

A THE STATE OF UTTAR PRADESH & ORS.

v.

RAJMATI SINGH

(Civil Appeal No. 9329 of 2022)

B DECEMBER 07, 2022

[SURYA KANT AND J. K. MAHESHWARI, JJ.]

- Service Law – Termination – Claim for reinstatement – Belated claim – Termination of Respondent in the year 1974 – She made several representations, one after the other, but did not approach any judicial or quasi-judicial forum – After enactment of Right to Information Act, 2005, whereunder the State Information Commission came to be constituted, the respondent moved before the said Commission – The Commission passed an Order on 05.03.2009 asking the appellant-authorities to communicate the decision on the representations of respondent – In this backdrop communication dated 04.06.2009 was issued by the District Basic Education Officer, which according to respondent revived her pending claim – Held: On facts, claim of respondent was stale, highly belated, time barred – The same ought not to have been entertained by the State Public Services Tribunal or the High Court after a span of over three decades – Respondent like any vigilant citizen, especially given that she does not belong to economically or socially backward segments of the society, was expected to assert her rights before an appropriate forum within a reasonable time – Repeated representations neither give rise nor revive the cause of action, if it had already arisen in the past – Respondent was required to seek a declaration of her continuity or have a writ of mandamus issued for her reinstatement – She did not do either – State Information Commission is not a forum which either could declare the rights of the respondent or grant any service benefits – Respondent's move before the State Information Commission was thus an exercise in futility – Respondent slept over her rights for a long duration of over 33 years – She waived her rights to raise objections in this regard and is deemed to have abandoned her employment – Challenge of respondent to the deemed order of termination or abandonment of employment before the State Public Services Tribunal in 2010 was hopelessly time-barred u/s 5 of the 1976 Act –*

However in the circumstances of the case, appellants also partially responsible for engendering hope in respondent at a juncture when she was nearing the age of superannuation – Appellants to pay a lump-sum compensation of Rs.5,00,000/- – U.P. Public Services (Tribunal) Act, 1976 – s.5 – Right to Information Act, 2005. A

Service Law – Judicial approach in service matters – Held: Undue sympathy and a perceived liberal approach by a judicial forum can lead to significant adverse consequences – It not only gives rise to illegitimate expectations in the mind of fence sitting employees, but also leads to undue burdens on the public exchequer – Indulgence shown by a Court solely on equitable considerations, dehors the law, breeds indiscipline in public services and incorrigible employees start looking for a dividend on the period of their absence or for dereliction of duty. B C

Service Law – Service disputes – Appropriate forum – Held: State Information Commission is not a forum to adjudicate service disputes – Right to Information Act, 2005. D

C. Jacob v. Director of Geology and Mining and Other (2008) 10 SCC 115 : [2008] 14 SCR634 – relied on.

Basic Shiksha Parishad and Another v. Sugna Devi (Smt.) and Others (2004) 9 SCC 68 : [2003] 6 Suppl. SCR 759 and Union of India and Ors. v. Tarsem Singh (2008) 8 SCC 652 : [2008] 12 SCR 903 – referred to. E

Case Law Reference

[2003] 6 Suppl. SCR 759	referred to	Para 16	F
[2008] 12 SCR 903	referred to	Para 18	
[2008] 14 SCR634	relied on	Para 19	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9329 of 2022.

From the Judgment and Order dated 24.01.2017 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Service Bench No.826 of 2014. G

Ms. Sansriti Pathak, Krishnanand Pandey, Advs. for the Appellants. H

- A Pradeep Kant, Sr. Adv., Mareesh Pravir Sahay, Simarangeet Singh Rekhi, Shubham Kumar, Ms. Awanika, Sachin Kharb, Advs. for the Respondent.

The following Judgment of the Court was delivered:

JUDGMENT

- B 1. Delay condoned.
2. Leave granted.
3. The State of Uttar Pradesh and its authorities in the Education Department are aggrieved by the judgment dated 24.01.2017 passed by C a Division Bench of the High Court of Judicature at Allahabad, Lucknow Bench whereby the respondent was declared to have continued in service, thus, entitling her to all consequential benefits including salary. The State of Uttar Pradesh has been permitted to hold an enquiry to find out the officers in the Basic Education Department responsible for the situation D which led to order of reinstatement with all consequential benefits, and to effect recovery of the entire amount from the officers found responsible.
4. The facts may be briefly recounted.
5. The respondent was appointed as an untrained Assistant E Teacher on 28.01.1971 in Kanya Karmottar Junior High School, Gaura, Rai-Bareli. She was relieved from the aforesaid post on 04.08.1973 to undergo the Basic Training Course (for short 'BTC'). Completion of this course was a necessity as per Department Instructions, in order to continue on the post on which the respondent was appointed on tenure basis. The respondent did not furnish a BTC Training Certificate but F appears to have produced a B.Ed Certificate instead, on the basis of which she was not permitted to resume her duties in the year 1974. No formal order terminating the services of respondent was passed but considering the fact that she was an untrained teacher and was admittedly relieved from her duties, her contractual employment came to an end.
G 6. The respondent appears to have made representations, which were seemingly ignored by the authorities. For the next several decades, respondent continued to make her representations, but did not approach a judicial/quasi-judicial forum for relief. She eventually filed a complaint before the State Information Commission, Uttar Pradesh, after the H enactment of the Right to Information Act, 2005, somewhere in the

year 2009, and based on her complaint, the Commission passed an order dated 05.03.2009 directing the District Basic Education Officer, Rai-Bareily to communicate the decision to the respondent on her representations.

