

**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA****CWPOA No.359 of 2019****Reserved on: 25.03.2026****Decided: 8th April, 2026**

Madan Lal and others

...Petitioners**Versus**

State of Himachal Pradesh and another

...Respondents*Coram***Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge***Whether approved for reporting?¹ Yes*

For the petitioners: Mr. Shashi Shirshoo, Advocate.

For the respondents: Mr. Sumit Sharma, Deputy Advocate
General.**Jiya Lal Bhardwaj, Judge**

By way of the present petition, the petitioners
have prayed for the following substantive reliefs:-

"i.) That the order dated 30.09.2010 Annexure-P/5 is totally illegal, arbitrary and discriminatory in view of the law laid down by this Hon'ble Court as well as the Apex Court and so that the respondents be directed to modify the order dated 30.09.2010 Annexure-P/5 to the extent that petitioners be allowed monetary benefits alongwith 9% interest per

¹ Whether reporters of Local Papers may be allowed to see the judgment?



annum from the date of their joining as auditor in the department.

ii.) The Respondents be directed to grant the pay scale arrear to the present petitioners from the date of their appointment as auditors alongwith interest @9% per annum in view of the judgment dated 8.9.2009 passed by this Hon'ble Court in case titled Sanjeev Kumar Mahajan and Others vs. State of HP and Another, in the monetary benefits were allowed to the petitioners (in OA No.2242/97) CWP(T) 4063/2008 and the petitioners who were impleaded as party in the year 2007 (in OA No.2242/97) CWP(T) 4063/2008."

2. Shorn of unnecessary details, the key facts of the case are that the petitioners are working and had worked as Auditors with respondent No.2 at different places throughout the State. The respondents as per notification dated 31.07.1995 (Annexure P/1) had granted pay scale of Rs.1800-3200/- to the Auditors promoted on or before 23.07.1990. Thereafter the pay scale of Rs.1500-2640/- was allowed to Auditors and Rs.1800-3200/- after completion of 5 years' of service. Some of the Auditors feeling aggrieved by the said action had preferred the original application before the



erstwhile HP Administrative Tribunal, which was transferred to this Court and was registered as **CWP(T) 4063 of 2008**, titled, ***Sanjeev Kumar Mahajan and others vs. State of Himachal Pradesh and another***. This Court had disposed of the said petition on 08.09.2009, directing the respondents to grant the petitioners therein, the pay scale of Rs.1800-3200/- with effect from the date their colleagues were granted the same, on the principle of “equal pay for equal work”. The respondents in sequel to the said directions, had granted the pay scale of Rs.1800-3200/- (revised w.e.f. 01.01.1986) vide order dated 20.05.2010 (Annexure P/4).

3. Thereafter respondents had issued an order on 30.09.2010 (Annexure P/5), after noticing the fact that on account of implementation of the judgment dated 08.09.2009, passed by this Court in aforementioned petition, an anomalous situation had arisen, since the pay scale of the junior employees, who were petitioners in the said writ



petition, had become higher than those of their seniors, who were not parties in the said writ petition and thus to maintain parity in the pay scales as well as to remove the pay anomaly, it was decided to grant the pay scale of Rs.1800-3200/- to the non-petitioners/Auditors. However, as per the law laid down by the Hon'ble Supreme Court of India in the matter of ***Jai Dev Gupta vs. State of H.P. and Another (AIR 1998 SC 2819)***, the aforesaid pay scale shall be allowed only on notional basis from the due date to the non-petitioners/Auditors. They shall be given notional benefit of annual increments thereafter. The actual monetary benefits will be payable from the date three years' prior to the issuance of the said order.

4. The petitioners after grant of benefits in pursuance of the directions in the aforementioned petition had made representations to the respondents on 20.05.2010 (Annexure P-6), 02.07.2010 (Annexure P-7) and 11.08.2010 (Annexure P-8) respectively, for the grant of monetary



benefits as granted to their counterparts, who were juniors to them.

5. After issuance of the aforesaid order dated 30.09.2010, the petitioners have approached this Court contending that the respondents have wrongly interpreted the judgment dated 08.09.2009, passed by this Court, and further the respondents have created classification within a classification, which is not permissible under law.

