

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C). No. 300 of 2016

WP(C). No. 340 of 2016

WP(C). No. 341 of 2016

WP(C). No. 300 of 2016

Smt. Jaya Chakraborty,
wife of Sri Anjan Chakraborty, resident of Nimbark Asharm, P.O. O. N. G. C.,
P.S. Amtali, Agartala, District: West Tripura

.....Petitioner

- V E R S U S -

1. The State of Tripura, represented by the Secretary to the Government of Tripura, Department of Industries & Commerce, Govt. of Tripura , Khejur Bagan, P.O. Agartala, District: West Tripura
2. The Director of Industries,
Government of Tripura, Khejur Bagan, Kunjaban, Pin: 799006, District:
West Tripura

..... Respondents

WP(C). No. 340 of 2016

Smt. Chandra Kala Singha,
daughter of late Kula Bidhu Singha, resident of South Dhaleswar, P.O.
Agartala College, Agartala, District: West Tripura

.....Petitioner

- V E R S U S -

1. The State of Tripura, represented by the Secretary to the Government of Tripura, Department of Industries & Commerce, Govt. of Tripura , Khejur Bagan, P.O. Agartala, District: West Tripura
2. The Director of Industries,
Government of Tripura, Khejur Bagan, Kunjaban, Pin: 799006, District:
West Tripura

..... Respondents

WP(C). No. 341 of 2016

Sri Krishna Kanta Bhowmik,
son of late Jogesh Ch. Bhowmik, resident of Bishalgarh, Bhatirlarma, P.O.
Purbalaxmibil, P.S. Bishalgarh, District: Sepahijala Tripura

.....Petitioner

- VERSUS -

1. The State of Tripura, represented by the Secretary to the Government of Tripura, Department of Industries & Commerce, Govt. of Tripura , Khejur Bagan, P.O. Agartala, District: West Tripura
2. The Director of Industries,
Government of Tripura, Khejur Bagan, Kunjaban, Pin: 799006, District:
West Tripura

..... Respondents

BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	: Ms. S. Deb Gupta, Advocate
For the respondents	: Mr. S. Chakraborty, Addl. G.A.
Date of hearing & delivery	: 16.12.2016
of Judgment and order	
Whether fit for reporting	: NO

Judgment and Order(Oral)

All these petitions being WP(C) No. 300 of 2016 [Smt. Jaya Chakraborty v. State of Tripura & Ors.], WP(C) No. 340 of 2016 [Smt. Chandra Kala Singha v. State of Tripura & Ors.] and WP(C) No. 341 of 2016 [Sri Krishna Kanta Bhowmik v. State of Tripura & Ors.] are clustered for disposal by a common judgment inasmuch as issues are common and setup in an identical conspectus of fact.

[2] Heard Ms. S. Deb Gupta, learned counsel appearing for the petitioners as well as Mr. S. Chakraborty, learned Addl. G.A. appearing for the respondents.

[3] Ms. S. Deb Gupta, learned counsel appearing for the petitioners has submitted that these writ petitions are squarely

covered by a decision of this Court in **Sri Hiralal Debnath v. State of Tripura & Ors.** [judgment and order dated 30.11.2016 in **WP(C) No. 144 of 2016**].

[4] Mr. Chakraborty, learned Addl. G.A. appearing for the respondents however submitted that all the petitioners in this batch of writ petitions have approached this Court after an inordinate delay. They were engaged much later than the industrial worker whose case has been referred by the petitioner there respective writ petitions. These writ petitioners did not approach any forum for redressal of the grievance that has been raised herein. The writ petitioners in this case are getting family pension after death of those industrial workers. As such, he has stoutly contended that all these writ petitions are hit by principle of laches and hence, those may not be decided on merit.

[5] Per contra, Ms. Deb Gupta, learned counsel appearing for the petitioners has submitted that it is a perennial deprivation inasmuch as if the relief is granted that would impact increase in their family pay and allowances and the writ petitioners have got cause to approach this Court. For purpose of appreciating the controversy, some relevant fact may be introduced in the beginning.

[6] The petitioners have contended that the workers who were working under the department of Industries were regularized as the industrial workers w.e.f. 01.04.1979 by an order dated 21.08.1979 issued by the Department of Industries.

[7] But some of the industrial workers for not having the purported trade certificate were wrongly placed in the pay scale of Rs. 170-210/- whereas they were entitled to the pay scale of Rs. 240-440/- w.e.f. 01.04.1979. Some of those industrial workers approached the Industrial Tribunal through the reference and the said reference was registered as the Labour Case No. 01 of 1998. By the judgment and award dated 14.12.2000, the Industrial Tribunal declared that the industrial workers were entitled to the pay scale of Rs. 240-440/- w.e.f. 01.04.1979.

[8] The said award was challenged by the State by filing a writ petition being WP(C) No. 546 of 2001 in the Gauhati High Court which had then the jurisdiction over the matters in the State of Tripura. By the judgment and order dated 15.11.2002 the Gauhati High Court affirmed the judgment and award of the Industrial Tribunal.

[9] Even though, the State had preferred the special leave petition in the Apex Court but the special leave petition was dismissed and such dismissal has been recorded in the judgment dated 08.10.2013 passed by this Court in WP(C) No. 07 of 2006. That fact has not been contested by Mr. Chakraborty, learned Add. G.A. appearing for the respondents. It is an admitted position of fact that the State by issuing the order dated 17.03.2005 implemented the said judgment and award passed by the Industrial Tribunal and

those industrial workers were given the pay scale of Rs. 240-440/- w.e.f. 01.04.1979.