7. The aforesaid order of the State Information Commission compelled the District Basic Education Officer to issue a communication dated 04.06.2009 (P-2) which contains a brief history as to how the respondent failed to produce the required BTC Certificate and was not permitted to resume her duties. This order, in no way, amounts to fresh consideration of the representations made by the respondent or rejection thereof on merits. It simply communicated the history regarding the events of 1973-1974 when the respondent had worked for a short duration.

8. Claiming that the communication dated 04.06.2009 amounted to denial of reinstatement to her, the respondent approached the State Public Services Tribunal (in short, 'the Tribunal') on 03.06.2010 but her Claim Petition was dismissed on 11.06.2010 as being barred by limitation. The respondent filed a Review Petition but it was dismissed on 13.08.2010. Thereafter, the respondent approached the High Court which vide order dated 02.07.2012 directed the Tribunal to consider the matter afresh on merits. The Tribunal then passed an order dated 13.12.2013 directing the appellant-authorities to consider and dispose of the representations filed by the respondent. In compliance with these directions, the District Basic Education Officer considered and rejected the representation(s) moved by the respondent, on 05.04.2014. In substance, this was actually the first communication sent to the respondent which explicitly rejected her claim for reinstatement/rejoining, as the prior communication had not provided any determination on merits.

9. The respondent again approached the High Court challenging the communication dated 05.04.2014 as well as the order of the Tribunal dated 13.12.2013. The High Court vide the impugned judgment, as stated earlier, has modified the Tribunal's order dated 13.12.2013 and declared the respondent to have continued in service with all consequential benefits including the salary.

10. The question that falls for our consideration is whether the claim of the respondent was inordinately delayed, obsolete, stale, and barred by the principle of delay and laches and as a civil claim, whether it was barred by law of limitation?

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- A 11. To trace out the answer to the question formulated above, some facts need to be repeated. The respondent was apparently relieved on 04-08-1973 to undergo the required BTC courses. She was allegedly not permitted to resume duties in the year 1974 after she had completed B.Ed. degree. She made several representations, one after the other, but did not deem it appropriate to approach any judicial or quasi-judicial forum. It was only after the enactment of Right to Information Act, 2005, whereunder the State Information Commission came to be constituted, that the respondent moved before the said Commission to issue a directive to discover the fate of her representations. The Commission passed an Order on 05.03.2009 asking the appellant -
- B C authorities to communicate the decision on the representations of the respondent and it was in this backdrop that the communication dated 04.06.2009 was issued by the District Basic Education Officer, which according to the respondent revived her pending claim.
- C 12. In our considered view, the respondent like any vigilant citizen, especially given that she does not belong to economically or socially backward segments of the society, was expected to assert her rights before an appropriate forum within a reasonable time. Repeated representations neither give rise nor revive the cause of action, if it had already arisen in the past. Respondent's difficulties do not end there, given that her services were brought to an end when she was denied to resume her duties in the year 1974. She was, thus, required to seek a declaration of her continuity or have a writ of mandamus issued for her reinstatement. She did not do either. The Information Commission is not a forum to adjudicate service disputes. It was not a forum which either could declare the rights of the respondent or grant any service benefits.
- D E F The respondent's move before the State Information Commission was thus an exercise in futility. It leaves no room for doubt that the respondent slept over her rights and allowed the grass to grow under her feet for a long duration of over 33 years.
- E 13. We are of the considered opinion that the respondent waived her rights to raise objections in this regard and is deemed to have abandoned her employment.
- F G H 14. The next question which falls for consideration is whether a deemed order of termination of services or abandonment of employment could be challenged by the respondent before the Tribunal in the year 2010? There can be no quarrel that such a challenge was hopelessly

time-barred under Section 5 of U.P. Public Services (Tribunal) Act, 1976. A

15. The view taken by the Tribunal on 11.06.2010 was legally correct and tenable. The High Court nevertheless vide Order dated 02.07.2012 passed in the respondent's Writ Petition set aside the Tribunal's order. A perusal of the High Court's order reveals that neither the principles of delay and laches nor the law of limitation were considered, with reference to the facts of the case in hand. The High Court blissfully ignored the proposition of law and proceeded on the premise that there was no fault on the part of the respondent to file the claim petition before the Tribunal as "the impugned order was passed on 04.06.2009 xx xx xx". The High Court completely overlooked the fact that it was not an order passed on the representations made by the respondent but was a communication sent to her under compulsion due to the directions issued by the State Information Commission. The said communication in no way revived the cause of action in favour of the respondent.

