

Ram Briksha Singh and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Oct-24-2003

Reported in : 2004(1)AWC645

Judge : Sunil Ambwani, J.

Acts : [Constitution of India](#) - Articles 226, 311 and 311(2); Indian Penal Code (IPC) - Sections 120B, 147, 148, 302/149, 324/149, 326/149, 379, 409 and 427; U.P.P.A.C. Act, 1948

Appeal No. : C.M.W.P. No. 3676 of 2003

Appellant : Ram Briksha Singh and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : R.C. Upadhyay and ;C.J. Yadav, Advs.

Disposition : Petition dismissed

Judgement :

Sunil Ambwani, J.

1. Petitioners were recruited as Constables and Head Constables in U.P. Police and Provincial Armed Constabulary of Uttar Pradesh. On 21/22.5.1973, some

police personnels serving in Provincial Armed Constabulary (P.A.C.) took part in subversive activities which was then called as P.A.C. Revolt of 1973. The persons involved were charged under Sections 147, 148, 302/149, 324/149, 326/149, 379, 120B, 409 and 427. I.P.C. and Section 7 (C) of U.P.P.A.C. Act, 1948. They were tried and convicted by Sessions Judge, Varanasi. A Criminal Appeal No. 2823 of 1976 and other connected criminal appeals were filed in which by judgment dated 21.12.1992, conviction of 76 appellants was set aside. Special Leave Petition No. 1908-72 of 1994 were dismissed by Supreme Court on the ground that the occurrence took place more than two decades ago.

2. The services of these police personnels were terminated under Article 311(2) of the [Constitution of India](#), which provides for dismissal or removal of a person without holding any inquiry where the Governor is satisfied and finds it expedient to not hold such an inquiry. The service of some other persons were terminated in pursuance of the Government Order dated 30.2.1983 by one months' notice treating them to be temporary Government servant.

3. One Sri Chhabinath Singh filed a claim petitioner before U. P. Public Service Tribunal for setting aside the termination order and for back wages. The claim petition was dismissed on 9.9.1992. He filed a Writ Petition No. 45931 of 1992 between Chhabinath Singh v. U. P. Public Service Tribunal, Jawahar Bhawan, Lucknow and Ors. The writ petition was allowed on 13.3.1997. The judgment and order of the Tribunal dated 9.9.1992 was set aside. A direction was Issued that the petitioner shall be entitled to be treated in service but since the petition succeeded only on technical ground and there was no pleading about gainful employment during the long period, petitioner was required to make representation before the competent authority for consequential relief of back wages. Special leave petition against aforesaid Judgment was dismissed on 24.11.1997.

4. A number of persons who were acquitted in criminal appeals on 21.12.1992 against which special leave petitions were dismissed in 1994, filed writ petitions before this Court for reinstatement and back wages. A total number of 126 police personnels (including 59 permanent and 67 temporary) were reinstated in pursuance of orders passed by this Court in several writ petitions. In Writ Petition

No. 45061 of 1993, Vijay Bahadur Singh v. State of U. P. and Ors., decided on 26.9.1997, Hon'ble K. D. Sahi, J., found that since the petitioner had been acquitted and in view of the notification and Government Orders, the petitioner shall be treated to be in continuous service and shall be entitled to get all service benefits. He referred to similar orders in Writ Petition No. 13973 of 1992 in which while allowing the writ petition and quashing the order of termination a direction was issued to reinstate the petitioner in service with full service benefit with retrospective effect. It is significant to note that the Judgment did not consider the issue whether the petitioners were entitled to back wages and no reasons were given for awarding consequential benefits including back wages with retrospective effect.