6. It has been averred in the petition that though the petitioners had made numerous representations for the last 15 years', but the respondents were not granting them the pay scale and consequential benefits and the respondents have still not granted them pay scale and consequential benefits as emanating from the judgment dated 08.09.2009 and thus prayed for the grant of similar benefits to them.

7. The respondents filed reply to the writ petition and supported the decision taken by them. It has been



averred that as per the principle laid down by the Hon'ble Supreme Court in the matter of *Jai Dev Gupta (supra)*, the respondents have decided to restrict the arrears of back wages for a period of three years' from the date of issuance of order dated 30.09.2010. It was further averred that since the petitioners had not earlier approached this Court, they cannot claim the higher pay scale and the State Government after taking a lenient view allowed the higher pay scale to all the Auditors on notional basis and on actual basis three years' prior to the date of issuance of the order dated 30.09.2010. The order passed by this Court in CWP(T) No.4063 of 2008 is not applicable to the petitioners. The petitioners cannot claim for the actual monetary benefits from the due date and thus prayed for dismissal of the petition.

8. The petitioners have not filed any rejoinder to the reply filed by the respondents.

9. I have heard the learned counsel for the parties



and also perused the record carefully.

10. Mr. Shashi Shirshoo, learned counsel for the petitioners has vehemently argued that the judgment passed by the Hon'ble Supreme Court in ***Jai Dev Gupta (supra)*** is not a judgment in rem, as per the judgment passed by this Court in **CWPOA No.5637 of 2019**, titled ***Balak Ram vs. Secretary (Forests) to the Government of Himachal Pradesh and others***, and thus the respondents are wrong while curtailing the benefits of the petitioners.

11. Learned counsel has also brought to the notice of the Court the judgment of the Hon'ble Supreme Court in ***K.T. Veerappa and others vs. State of Karnataka and others***, **(2006) 9 SCC 406**, wherein, it has been held that once the benefit has been given to some of the employees, the same benefits should be extended to all the employees. Learned counsel also relied upon the judgment passed by the Hon'ble Division Bench of this Hon'ble Court in **CWP No.810 of 2017**,



titled, ***State of H.P. and others Vs. Suri Dass Negi and others***, decided on 22.03.2022.

12. No doubt, the judgment passed by the Supreme Court in ***Jai Dev Gupta's case (supra)*** and other judgments cited are not in rem, but since the petitioners had not approached the Court after making the representations, no fault can be attributed to the order, whereby the arrears have been restricted to three years'. This Court in ***Balak Ram's case (supra)*** had held that the judgment in ***Jai Dev Gupta (supra)*** is not in rem, but in the present case, since the petitioners were not vigilant about their rights and did not rake up the issue before the competent Court of law, they cannot seek parity as per the judgment passed by this Court in ***Sanjeev Kumar Mahajan's case (supra)***, since the petitioners therein had come to the Court well within time.

13. In the judgment passed by the Hon'ble Division Bench of this Court in ***Suri Dass Negi's case (supra)***, the Court



was considering the relief granted by the Tribunal regarding arrears and the State was agitating the matter for the reason that the benefits could have been curtailed for three years'. This Court after considering the fact that the respondents' case was ordered to be considered on the analogy of Balbir Singh's case, who were granted the entire arrears, had come to the conclusion that action of the State would therefore tantamount to hostile discrimination and thus affirmed the order of the Tribunal. However, in the present case, the petitioners had come to the Court after passing the order on 30.09.2010, when the respondents have paid the same pay scale to them, but restricted the arrears and thus, the aforementioned judgment is not attracted in the case of the petitioners.

