

IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

Review Petition No.-

/2024

1. THE STATE OF MADHYA PRADESH, SECRETARY, PUBLIC HEALTH ENGINEERING DEPARTMENT, VALLABH BHAVAN, BHOPAL (MADHYA PRADESH)
2. THE ENGINEER IN CHIEF, PUBLIC HEALTH ENGINEERING DEPARTMENT, JAL BHAWAN, BANGANGA, BHOPAL (MADHYA PRADESH)
3. CHIEF ENGINEER, PUBLIC HEALTH ENGINEERING DEPARTMENT, INDORE ZONE, INDORE (MADHYA PRADESH)
4. EXECUTIVE ENGINEER, PUBLIC HEALTH ENGINEERING DEPARTMENT, DIVISION, INDORE (MADHYA PRADESH)

.....PETITIONERS

Vs.

LAXMIKANT SHRIVASTAV,
AGED ABOUT 59 YEARS,
OCCUPATION: SERVICE, R/O.
E75, LAVEKUSH VIHAR,

SUKHLIYA, INDORE
(MADHYA PRADESH)

....RESPONDENT

Review Petition for reviewing the order dated 22/05/2024
passed in W.P.No.11926/2024 by Hon'ble Single Bench
of this Hon'ble Court comprising of Hon'ble Justice Shri
Pranay Verma Ji

MAY IT PLEASE THIS HON'BLE COURT,

Most humbly and respectfully petitioner submits this petition
as under: -

1. That the respondent is Daily wage employee. He was classified permanent on the post of Muster Clerk by the order dated 19/05/2003 issued by the Executive Engineer P.H.E. Division, Dhar.
2. That, the respondent filed a Writ Petition No 11926/2024, on date 01/05/2024, which is first time after 21 years of his permanent classification order dated 19/05/2003, before this Hon'ble Court, for seeking relief as under: -

(I) That, Petition may kindly be allowed by issuing appropriate writ order or direction by directing respondents to grant arrears of benefit of minimum of

regular pay scale from the date of classification as permanent employee, i.e., 19/5/2003 to present date to the petitioner.

(II) That, any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case may be awarded along with the cost of the petition.

3. That, the aforesaid Writ Petition No. 11926/2024 came on hearing for admission purpose on 22/05/2024 and this Hon'ble court after finding the similarity in the facts of this case with the facts of the case in **Khemraj Khandekar & Ors. (supra)**, was pleased to allow this petition in following terms: -

(III). Accordingly the petition is allowed and the case of the petitioner is directed to be examined by the respondents and necessary order in his favour as prayed by him in this petition be passed and consequential benefits be given to the petitioner within a period of 90

days from the date of receipt of the certified copy of this order

(IV). Petition is accordingly allowed and disposed off.

Copy of the order dated 22/05/2024 passed in WP No 11926/2024 annexed as **Annexure RP-1.**

4. That, the humble petitioners are totally convinced & agree with the part of the decision dated 22/05/2024, which deals with the status and benefit entitlement of respondent. The only grievance of the petitioners is that despite many orders of Hon. Apex Court & Division as well as coordinate benches of this Court, about limiting the duration of payable arrear amount in case of delay caused in filing the first writ petition from the date of cause of action, the respondent has been granted the arrears of minimum of regular pay-scale from the date of classification i.e. 19/5/2003 to till date, even after the delay of 21 years from the date of arise of cause of action i.e. 19/5/2003, in filing this petition.

5. That, it is pertinent to mention here that Hon'ble High Court of M.P. at Jabalpur in a case of a permanently classified Daily wage employee,

pertaining to grant of arrears of minimum of regular pay scale from the date of classification to present date, passed the order dated 11/4/2022 in WP No. 8014/2022 (Suresh Tiwari & others Vs State of MP & others) stating that: -

“The law laid down by the Supreme Court in the case of M.R. Gupta Versus Union of India and Others (1995) 5 SCC 628 provides that the law of limitation will be applicable and the petitioners will not be entitled to claim arrears of salary for which the cause of action arises on every 1st day of the month when their salary becomes due for a period exceeding three years prior to the date of filing of the writ petition

Accordingly, this writ petition can be disposed of modifying the order dated 10.11.2020 passed by the Gwalior Bench of the High Court of Madhya Pradesh in Writ Petition No.16421/2020 (Rakesh Kumar Shrivastava & Others versus State of Madhya Pradesh & Others) to the extent that in case the petitioners' classification is intact then they will be entitled to the minimum of pay scale

admissible to the post on which they are working in the light of the law laid down by the Supreme Court in the case of Ram Naresh Rawat versus Ashwini Ray 2017 (Volume 3) SCC 436 but their arrears will be restricted for a period of three years prior to the date of filing of the present writ petition i.e. three years prior to 1.4.2022 in the light of the law laid down by the Supreme Court in the case of M.R. Gupta Versus Union of India and Others (supra).”