5. Petitioners in Writ Petition No. 3676 of 2003 alongwith Netrapal Singh and Basudeo Yadav, who are not parties in this writ petition, had filed a Writ Petition No. 52528 of 2000. which was disposed of with direction to Senior Superintendent of Police, Agra and Commandant 35 Battalion, P.A.C., Lucknow to consider the case of respective petitioners and pass speaking orders in accordance with law taking into consideration various decisions of this Court as well as Government Order dated 13.11.1998 within three months. Similar orders were passed in Writ Petition Nos. 53667 of 2000 and 50170 of 2000 and many other writ petitions. The State of U. P. filed Special Appeal No. 231 of 2001 against one such order dated 8.9.1999 passed in Writ Petition No. 40410 of 1998 which was dismissed on 17.4.2002 on a statement given by counsel for respondents-writ petitioners that orders passed by learned single Judge has been complied with. The Bench also noticed that there was delay of 199 days and that the application under Section 5 of Limitation Act was also dismissed.

6. In some of the writ petitions namely Writ Petition No. 45693 of 1998, decided on 15.5.2001, the Court relied upon the orders passed by the State Government in the matter of Hori Lal v. State of U. P., Writ Petition No. 4569 of 1998, decided on 11.2.1999, allowing the writ petition and directing respondents, to reinstate petitioner forthwith. The question of back wages was left open to the State Government and was made subject to policy decision taken by the State Government in respect of other similarly situated constables.

7. Under the threat of contempt petition filed by some of the petitioners who were directed to be reinstated with all consequential benefits, back wages were given to some of these persons which gave rise to expectation to all these petitions, and that a large number of writ petitions were filed for similar relief. Some of these dismissed/terminated in 1973 have filed writ petition for the first time in the year 2002-2003.

8. The State Government did not take any steps to get all these petitions consolidated and decided by common order. In fact, the record shows that the office of Chief Standing Counsel which is not functioning as an organised establishment, took no interest to get these matters consolidated together. Almost all the petitioners took advantage of Judgment in Vijay Bahadur Singh's case (supra), and got various kinds and shades of orders. In the later orders this Court was cautious in giving relief of back wages and left the matter to be decided by the State Government.

9. The State Government also took an ad hoc approach to the whole Issue. A Government Order, dated 13.11.1998 was Issued stating that both permanent and temporary employees were dismissed by Hon. Governor in the year 1973. Some directions were given by Government Orders, dated 7.9.1998 for reinstating the persons in pursuance of orders passed by the High Court. In some cases where the services were terminated after giving one months notice, but without payment of one months salary, a direction was issued by the Special Secretary communicating the decision of the State Government to all the Senior Superintendent of Police and Commandant of P.A.C. Battalions, that a common procedure may be adopted in deciding their representations in pursuance of directions of High Court. Since a large number of orders were received by the State Government with reinstatement and back wages, a High Level Meeting took place on 11.7.2002 under the Chairmanship of Principal Secretary (Home) which was attended by Home Secretary, Additional Director General of Police, P.A.C., Additional Director General of Police (Personnel), Lucknow, Inspector General of Police (Establishment), Special Secretary (Home), and other Senior Officers. They took notice of the fact that out of 126 reinstated employees, 59 were permanent and 67 were temporary employees. In the matter of Narain Trivedi, Kishan Singh,

Subedar, Shiv Ambar Singh, Bharat Singh, Vijay Bahadur Singh, Mahendra Nath Tiwari. Laxmi Naratn Shukla, Narottam Singh, Gulloo Singh, Vijay Bahadur Singh and Hari Narain Singh Yadav (12 persons), the High Court had given direction to reinstate them with full benefits. Out of these special appeals were filed in the matter of Mahendra Nath Tiwari, Laxmi Narain Shukla and Gulloo Singh. Special writ petition in the matter of Narottam Singh was dismissed. Contempt petitions were pending in the matter of Hari Narain Singh Yadav and Vijay Bahadur Singh. The meeting noticed that the matter has been referred for legal advise to the Law Department. The matter of 67 temporary employees is pending in special appeals filed before High Court. It was resolved in the meeting that there is a gap of 25 years between the termination and reinstatement which could not be regularised even if all admissible leave is granted and thus before taking any decision advise may be taken from Finance and Law Department and in the meantime regularisation may be directed in such a manner that decision may be taken in respect of pensionary benefits of these employees. On item No. 2, it was resolved that the decisions of the High Court for giving full benefits were taken in the year 1997 and that though sufficient grounds are not available to seek condonation of delay in filing special appeal or special leave to appeal, even then proposal may be sent to the Law Department for filing appeals against that part of the order which directs full benefits to be given to them. On item No. 3 it was resolved that where the stay orders have not been granted applications may be filed, for obtaining stay orders in pending special appeals.

