



HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

D.B. Special Appeal Writ No. 469/2024
CNR: RJHC010177042024 | URN: SAW / 740U / 2024

Majid Khan S/o Sh. Faqeer Mohd. Sindhi, Aged About 73 Years,
R/o- Prithviganj, Holi Chowk, District-Banswara.

----Appellant

Versus

1. The State of Rajasthan, through the Principal Secretary, Panchayati Raj and Rural Department, Govt. of Rajasthan, Jaipur.
2. Panchayat Samiti Bagidaura, District Banswara through the Vikas Adhikari Bagidaura, District Banswara.
3. The Director, Directorate of Pension and Pensioners Welfare Department, Govt. of Rajasthan, Jaipur.
4. The Range Forest Officer, Departmental Works Unit Devli, District Udaipur.

----Respondents

For Appellant(s)	:	Mr. R.S.Saluja, Adv. through VC Mr. Achraj Singh Saluja, Adv.
For Respondent(s)	:	Mr. I.R.Choudhary, AAG with Mr. Pawan Bharti, Adv. Mr. Harshvardhan Singh, Adv.

HON'BLE THE CHIEF JUSTICE MR. SANJAY K. AGRAWAL
HON'BLE MR. JUSTICE MUNNURI LAXMAN

Judgment

Reportable

09/09/2026

1) The present special writ appeal assails the order dated 18.01.2024 passed by the learned Single Judge of this Court in S.B. Civil Writ Petition No. 3729/2019, whereby the claim of the petitioner for re-fixation of pay in the pay scale applicable to the



post of *Gram Sevak-cum-Pradhan Sachiv*, instead of pay scale adopted for the post of *Mohrir*, and consequential upgradation of the selection grade on the basis of such pay scale, along with payment of the arrears arising therefrom and payment of deficit thereon was dismissed on the ground of delay and laches as well as on merits.

2) The sum and substance of the case of the appellant-writ petitioner is that he was initially appointed as a work-charge employee on 01.04.1983 to the post of *Mohrir* in the Forest Department. He was made semi-permanent on 01.04.1983 and was subsequently made permanent with effect from 01.04.1993. While serving in the Forest Department, his pay scale was upgraded by granting him the first selection scale upon completion of nine (9) years of service.

3) Subsequently, in pursuance of proceedings dated 08.06.2000, the petitioner was transferred to Panchayat Samiti, Mavli, and appointed to the post of *Gram Sevak*. Such proceedings were drawn as a consequence of proceedings dated 09.05.2000 issued by the Principal Conservator of Forests, Forest Department.

4) The petitioner had joined in Panchayat Samiti, Mavli as *Gram Sevak-cum-Pradhan Sachiv* on 15.06.2000. Upon his joining in Panchayat Samiti, Mavli as a *Gram Sevak-cum-Pradhan Sachiv*, he was continuously placed in the pay scale of Rs.2750-4400 and was subsequently further upgradation was done in his pay scale. The appellant retired from service on 31.07.2009.



5) The petitioner's main grievance is that after his joining in the post of *Gram Sevak*, his pay was fixed in the pay scale i.e. Rs. 2750-4400 applicable to the post of *Mohrir* instead of the pay scale applicable to the post of *Gram Sevak* i.e. Rs.3200-4900. The pay scale of *Gram Sevak* as on 15.06.2000, i.e., the date on which the petitioner joined the post of *Gram Sevak*, was Rs. 2750-4400.

6) The further grievance of the petitioner is that at the time of his retirement, his pay was revised and re-fixed notionally by treating him as *Gram Sevak-cum-Pradhan Sachiv* for the purpose of fixation of pension. However, the actual monetary benefits arising out of such revision were not extended to him, but the revised pay was taken into consideration only for the purpose of fixation of pension.

7) It is also his grievance that for the purpose of payment of gratuity, the respondents took into consideration his last unrevised pay of Rs. 9,970/- instead of the revised last pay of Rs. 10,100/-.

8) The learned Single Judge dismissed the writ petition filed by the appellant, holding that the reliefs sought were suffered from delay and laches and also on merits. Aggrieved by the said order, the petitioner has preferred the present appeal.

9) The learned counsel appearing for the appellant submits that the learned Single Judge, without examining the merits of the case in depth and by taking a superficial view of the matter, dismissed the writ petition on the ground that writ petition suffers from delay and laches and also on merits. According to the



learned counsel, the findings recorded by the learned Single Judge are not sustainable.