A copy of order dated 11/4/2022 in WP No.8014/2022 (Suresh Tiwari & others Vs State of M.P. & others) is being annexed herewith and marked as **ANNEXURE RP/2**.

6. That, it is further submitted that this Hon'ble Court M.P. at Jabalpur in the similar matter of grant of arrear amount from the date of classification to daily wage employees, in WP No.13892/2022 (Hirdaram Yadav and 10 others Vs State of M.P. and others) Decided on 24.06.2022, WP No.4802/2023 (Srinivas Mishra Vs State of M.P. and others) Decided on 01.03.2023, RP No.343/2024 (State of M.P.

and others Vs Ganga Prasad Dubey) Decided on 15.04.2024 and WP No.10365/2013 (Rameshwar Prasad Pyasi Vs State of M.P. and others) Decided on 21.02.2023, also dealt with the similar point and restricted the arrears for a period of three years prior to the date of filing of the first writ petition. Copies of orders dated 24.06.2022, 01.03.2023, 15.04.2024 & 21.02.2023 are being annexed herewith and marked as **ANNEXURE RP/3, RP/4, RP/5 & RP/6.**

7. That, it is further submitted that this Hon'ble Court M.P. at Jabalpur in a case pertaining to kramonnatti / time scale in WP No.20847/2018 (Harilal sen Vs State of M.P. and others) Decided on 10.08.2021 & in a case pertaining to annual increment in WP No.17459/2023 (Chandra Shekhar Chourey Vs State of M.P. and others) Decided on 24.07.2023 has declined arrear because of delay in filing in writ petition. Copies of orders dated 10.08.2021 & 24.07.2023 are being annexed herewith and marked as **ANNEXURE RP/7 & RP/8.**

8. That, in addition to the aforesaid the Division Bench of this Hon'ble Court vide order dated 16.09.2021 passed in **Writ Appeal**

No. 808/2021 (Narayan Prasad Pandey Vs State of M.P. and others)
has upheld the order passed by Hon'ble Single Judge and has held as
under: -

Even that argument of the learned
counsel for the appellant is hardly
convincing because the appeal itself
was dismissed by the Division Bench
on 09.12.2013 and an SLP there
against was dismissed on 09.01.2015
by the Supreme Court. The writ
petition has been filed highly belatedly
on 24.06.2021. **In our view,**
therefore, the direction of the
learned Single Bench to confine the
payment of arrears of his pay scale
for the period of three years prior

**to the date of filing writ petition,
cannot be faulted.**

However, it is clarified that the appellant shall be entitled to notional benefits of fixation of pay and grant of pay scale and also the revision of the retrial benefits/pension for the intervening period while computing the arrears of three years and also the revised pension which is to be now paid to him while making compliance of the order of the learned Single Judge which shall be made within the period of two months from the date a copy of this order is produced before the respondents.

With the aforesaid direction, the writ appeal is disposed of.

Copy of order dated 16.09.2021 is being annexed herewith and marked as ANNEXURE RP/9.

9. That, the law recognizes a ‘**continuing**’ cause of action” which may give rise to a “**recurring**’ cause of action” as in the case of salary or pension. Hon. Supreme Court in **M.R. Gupta v. Union of India and Others, (1995) 5 SCC 628** has held that so long as the employee is in service, a fresh cause of action would arise every month when they are paid their salary on the basis of a wrong computation made contrary to the rules. If the employee’s claim is found to be correct on merits, they would be entitled to be paid according to the properly fixed pay-scale in future and the question of limitation would arise for recovery of the arrears for the past period. A copy of order passed by Apex Court in **M.R. Gupta v. Union of India and Others, (1995) 5 SCC 628** is being annexed herewith and marked as ANNEXURE RP/10.

10. That the Hon. Supreme Court relying upon the aforesaid ratio, in the case of **Union of India and Others v. Tarsem Singh (2008) 8 SCC 648**, while referring to the decision in **Shiv Dass v. Union of India and Others (2007) 9 SCC 274**, quoted the following passages from the latter decision:

(V). 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."**

And after giving the principles relating to **recurring/successive wrongs**, finally held that:-

(VI). 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.

A copy of order passed by Apex Court in **Union of India and Others v. Tarsem Singh (2008) 8 SCC 648** is being annexed herewith and marked as **ANNEXURE RP/11**.