10. In the aforesaid back-drop, petitioner Ram Brlksha Singh filed Writ Petition No. 51070 of 2000 which was disposed of on 16.11.2000 with a direction to the respondents to decide the representation. The Senior Superintendent of Police, Varanasi, rejected the representation on 28.12.2001 on the ground that the petitioner was not involved in criminal case and his termination in the year 1973 under Article 311(2) cannot be re-opened.

11. It is disturbing to note that the counsel appearing in these matters have succeeded in causing confusion and obtaining inconsistent orders without disclosing full facts in these writ petitions. They have been impleading petitioners with different facts and backgrounds. For example in Writ Petition No. 3676 of

2003. petitioner No. 1 Ram Brksha Singh was dismissed on 8.6.1973 in exercise of powers under Article 311(2) of the [Constitution of India](#), and had earlier filed writ petitions in pursuance of which his representation was rejected. Petitioners 2, 3, 4 and 5 were terminated on 30.5.1973 by Commandant 24th Battalion, P.A.C., Varanasi by giving one months' notice. There is no pleading with regard to petitioner No. 6. All these writ petitions have been drafted in a casual manner and the reliefs have been sought only on the basis that some of the favourable orders passed by this Court. On being persuaded, learned standing counsel has filed a list of about 44 writ petitions which are pending for almost similar reliefs. This Court found it expedient to get all the matters listed and proceeded to decide these matters to settle the issue.

12. The entire batch of these writ petitions can be divided into three categories. The first is led by Writ Petition No. 3676 of 2003 between Ram Briksha Singh and Ors. v. State of U. P. and Ors. These petitioners and some widows of police personnel in Writ Petition Nos. 19344 of 2003 and 19716 of 2001, have prayed to set aside their dismissal orders either under Article 311(2) of the [Constitution of India](#), or by giving them one months' notice, treating them to be temporary employees, and for their reinstatement with back wages. The second category of petitions is led by Writ Petition No. 6695 of 2003 between Udai Bhan Singh v. Government of U. P., Department of Home through its Secretary and Ors. These writ petitions can be divided into two sub-categories. The first sub-category is of those petitioners who have been reinstated in service and are claiming back wages, and the second sub-category is of those petitioners who have been reinstated. Their salary has been re-fixed treating the entire period between the dismissal and reinstatement as a break in service and re-fixing their pay-scales. These petitioners have claimed back wages from 1973 to the date of their reinstatement in 1998-2000 and have also claimed that entire period in between, should be treated to be in service. Third category of petitions namely Writ Petition No. 41673 of 2000 between Kailashi Devi v. State of U. P. and Writ Petition No. 8450 of 2001 between Hari Lal Kushwaha v. State of U. P., are petitions by mother and son respectively claiming compassionate appointment on the death of Sri Krishna Pratap Kushwaha whose services were terminated in 1973 but he died before he could be reinstated in service. They have prayed for compassionate

appointment and the monetary benefits which may have accrued to them if he was reinstated.