10) It is further submitted that the injury relating to fixation and revision of pay scale is a continuing wrong and gives rise to a recurring cause of action until the benefit of such revision and re-fixation is actually extended to the employee. In support of his case, the learned counsel has relied upon the decision of Apex Court in the cases of (i) **M.R.Gupta V. Union of India & ors.**, reported in AIR 1996 Supreme Court 669 and (ii) **Union of India & Ors.Vs. Tarsem Singh**, reported in (2008) 8 SCC 648.

11) Per contra, the learned counsel appearing for the respondents submits that the respondents have already corrected the pay fixation in terms of the claim made by the appellant, and such re-fixation was carried out after his retirement for the purpose of fixation of pension. However, the actual arrears arising out of such re-fixation were not paid. Similarly, the gratuity was calculated and paid on the basis of the unrevised last pay. It is submitted that the appellant cannot now claim such monetary benefits, as the relief sought suffers from delay and laches. It is further argued that the judgments relied upon by the learned counsel for the appellant do not come to his rescue, as, even in those cases, the entitlement to arrears was restricted to a period of three years preceding the filing of the writ petition. In the present case, the writ petition was filed after a delay of more than ten years. Therefore, the arrears, if any, arising out of revision of pay and the deficit amount of gratuity cannot be granted after



such a long lapse of time. According to the learned counsel for the respondents, the impugned order of learned Single Judge suffers from no error warranting interference by this Court in the present appeal. In support of his arguments, the learned counsel for the respondents has relied upon the decision of Apex Court in the cases of (i) **State of Kerala & ors. Vs. Krishnan N.V.**, [Civil Appeal No.10898/2025], decided on 19.08.2025, and (ii) **New Delhi Municipal Council Vs. Pan Singh & Ors.**, reported in (2007)9 Supreme court Cases 278.

12) We have considered the arguments of both the counsel and the judgments relied upon by them.

13) The only question that falls for consideration is whether the dismissal of the writ petition on the ground of delay and laches suffers from any error warranting interference by this Court in the present appeal.

14) The present case relates to a claim for payment of the actual arrears arising out of the re-fixation of the appellant's pay scale after his retirement, i.e., in the year 2010. The appellant retired in the year 2009. The pay was re-fixed, as claimed by the appellant, for the purpose of fixation of pension. However, the actual monetary benefits arising out of such re-fixation were not extended to him. Similarly, for the purpose of payment of gratuity, the revised last pay scale was not taken into consideration and the gratuity was calculated on the basis of the old pay scale. Those are the two grievances raised by the appellant.



15) The question, therefore, is whether such grievances can be treated as a continuing wrong and gives rise to recurring cause of action, so as to entitle the appellant to claim the consequential monetary benefits notwithstanding the delay of ten years in approaching the Court. In order to understand the continuous wrong and recurring of cause of action, it is apt to refer to the decision relied upon by the learned counsel for the petitioners. The Apex Court in the case of **M.R. Gupta** (cited supra) held as follows:-

"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."





16) It is also apt to refer to the decision of Apex Court in the case of **Tarsem Singh** (cited supra). The relevant paras 4, 5, 6 & 7 of the said judgment read as under:-



"4. The 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. This Court in **Balkrishna Savalram Pujari and Others Vs. Shree Dnyaneshwar Maharaj Sansthan and Others**, explained the concept of continuing wrong (in the context of Section 23 of Limitation Act, 1908 corresponding to section 22 of Limitation Act, 1963):

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.

In **M.R. Gupta Vs. Union of India and others**, the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1.8.1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held:

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....

In **Shiv Dass Vs. Union of India (UOI) and Others**, this Court held:

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.

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.





5. 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 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 re-opening 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 re-fixation 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. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, 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.

6. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have 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. It ought not to have granted interest on arrears in such circumstances.

7. In view of the above, these appeals are allowed. The order of the Division Bench directing payment of disability pension from the date it fell due, is set aside. As a consequence, the order of the learned Single Judge is restored."

17) From a close scrutiny of the decision of the Apex Court in **M.R. Gupta** (cited supra), it is clear that the wrong in fixation of pay constitutes a continuing wrong and gives rise to a recurring





cause of action every month when the employee is paid his monthly salary on the basis of an erroneous computation contrary to the applicable rules while he was in service. Thus, such continuing wrong and recurring cause of action continue to subsist so long as the employee draws his salary every month i.e., until his retirement. The decision in **Tarsem Singh** relates to the grant of disability pension after retirement. In the said judgment also, the principle of continuing wrong and recurring cause of action was applied in the context of pensionary benefits, which are also required to be paid every month. On that premise, it was held that delay and laches would not operate as a bar to such a claim.

