Routine Clerk and junior clerk. If he was Intended that the post of clerk-cum-cataloguer is to stand merged in the post of junior clerk, there was no point in specifying the two posts separately. While the post of Junior clerk is in existence in various departments at various levels, the post of clerk-cum-cataloguer existed only in Library either in Government Public Library or in the Degree Colleges. The post of cataloguer, though in clerical grade, is somewhat specialized post and it was with a view to recognize the speciality and expertise in the subject, the post of clerk-cum-cataloguer came to be re-designated as cataloguer in the pay scale of Rs. 470-735 and subsequently w.e.f. 1.1.1986 in the pay scale of Rs. 1,200-2,040. The contention of the learned standing counsel that only three posts were sanctioned for Government Degree Colleges of Rampur, Gyanpur and Rishikesh is clearly in opposition to G. O. dated 19.8.1989. by which six posts of cataloguer were placed in the pay scale of Rs. 1,200-2,040 w.e.f. 1.1.1986. This G. O. contains a certificate by Special Secretary to the State Government, to the effect that the number of posts, their nature and pay scale have been verified and have been found to be correct. On the basis of this certificate, it would be too genteel to discourse on behalf of the respondents that only three posts were sanctioned and mention of six posts in the said G. O. was wrongly made. If there was any mistake in the G. O. it could have been rectified within a reasonable time. Now that a decade has already elapsed, and no corrigendum has come to be made, the plea that only three posts of cataloguer were sanctioned is wide off the mark. The respondents have not been able to indicate that apart from three Government Degree Colleges at Gyanpur, Rampur and Rishikesh where one post each of cataloguer has been sanctioned, where the three other posts have gone. The firm stand of the petitioner, which appears to be quite plausible and within the realm of

reality, is that out of 'the six sanctioned posts, three fell to the share of Government Public Library, Allahabad. The figure of three clearly concides with the three posts of clerk-cum-cataloguer which were mentioned (in addition to the fourth post of Typist) in the G. O. dated 31.7.1975, by which the Government Public Library was placed under the management and control of Director of Education (Higher Education) U. P. Allahabad. As a matter of fact, the Director of Education (Higher Education) has also proceeded and taken action treating that three postsof cataloguer were sanctioned for Government Pubic Library as would be clear from the various notes and orders passed on the departmental file.

12. There is yet another aspect of the matter. It sounds ridiculous that the post of clerk-cum-cataloguer which originally existed in the pay scale of Rs. 354-550 in Government Degree Colleges shall stand converted and re-designated as cataloguer in the pay scale of Rs. 470-735 but the similar three posts in the Government Public Library shall not be likewise upgraded and re-designated. In view of the various Government Orders and the facts and circumstances of the case, mentioned above, there can be no escape from the finding that the six posts of clerk-cum-cataloguer existing in Government Degree Colleges at Gyanpur. Rampur and Rishikesh (one post each) and that of Government Public Library (three posts) stood upgraded and re-designated in the pay scale of Rs. 470-735 and the incumbents who were working on the post of clerk-cum-cataloguer and were Graduate with certificate in Library Science automatically came to be placed in the pay scale of Rs. 470-735 from the date this scale became operative or from the date of joining and in the revised pay scale of Rs. 1,200-2.040 w.e.f. 1.1.1986. The petitioner who possesses the requisite qualifications for the post of cataloguer and was appointed as clerk-cum-cataloguer in the year 1980 shall be deemed to have been upgraded and re-designated as cataloguer in the pay scale of Rs. 470-735 from the date, it was made effective and shall be entitled to the . further upgraded scales, as and when they were revised.