13. Coming to the facts of first batch of these writ petitions which are treated as representative of these petitions, which have common facts, I find that in Writ Petition No. 3676 of 2003 services of petitioner No. 1 Ram Briksha Singh were dismissed under Article 311(2) of the [Constitution of India](#) on 8.6.1973. The services of petitioners 2, 3 and 5 were terminated on 30.5.1973 by giving one months' notice. The services of petitioner No. 4 Sughar Singh were terminated on 13.11.1973 by giving him one months' notice. In respect of petitioner No. 6 Udai Raj Tiwari, there is no pleadings about the nature of services, and the manner in which he was dismissed/terminated. The averments in the writ petition are general in nature and do not give the service details of these petitioners. In paragraph 24 of the writ petition, it is stated that petitioner completed 6 years service on 30.5.1973 and his work and conduct was satisfactory and praised by authorities concerned. The paragraph does not specify and give reference of the petitioner or petitioners to which it is concerned. The representation of only petitioner No. 1 has been decided. In the prayer clause, orders dated 30.3.2002, 30.4.2002 and 28.12.2001, have been sought to be quashed, and a further direction has been sought for re-instatement in service with all service benefits. The writ petition encloses only the order dated 28.12.2001 in respect of petitioner No. 1 Ram Briksha Singh. The orders dated 30.4.2002 and 30.3.2002 have not been annexed nor there is any reference or details of other orders in the writ petition.

14. In Writ Petition No. 6695 of 2003, of second batch (representation) petitioner has prayed for quashing the order dated 18.1.2003 (Annexure-5) issued by Commandant 2nd Battalion, P.A.C., Sitapur, and has prayed for fixing pay-scales from the date of initial appointment dated 28.6.1969 with all consequential benefits. The impugned order shows that petitioner Constable Udai Bhan Singh was terminated from service on 14.11.1973. In Writ Petition No. 5929 of 1998 a direction was issued by this Court on 18.2.1998 to decide petitioner's representation. In pursuance of the said order, the petitioner was reinstated on 18.11.1998 with the condition that on back wages decision will be taken after the guidelines are received from the State Government, The impugned order refers to

Government Order dated 8.1.2003 by which the State Government took a decision that those employees who have not performed any work will not be paid wages, and in pursuance of the said directions petitioners' pay was fixed in the pay-scale of Rs. 3,050-4,590 and while setting aside the order dated 11.8.2001 by which his basic pay was fixed at Rs. 4,370 with effect from 2.1.2002, his basic pay has now been fixed at Rs. 3,350 with effect from 1.11.2002. Essentially, the petitioner has prayed for back wages and fixation of his pay in the pay-scale of Rs. 5,500-9,000.

15. In Writ Petition No. 47080 of 2002, (First batch) petitioner Moti Lal has prayed for quashing the order dated 30.3.2001 (Annexure-12 to the writ petition) passed by the Senior Superintendent of Police, Kanpur. By this order his representation in pursuance of the order of this Court dated 28.11.2000 in Writ Petition No. 47912 of 1999 was decided and rejected. The Senior Superintendent of Police, Kanpur has found that there is no evidence to show that petitioner was involved in P.A.C. revolt in 1973, He was not charge-sheeted in the criminal case nor any report was lodged against him at any police station. He was terminated on the ground that his services were no longer required, after giving one months' notice and thus he was not entitled to reinstatement.

16. Sri R. C. Upadhyay, counsel for petitioners has relied upon a judgment of this Court in Special Appeal No. 110 of 2000 alongwith other connected special appeals dated 15.11.2002. In this judgment it was held that the writ petition which was filed in 1998 and 1999 for disposal of representation cannot be treated to be barred by laches. The State Government had reinstated those persons who were acquitted in P.A.C. revolt case and there was no justification of depriving those petitioners who were also dismissed for the same reasons by giving only one months' notice. It was found that their termination was on account of P.A.C. revolt and thus the learned single Judge was correct in directing reinstatement. In this judgment no direction was given with regard to back wages. The State Government has filed S.L.P. (C) 4097 of 2003 and other connected special appeals against the said judgment dated 7.5.2003 in the matter of State of U. P. and Ors. v. Gajadhar Pandey, in which the delay was condoned, and the special leave petition was dismissed. Sri Upadhyay submits that similarly situate persons have been re-instated and thus petitioner is entitled to reinstatement with all

consequential benefits. He submits that in the matter of Writ Petition No. 47080 of 2002, the petitioner was reinstated in service and thus there was no reason to deprive him of the pay-scale which was earlier fixed treating him to be in continuous service. He relies up the case of those persons who have been paid back wages and has drawn parity with such persons.