18) The decision relied upon by the respondents in **Krishnan N.V.**(*cited supra*) do not assist the respondents. In the said case, the principle of continuing wrong and recurring cause of action was not considered, as the earlier decisions of the Apex Court laying down the said principle were not brought to the notice of apex court. Consequently, the Special Leave Petition in **Krishnan N.V.** was dismissed on the ground of delay and laches.

19) **Pan Singh'** case (*cited supra*) relates to promotion and consequential benefits, which is distinguishable from the relief claimed by the appellant herein. The facts of the present case are, therefore, more akin to those considered by the Apex Court in **M.R. Gupta** and **Tarsem Singh**.

20) The Apex Court, in **M.R. Gupta** and **Tarsem Singh**, has held that even where a writ petition is entertained on the principle of continuing wrong and recurring cause of action, the arrears



arising out of such re-fixation are required to be restricted to a period of three years preceding the date of filing of the writ petition.

21) By taking cue from the principles as laid down in **M.R. Gupta** (cited supra) and **Tarsem Singh**(cited supra), we are of the view that the principle of continuing wrong and recurring cause of action can also be extended to cases of re-fixation of the pay of a retired employee, even though such employee is no longer drawing monthly salary when writ petition was filed if he holds pensionable post. The reason for extension of principle of continuing wrong and recurring cause of action to the retired employee is as the re-fixation of last pay has a direct impact on the fixation of pension. If pension is being paid on the basis of an erroneous fixation of the employee's last pay, which is payable on a monthly basis, the employee has a continuous wrong and recurring cause of action every month when pension is paid on the basis of such erroneous fixation of his last pay. However, the arrears, if any, arising out of revision of the last pay and consequential revision of pension would have to be restricted to a period of three years preceding the date of filing of the writ petition.

22) Even the above principle cannot be treated as absolute or inflexible, for the reason of decision of Apex Court, in **Shiv Dass v. Union of India & Ors.**, reported in AIR 2007 SC 1330, whereunder, it was held as follows:-

"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."

23) Looking to the aforesaid ratio, where a petition is filed beyond a reasonable period, it is within the discretion of the Court either to reject the same on the ground of delay and laches or restrict the relief to a reasonable period, ordinarily three years preceding the filing of the petition. There is, however, no hard-and-fast rule that in every case where a claim for re-fixation of pay is raised after an inordinate delay after retirement, it must necessarily be rejected on the ground that there is no continuing wrong and recurring cause of action. The reason is that pension is fixed on the basis of the last pay drawn by the employee. If the last pay has been incorrectly fixed, any subsequent revision of the pay scale would have a corresponding impact on the pension payable to the employee. Since pension is paid on a monthly basis, any erroneous fixation of pension may give rise to a recurring cause of action every month when the pension is paid on the basis of such incorrect fixation. Whether such a claim can be entertained despite delay and laches would depend upon the facts and circumstances of each case i.e. gravity of injury, class of employee and the length of the delay etc.

24) In the present case, the last pay of the appellant was notionally re-fixed in the year 2010, after his retirement. Such notional re-fixation was taken into consideration only for the purpose of fixation of pension. However, the benefit of such re-



fixation was not extended for the purpose of payment of actual arrears of salary arising therefrom, nor the revised pay was taken into consideration for the purpose of payment of gratuity. The notional fixation was made in the year 2010. The writ petition, however, was filed after a lapse of more than ten years from the appellant's retirement. Even if it is assumed that the principle of continuing wrong and recurring cause of action is attracted to the facts of the present case, the relief of arrears could, at the best, be restricted to a period of three years preceding the filing of the writ petition. The appellant filed writ petition after 10 years. The appellant, therefore, cannot claim payment of arrears consequence to re-fixation. So far as the claim for payment of gratuity on the basis of the revised pay is concerned, the same is one time injury and it is not a continuous wrong. The claim in that regard, having been raised after an inordinate and unexplained delay, is also liable to be rejected on the ground of delay and laches, in view of the principles laid down by the Apex Court in **Shiv Dass** (cited supra).

25) It is not in dispute that the pay of the appellant was notionally re-fixed. The said notional re-fixation was made pursuant to acceptance of the claim as is raised by the appellant in the present writ petition. Therefore, there is no surviving grievance insofar as the fixation of pay is concerned. The dispute, if any, is confined only to the consequential monetary benefits arising out of such re-fixation. Such monetary benefits cannot be granted in this appeal as they are beyond the 3 years.



26) In the result, the present appeal being devoid of merit is hereby dismissed.

27) Pending interlocutory applications, if any, shall stand disposed of.



(MUNNURI LAXMAN),J

(SANJAY K. AGRAWAL),CJ

100/Narendra