13. Learned standing counsel pointed out that the petitioner never raised any objection about the fixation of salary on the post of Junior clerk as would be evident from the various option forms submitted by him as Annexure-C.A. 2 to the counter-affidavit. It was also stated that the writ petition suffers from the defect of

laches. It is true that the petitioner has got the benefit of fixation of his salary as Junior clerk. When the departmental authorities were not prepared to see to reason, the petitioner had no option but to accept the salary of the post of junior clerk and to give options as required under the Government orders in order to enjoy the benefit of revised pay scales. Nevertheless, the petitioner has been approaching the departmental authorities to give him the salary of cataloguer. The petitioner did make a representation on 29/30.11.1995 to the Director of Education (Higher Education) for fixation of his pay in the pay scale of Rs. 1,200-2,040 for the post of cataloguer in view of G. O. dated 19.8.89. On the representation of the petitioner, the Director of Education (Higher Education) wrote a letter dated 23.11.1996, a copy of which is Annexure-R. A. 3 to the rejoinder-affidavit, to the Librarian Government Public Library respondent No. 3 and called for his comments. This letter, it appears, did not evoke any response. It is not a case where the petitioner has acquiesced in the matter by accepting salary in the pay scale of junior clerk. Even otherwise, there can be no acquiescence in the matter of payment of salary. The petitioner has been agitating the matter. As a matter of fact, the law of limitation cannot be rigidly applied in the circumstances of the present case. Even if there were certain laches on the part of the petitioner, they have to be ignored. The rule, which says that Court may not enquire into belated or stale claims, is not a rule of law but rule of practice based on sound and proper exercise of discretion and there is no invariable rule that whenever there is delay, Court must necessarily refuse to entertain the writ petition. The question is one of discretion to be followed on the facts and circumstances of each case. In *Ram Chandra Shankar Deo Dhar and others v. State of Maharashtra and others.*, AIR 1974 SC 259, it was observed that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition, should not be allowed to be disturbed unless there was reasonable explanation for the delay. In another case in *M/s. Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur and others*, 1992 (2) SCC 598, it was held that the real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right in another person is created and that the lapse of time is not attributable to any laches or negligence. In the instant case, if the petitioner is granted the relief

of fixation of salary on the post of cataloguer, rights of any other person or employee are not, in any manner, going to be affected. I am, therefore, not persuaded to refuse the relief to which the petitioner is legitimately entitled, solely on the ground of laches, delay or the like.

14. For the reasons stated above, the post of cataloguer is in a higher scale of pay than that of a junior clerk. Both these posts are not interchangeable. The petitioner who is a cataloguer in the higher scale of pay, cannot be transferred to any other institution on the post of Junior clerk. The earlier order of transfer dated 4.6.1994, which is subject-matter of Writ Petition No. 36875 of 1994 from Government Public Library to Rajkiya Mahila Mahavidyalaya Banda and subsequent transfer order dated 30.6.1999 to Government Women Degree College, Fatehpur on the post of junior clerk are illegal as the post of Junior clerk is inferior to the post of cataloguer. If at all, if necessary, the petitioner can be transferred to any one of the posts of cataloguer available in the Government Degree Colleges of Rampur, Gyanpur and Rishikesh. The respondent No. 4 Muzaffar Hussain who has been posted in place of the petitioner in Government Public Library cannot be treated to have been posted against the post of cataloguer in the said Library. He is a junior clerk and may continue to remain posted as such, in any one of the establishments under the Director of Education (Higher Education). The petitioner has no grievance against him. His transfer has nothing to do with the petitioner.

15. In the result, all the three writ petitions succeed and are allowed to the extent that the petitioner shall be treated to have been appointed as cataloguer against one of the post sanctioned for Government Public Library in the pay scale of Rs. 470-735 from the date it was made effective and his salary shall be determined and re-fixed in the said pay scale and the pay scales which were subsequently revised for the post of cataloguer with all consequential benefits. The impugned order of transfer dated 30.6.1999 passed by (he Director of Education (Higher Education) U. P., Allahabad from Government Public Library, Allahabad to Government Women Degree College. Fatehpur. as Junior clerk shall stand quashed.

16. The original file of the Department be given to Learned Standing Counsel who shall hand over the same to the department.

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