17. Learned standing counsel, on the other hand, submits that all these petitioners in the first and third category of writ petitions, were dismissed or terminated in the year 1973. There is no evidence of involvement of these persons in P.A.C. revolt. They were not charge-sheeted, tried, convicted and thereafter acquitted in the criminal case. They have filed these petitions after about 25-27 years without any explanation of delay. According to learned standing counsel, these petitions having accepted the orders more than two decades ago are estopped from challenging the same and claiming back wages. It is contended that the service under the State have been regulated by and under the proviso to Article 309 of the [Constitution of India](#). The petitioners cannot claim to be in continuous service after two decades of their dismissal/ termination. They have slept over their rights and cannot be permitted to draw parity with those persons who were subjected to criminal case and were acquitted in 1994 or those who had pursued their matter before the Public Service Tribunal. The order in Vijay Bahadur Singh's case dated 26.9.1997, was passed in a writ petition filed in the year 1993. According to him, petitioners are not entitled to reinstatement and no relief of back wages can be given to them. In respect of second category of petitions learned standing counsel submits that the State Government has taken a decision on 9.11.2002 to the effect that the re-instated employees are not entitled to back wages on the principle of 'no pay no work'. They have been re-instated with the condition that the question of back wages will be decided by the State Government. Since they have not worked from 1973, they cannot be held to be entitled to salary and other benefits.

18. The negligence or omission to assert a right, taken in conjunction with the lapse of time, more or less great, and other circumstances causing prejudice to the opposite parties operates as a bar in a Court of equity. Although Article 226 of the Constitution does not prescribe any period of limitation, but ordinarily no application can be entertained after a reasonable period of time. The discretionary

relief cannot be granted to a person who do not seek his remedy with due diligence. Any person who invokes extra-ordinary powers under Article 226 of the [Constitution of India](#), must be vigilant and must approach the Court at the earliest. If he fails to do so, he has to give a satisfactory explanation. His rights seeking relief must be balanced with the rights of third party and the respondent who may have corresponding duty to give such relief if the petitioners had approached the respondents within reasonable time. No. hard and fast rule can be fixed as to what is the period which may be taken as unreasonable and thus amount to laches. It appears upon the facts and circumstances of each case and the explanation offered by the petitioner seeking discretionary relief from the Court of equity. Ordinarily the period fixed within which the suit can be brought in civil court is the reasonable standard by which the delay has to be taken into consideration. The Courts do not take into account stale claims and must throw out those persons seeking relief who have slept over their rights for decades altogether.

19. Pursuit of any extra legal remedy such as departmental representation or correspondence is no ground to condone the delay. In Jagdish Kumar Maitiar v. State of Bihar and Ors., (1973) 1 'ACC 811, the Supreme Court held that a Government servant pursuing mercy petition before the Government for three years before filing the writ petition cannot be a ground to condone the delay. In Gian Singh Mann v. High Court of Punjab and Haryana and Ors., (1980) 4 SCC 266, it was held that a writ petition filed after 11 years after the date from which the promotions were claimed could not be entertained. In the words of Supreme Court it was stated 'that the petitioner was making successive representations during this period can hardly justify our overlooking the inordinate delay'. In State of Jammu and Kashmir v. Dr. Ashok Kumar Gupta and Ors. (1996) 2 SCC 82, it was held that there was a delay of about 3 months in filing appeal to Division Bench. The Supreme Court refused to condone the delay as the time was spent in the process of consultation between different department. In Life Insurance Corporation of India and Ors. v, Jyotish Chandra Biswas, (2000) 6 SCC 561, it was found that respondent's services were terminated on 28.1.1969. He filed writ petition challenging the order of 25.3.1975, almost after a period of 6 years. There was no explanation of delay. He was re-employed after about 5 years from the date of termination of his service. These facts indicated that he had accepted the order of

termination of service, even not expressly but impliedly.