14. The issue regarding grant of the similar benefit as granted to other employees on the analogy was considered by the Hon'ble Supreme Court in ***Union of India and others***



vs. Tarsem Singh, (2008) 8 SCC 648, and held that 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), however, one of the exceptions to the said rule is cases relating to a continuous wrong. It was held that 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. But if the claim is with respect arrears, the principles relating to recurring/successive wrongs would apply and in such cases, 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. The relevant para reads as under:-

“7. 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 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.***

15. The aforesaid view taken by the Hon'ble Supreme Court was again considered in ***Rushibhai Jagdishbhai Pathak vs. Bhavnagar Municipal Corporation, (2022) 18 SCC 144***, wherein it was held that only the date of filing the writ petition is relevant while examining the question of delay and laches or limitation. The Hon'ble Supreme Court had rejected the prayer made by the appellants that they should be given arrears right from the year 2010 and further to refund the entire amount which had been collected by the respondent-



Corporation in terms of order dated 28.10.2010. The relevant paras of the judgment read as under:-

"14. In Tarsem Singh, the delay of 16 years in approaching the courts affected the consequential claim for arrears and thus, this Court set aside the direction to pay arrears for 16 years with interest. The Court 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". Further the grant of interest on arrears was also denied

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16. In the facts of the present case, it is accepted that the respondent Corporation had accepted the interpretation rendered by the High Court of Gujarat to the Scheme whereby the appellants, on financial upgradation, would be entitled to the higher grade pay scale of the next promotional post, which is Rs.5000-8000 in the present case. As noted above, the impugned judgment of the Division Bench accepts the said position and grants the appellants the said pay scale but restrict the benefit from the date of the judgment of the Single Judge in the writ petitions filed by the appellants, that is, with effect from 31-7-2018. The Division Bench should not have taken the date of the decision/judgment of the Single Judge for grant of the said benefit in view of the decision and ratio in Tarsem Singh which has been followed in several other decisions. That apart, the date of the decision of the Single Judge is a fortuitous circumstance. Only the date of filing of the writ petition is relevant while examining the question of delay and laches or limitation. The appellants would, in consonance with the case law referred to above, be entitled to the arrears for three years before the date of filing of the writ petitions



17. XXXXX

18. *In view of the aforesaid discussion, the prayer of the appellants that they should be given arrears right from 2010 has to be rejected. We also reject the prayer of the appellants that they should be refunded the entire amount which had been collected by the respondent Corporation in terms of the order dated 28-10-2010.*

19. *Recording the aforesaid, we partly allow the present appeals with a direction that the appellants would be entitled to arrears in the pre-revised pay scale of Rs.5000-8000 for three years prior to the date of filing of the writ petitions along with interest @ 7% p.a. with effect from 1-9-2017. The arrears, with interest, would be paid within a period of four months from the date of pronouncement of this judgment. A computation sheet/statement of accounts on the basis of which payment is made by the respondent Corporation shall be furnished to the appellants. The impugned judgment is, accordingly, partly set aside and the writ petitions filed by the appellants would be treated as allowed in the aforesaid terms. There would be no order as to costs."*

16. In the present case, the respondents themselves have granted similar benefit of pay scale to the petitioners before approaching the Court. However, the arrears on account of the pay scale have been restricted to three years' prior to the issuance of the office order dated 30.09.2010 and once the Hon'ble Supreme Court has also laid down the principles that the High Courts can restrict the arrears for



three years', no infirmity can be found with the order dated 30.09.2010, passed by the respondents while restricting the arrears for three years'.

17. It is settled law that mere making a representation will not extend the period of limitation and in the present case, the claim of the petitioners has been redressed by the respondents, while issuing an order dated 30.09.2010, whereby they had been granted the same pay scale on the analogy of ***Sanjeev Mahajan's case (supra)***, but the arrears have been restricted to three years'.

18. The respondents-State while issuing an office order dated 30.09.2010, has neither acted illegally nor arbitrary, but with a view to grant the similar pay scale of Rs.1800-3200 to its employees, who had worked on the post of Auditors and thus, the writ petition is bereft of any substance. The claim raised by the petitioner to grant them the actual monetary benefits from the date when the



petitioners in ***Sanjeev Kumar Mahajan's case (supra)*** were granted, is not tenable and the same cannot be countenanced once they had not approached the Court before passing an office order dated 30.09.2010.

19. Consequently, the present petition being devoid of merit is dismissed. However, there shall be no orders as to cost. Pending application(s), if any, shall also stand disposed of.

8th April, 2026

(ankit)

**(Jiya Lal Bhardwaj)
Judge**