16. In all fairness and faced with the situation, learned Senior counsel appearing for the respondent relies upon a decision of this Court in "Basic Shiksha Parishad And Another vs. Sugna Devi (Smt.) And Others" (2004) 9 SCC 68.

17. In Sugna Devi's case, the only issue that arose for consideration was whether or not she was appointed as an Assistant Teacher and if so, whether her services were terminated illegally. This Court upheld the finding of fact returned by the High Court which, upon consideration of the record regarding the payment of salary, transfer orders, joining reports and letter of authority asking her to present her testimonials etc., proceeded to hold that Sugna Devi was actually working as a Teacher. It was further held that her services could not be terminated without passing a formal order. Consequently, this Court upheld the directions issued by the High Court to grant "compensation equivalent to the salary for the last three preceding years before the date of her superannuation".

18. In "Union of India and Ors. vs. Tarsem Singh" (2008) 8 SCC 652, this Court summarized the settled principles in the following manner:-

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of

- A 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 reopening 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 refixation 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. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring-successive wrongs will apply. As a consequence, the 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.”
- E 19. Close to the facts of this case, in “C. Jacob versus Director of Geology and Mining And Other” (2008) 10 SCC 115, this Court, having found that the employee suddenly brought up a challenge to the order of termination of his services after 20 years and claimed all consequential benefits, held that the relief sought for was inadmissible. The legal position in this regard was laid out in the following terms:
- F “10. Every representation of the Government for relief, may not be applied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.
- H 11. When a decision is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed)

examines the matter on merits, being under the impression that failure to do so may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of “acknowledgement of a jural relationship” to give rise to a fresh cause of action.

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12. When a government abandons service to take alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for the purpose of pension. That will be a travesty of justice.

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13. Where an employee unauthorisedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches the court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/ removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage discipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back wages.”

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20. Taking into consideration the cumulative effect of the facts in this case, coupled with the legal principles cited above, we are satisfied that the claim of the respondent is stale, highly belated, time barred, and the same ought not to have been entertained by the Tribunal or the High Court after a span of over three decades.

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21. We reiterate that undue sympathy and a perceived liberal approach by a judicial forum can lead to significant adverse

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- A consequences. It not only gives rise to illegitimate expectations in the mind of fence sitting employees, but also leads to undue burdens on the public exchequer. Not only this, the indulgence shown by a Court solely on equitable considerations, *dehors* the law, breeds indiscipline in public services and incorrigible employees start looking for a dividend on the period of their absence or for dereliction of duty. While there is no evidence to suggest that the respondent deliberately absented herself from duty, the facts speak for themselves in that she failed to take any recourse provided under law for more than three decades. We may say at the cost of repetition that the respondent had hardly served as an untrained teacher on temporary basis for a period of 2½ years and
- C in terms of the impugned judgment of the High Court, she has been held entitled to get arrears of pay of more than 40 years, besides all the retiral benefits. We are, therefore, of the view that the High Court ought not to have drawn adverse inferences against the appellants or put the entire onus on them to prove that the respondent was unjustifiably denied the resumption of duties. The approach of the High Court in this regard is completely erroneous and contrary to the settled principles of law. The impugned Judgment thus cannot sustain and is liable to be set aside.

22. Having held so, let us look into the conduct of the appellants as well. It is true that the State Information Commission had no authority to intrude into a service dispute and pass an inappropriate order like dated 05.03.2009. The Tribunal, however, corrected that error and turned down the respondent's claims being barred by limitation. That order was nullified by the High Court vide impugned Judgment dated 02.07.2012. The appellants sat silent and accepted that verdict without any murmur.
- E The said Judgment has, in a way, attained finality, though it is legally unsustainable. Having accepted that Judgment, the appellants ought to have been prepared to face the next consequence which fell on them when the Tribunal directed them to decide the respondent's representations afresh. This led to the revival of a ghost claim after over 30 years. The appellants were expected to immediately understand the implications and consequences of events as they unfolded but they remained silent on the judgment dated 02.07.2012. Under these circumstances, the appellants are also partially responsible for engendering hope in respondent at a juncture when she was nearing the age of superannuation.

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23. Taking into consideration the cumulative effects of all the facts and circumstances, while we set aside the impugned Judgment dated

24.01.2017 of the High Court and reject the claim of the respondent for reinstatement, retiral benefits or arrears of pay etc., we direct the

appellants to pay a lump-sum compensation of a sum of Rs.5,00,000/- (Five Lakh) within a period of two months from the date of receipt of a copy of this Order to the respondent.

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24. The appeal stands allowed in the above terms.

Bibhuti Bhushan Bose
(Assisted by : Neha Sharma, LCRA)

Appeal allowed.