20. In Writ Petition No. 3676 of 2003 petitioner Ram Briksha Singh challenged the order dated 8.6.1973 dismissing him from service, in Writ Petition No. 51070 of 2000 after about 27 years, his representation in pursuance of the order of the Court was decided on 28.12.2001. The Senior Superintendent of Police found that petitioner was not involved in a criminal case and that his services were rightly terminated by the Government of U. P. under Article 311(2) in 1973. There is no explanation whatsoever offered for delay of 27 years. All the 30 paragraphs of the writ petition narrate the background in which other persons were granted relief. So far petitioners 2 to 6 are concerned, the orders terminating their services after giving them one month's notice passed in May, 1973 and November, 1973 have been challenged after 30 years without any explanation for delay in the writ petition. There are no averments as to what the petitioners were doing in the meantime. They did not even make a representation for their reinstatement in service. In Writ Petition No. 6695 of 2003 petitioners' services were terminated on 14.11.1973. In Writ Petition No. 47080 of 2002, petitioner's services were terminated on 8.7.1973 after giving him one month's notice. He filed Writ Petition No. 47192 of 1999 in which he disclosed that he was involved in P.A.C. revolt. The writ petition was disposed of on 28.11.2000 to decide his representation. This Court did not condone the delay in filing the writ petition. The representation was dismissed on the ground that petitioner had no concern with P.A.C. revolt and his temporary services were terminated on the ground that his services were no longer required. They challenged that termination order has been made after 26 years. There is no explanation in the writ petition regarding any steps taken by him during this long period of 27 years. All the 30 paragraphs of the writ petition relate to the litigation perused by other persons who were involved in P.A.C. revolt.

21. For the aforesaid reasons, I find that the relief claimed in the first batch of writ petitions led by Writ Petition No. 3676 of 2003, claiming re-instatement and all similarly situated petitions are grossly barred by laches and thus these writ petitions are liable to be dismissed. All other connected petitions of this batch have almost identical facts which do not need reiteration. The counsels in these connected writ petitions did not appear on several dates when these petitions were

listed. Since these petitions involve almost same facts, and questions of law, I thought it fit to decide them together.

22. In the second batch of writ petitions led by Writ Petition No. 6695 of 2002, we are concerned with fixation of pay and back wages. Petitioner was reinstated in service between 1998-2000. Their pay was fixed, taking into account the pay revisions from time to time. We are not concerned with the direction of reinstatement as State Government did not challenge the order dated 23.9.1999 passed in Writ Petition No. 40965 of 1999 between Dhanraj Yadav v. State of U. P, and Ors., The order dated 16.11.1999 by which petitioner's pay was fixed in pay-scale of Rs. 5,500-9,000 was passed, on the basis that the petitioner was entitled to higher pay-scale and increment by treating the entire period to have been spent in service. By impugned order dated 18.2.2001, the pay has been re-fixed in the pay-scale of Rs. 3,050-4,590, on the ground that there is no order with regard to continuance of petitioner's services from 14.11.1973 to 18.11.1998 when he was out of service. Further in pursuance of order dated 8.1.2003 he is not entitled to back wages on the ground that he had not worked during this period. In Writ Petition No. 23706 of 2003 same question is involved. In the other petitions of this second batch, the petitioners have claimed back wages. Some of the petitioners have since retired.

23. The questions involved in all these writ petitions are whether the petitioners are entitled to be paid back wages. While disposing of the writ petition on 18.2.1998 no direction was given with regard to back wages. Respondent No. 3 in the said petition was directed to consider the question of permitting the petitioner to Join his duties provided the termination order was passed only on the ground of his involvement in P.A.C. revolt. If the services were terminated on any other ground the order was not to enure any benefit to him. In the reinstatement order dated 18.11.1998, the question of back wages were required to be considered after the State Government has taken a decision in this regard. A resolution was passed in High Level Committee presided by Principal Secretary (Home), dated 11.7.2002 to seek opinion of the Law Department with regard to back wages. The State Government thereafter by its order dated 9.11.2002 decided that no back wages shall be payable in these matters.