[10] Some other industrial workers have approached this Court by filing these writ petitions being WP(C) No. 490 of 2005, WP(C) No. 491 of 2005, WP(C) No. 305 of 2005 and WP(C) No. 306 of 2005 on claiming the similar relief. Those writ petitions were allowed granting relief in terms of industrial award. The State by the order under No. F.DI / ESTT / IV-27 /2013 / 18686-761, dated 29.12.2014 implemented the judgment as granted in those writ petitions.

[11] In the present case, the petitioners were also regularized. They were also denied the pay scale of Rs. 240-440/- w.e.f. 01.04.1979 or from the day of their appointment as the Industrial Worker.

[12] Ms. Deb Gupta, learned counsel appearing for the petitioners has referred to the judgment and award dated 14.12.2000 passed by the Industrial Tribunal in Labour Case No. 01 of 1998 as published in the Tripura Gazette Extra Ordinary Issue dated 09.04.2001 (**Annexure-4** to this writ petition being WP(C) No. 192 of 2016).

[13] Ms. Deb Gupta, learned counsel appearing for the petitioner has further referred to the judgment and order dated 15.11.2002 as passed in WP(C) No. 546 of 2001 (**Annexure-5** to the

writ petition being WP(C) No. 192 of 2016) whereby the said industrial award was affirmed by the High Court on discarding the challenge thrown by the State.

[14] Thereafter, Ms. Deb Gupta, learned counsel has referred some other previous decisions of this Court as referred above such as the common judgment and order dated 29.04.2014 delivered in a batch of writ petitions being WP(C) No. 490 of 2005 etc., and contended that the doctrine of laches will not apply in these cases as these are the cases of perennial deprivation and the deprivation still continues.

[15] In this regard Ms. Debgupta, learned counsel appearing for the petitioners has referred to a decision of the Apex Court in **State of Madhya Pradesh v. Jogendra Shrivastava**, reported in **(2010) 12 SCC 538** where it has been held by the Apex Court as under:

“18. We cannot agree. Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application. [See: *M.R. Gupta vs. Union of India* (1995) 5 SCC 628, and *Union of India vs. Tarsem Singh* (2008) 8 SCC 648]”.

[16] So far the doctrine of laches is concerned, by the common judgment and order dated 29.04.2014 delivered in WP(C) No. 490 of 2005 etc., (**Annexure-7** to the writ petition being WP(C) No. 192 of 2016) it has been held as under:

“5. In view of the above decision of the Apex Court, the present writ petitions may be allowed keeping in view of the judgment passed by this Court in WP(C) No.7 of 2006 but the relief in respect of arrears should be restricted to the extent of three years prior to the date of original application. It may be mentioned here that the judgment of the apex Court in the case of Jogendra Sreevastava (supra) was not referred while passing of the judgment of WP(C) No.7 of 2006.

6. Accordingly, both the writ petitions are allowed in terms of the judgment passed in WP(C) No.7 of 2006 and subsequent judgment passed in WP(C) No.305 of 2005 and WP(C) No.306 of 2005, subject to the consequential relief in respect of payment of arrears restricted to a period of three years prior to the date of original application filed by the petitioners of the present cases.

7. Both the writ petitions were filed on 07.12.2005 and so the petitioners of both the writ petitions shall be allowed consequential reliefs of payment of arrears restricted to a period of three years prior to the date of filing of these petitions.”

[17] Mr. Chakraborty, learned Addl. G.A. appearing for the respondents has admitted that the said judgment and order dated 29.04.2014 has been implemented by the State. Hence, this Court does not find any reason why the writ petitioners will not get similar benefits.

[18] True it is that the writ petitioners of these writ petitions have approached this Court almost after three decades. Apparently the laches is un-surmountable, but at the same time, it cannot be denied that the deprivation from getting the benefit of the pay scale of Rs. 240-440/- still continues in the form of pecuniary loss. In view of the ratio of supra), this Court is of the considered view that the

doctrine of laches would not apply in these cases, rather the principle of recurring and successive wrong would apply.

[19] Having regard to the judgment and order dated 29.04.2014 delivered in WP(C) No. 490 of 2005 (**Annexure-6** to the writ petition being WP(C) No. 300 of 2016), the present petitioners have the similar status and the respondents have not raised no other objection nor have clarified why in the context the said pay scale of Rs. 240-440/- should not be made available to the petitioners herein. Thus, the respondents are directed to re-fix the pay of the petitioners in the pay scale of Rs. 240-440/- with admissible allowance w.e.f. 01.04.1979 or from the day when they were appointed as the Industrials Worker or whichever is earlier and thereafter, the petitioners shall be given the benefit of revision of pay scales for purpose of fixing their pay and other benefits subject to condition as laid hereinafter. But the consequential financial benefits in respect of the payment of arrears shall be restricted to a period of 3 (three) years prior to the date of filing of the writ petition. The pay and allowances of the remaining period shall be accounted notionally. The respondents shall pay the arrears of the petitioners as would accrue as consequence of this judgment within in period of 6 (six) months from the day when the petitioners shall submit a copy of this judgment and order. For purpose of record, this writ petition was filed in this High Court on 28.04.2016. The date of filing of the other

writ petitions has recorded in the separate order placed in the said writ petition.

Accordingly, these writ petitions stand allowed to the extent as indicated above. There shall be no order as to costs.

JUDGE

A.Ghash