24. This Court did not set aside the termination order and left the matter at the discretion of the respondents. There is no finding in the reinstatement order that petitioner's termination was illegal or unjustified. The fact that petitioner's representation was allowed and they were reinstated in service with condition that the period between termination and reinstatement shall be treated as period on duty and this period shall be treated for the purposes of pension, promotion and annual increment under Fundamental Rule 54 (4) (2) of the U.P. F.H.B., Vol. II, Parts II to IV. The Court, however, finds that appointing authority was not competent to take the entire period to have been spent on duty. Fundamental Rule 54 (4) is applicable where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority on the ground of non-compliance with the retirement Clause (2) of Article 311 of the [Constitution of India](#) and no further inquiry is proposed to be held. In the present case termination order has not been set aside by the appellate or reviewing authority on the ground of non-compliance of required Clause (2) of Article 311 of the [Constitution of India](#). The petitioners, therefore, cannot be held entitled to back wages and allowances.

25. Fundamental Rule 54 (1) provides that where the Government servant who has been dismissed, removed or compulsorily retired, his reinstatement as a result of appeal or review, the authority competent shall consider and make specific order regarding pay and allowances to be paid to Government servant for the period of absence in duty including the period of suspension and whether or not such period shall be treated as period spent on duty. Sub-rule (3) provides that in cases falling under Sub-rule (2) where the dismissal, removal or compulsory retirement of Government servant is set aside and in the opinion of competent authority he is fully exonerated, he shall be paid full pay and allowance and in such cases, the period of absence from duty shall be treated as spent the period on duty for all purposes.

26. The Scheme of Fundamental Rules 54, 54A and 54B, does not cover the facts of the present case. The competent authority, therefore, cannot treat the entire period on duty for the purposes of back wages, pension, promotion and annual increment.

27. For counting the period to be spent on duty, the competent authority, i.e., the State Government must take into consideration whether the period can be treated to be on leave. No such order has been passed in the present case. The grant of leave beyond five years is within the domain of State Government. Since no decision is taken in this regard, the competent authority could not have decided to give the benefit to petitioner. In the present case petitioners cannot be given back wages or any part of wages. It is not a case where the order terminating their service has been set aside by any Court. They have been reinstated by the State Government in pursuance of the order of Court to decide his representation. There is no finding that their termination was illegal or unjustified. The back wages cannot be granted as a matter of course. The petitioners have not laid down any foundation for award of back wages. A number of factors must be taken into account while giving such relief which is based on principle that the person was willing and was deprived from working. In the present case, the petitioner filed writ petitions challenging the order of termination dated 31.5.1973 in the years 1998-2003. Without going into the question of explanation offered for the long delay of more than two decades since the petitioner has been reinstated, I find that there was absolutely no justification for the petitioner to have slept over his rights for such a long period. They have not disclosed as to how they spent that period and whether they were gainfully employed during this long period of 26 years. In *P.G.I. of Medical Education and Research, Chandigarh v. Raj Kumar*, 2001 (1) AWC 571 (SC) ; (2001) 2 SCC 54, it was held by Supreme Court that payment of back wages has a discretionary element involved and the cases have to be dealt with, in the facts and circumstances of each case and no straight jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. In the present case, since the delay of two decades was not explained nor any foundation has been made with regard to the manner in which the petitioners spent, the entire period and whether they were gainfully employed, I find that the petitioners are not entitled to back wages.

28. With regard to compassionate appointment in Writ Petition Nos. 41673 of 2000 and 8450 of 2000, I find that Shri Krishna Pratap Kushwaha was not reinstated in service. He died on 26.7.1999. He did not file any writ petition challenging the order of his termination/dismissal up to the date of his death. There was no orders

passed by this Court or State Government in his favour. His dependents, therefore, cannot claim the benefit of compassionate appointment as he was not Government servant on the date of his death.

29. In the result all the writ petitions are dismissed. There shall be no order as to costs.

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