11. That as decided by Hon. Supreme Court in **Tarsem Singh (supra)**, the delay of 16 years in approaching the courts affected the consequential claim for arrears and thus, the Apex 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. The aforesaid ratio in **Tarsem Singh (supra)** has been followed by the Apex Court in **State of Madhya Pradesh and Others v. Yogendra Shrivastava (2010) 12 SCC 538** and **Asger Ibrahim Amin v. Life**

Insurance Corporation of India (2016) 13 SCC 797. Copies of the order passed by Apex Court in **State of Madhya Pradesh and Others v. Yogendra Shrivastava (2010) 12 SCC 538** and **Asger Ibrahim Amin v. Life Insurance Corporation of India (2016) 13 SCC 797** are being annexed herewith and marked as **ANNEXURE RP/12 & RP/13.**

12. That in the aforesaid Writ Petition No.11926/2024 also, the respondent approached to writ court after 21 years, for obtaining the benefits of order dated **19/05/2003.**

13. That, the order dated 22/05/2024 in WP No. 11926/2024 be modified up to the extent that arrears will be restricted to a period of three years prior to the date of filing of the present writ petition i.e. three years prior to 01/05/2024 in the light of the law laid down by the Supreme Court in the case of **M.R. Gupta Versus Union of India and Others (supra) & Tarsem Singh (supra).**

14. That, it is pertinent to state here that due to delay caused in approaching the court, the respondent has no right to get benefits of salary arrear from the date of classification i.e. from the date **19/05/2003**

to till date, as claimed by him, but only 03 years prior to filing the Writ Petition No. 11926/2024 . It is ensured that his salary will be updated notionally to the present stage as revised from time to time and he will be paid properly fixed pay-scale in future.

15. **GROUND:**

A. Because, Hon'ble High Court of MP at Jabalpur passed the order dated 11/4/2022 in WP No. 8014/2022 Suresh Tiwari & ors Vs State of MP & ors stating that "The law laid down by the Supreme Court in the case of M.R. Gupta Versus Union of India and Others (1995) 5 SCC 628 provides that the law of limitation will be applicable and the petitioners will not be entitled to claim arrears of salary for which the cause of action arises on every 1st day of the month when their salary becomes due for a period exceeding three years prior to the date of filing of the writ petition. Accordingly, this writ petition can be disposed of modifying the order dated 10.11.2020 passed by the Gwalior Bench of the High Court of Madhya Pradesh in Writ Petition No.16421/2020 (Rakesh Kumar Shrivastava & Others versus State of Madhya Pradesh & Others) to the extent that in case the petitioners' classification is intact then they will be entitled to the minimum of pay scale admissible to the

post on which they are working in the light of the law laid down by the Supreme Court in the case of Ram Naresh Rawat versus Ashwini Ray 2017 (Volume 3) SCC 436 but their arrears will be restricted for a period of three years prior to the date of filing of the present writ petition i.e. three years prior to 5.9.2022 in the light of the law laid down by the Supreme Court in the case of M.R. Gupta Versus Union of India and Others (supra)." It is further submitted that WP No.13892/2022 (Hirdaram Yadav &10 others Vs State of M.P.& others), WP No.4802/2023 (Srinivas Mishra Vs State of M.P.& others) , RP No.343/2024 (State of M.P.& others Vs Ganga Prasad Dubey), this Hon'ble Court also dealt with the similar point & restricted the arrear three years prior to date of filing of writ petition.

- B. Because, respondent has caused extreme delay in approaching to the court, therefore he has no right to get benefit as claimed by him and the order dated 11/4/2022 passed by Hon'ble High Court of MP at Jabalpur in WP No.8014/2022 (Suresh Tiwari & others Vs State of MP & others) may be followed in present case.
- C. Because, the order dated 22/05/2024 in WP No. 11926/2024 be modified up to the extent that Respondent's arrears will be restricted for a period of three years prior to the date of filing of the present writ petition i.e. three years prior to 01/05/2024 in the light

of the law laid down by the Supreme Court in the case of M.R. Gupta Versus Union of India and Others (supra) & Tarsem Singh (supra).

D. Because, respondent filed writ petition in the year 2024 to take advantage of order dated 19/05/2003 and such writ petition have been filed after enormous and elongated delay, respondent has to bear the loss of arrear and respondent may be eligible to get benefit from three years prior to the date of filling the writ petition on the basis of above mentioned orders passed by this Hon'ble Court,

E. That, other grounds shall be urged at the time of hearing.

PRAYER

16. In view of the aforesaid facts and circumstances it is humbly prayed that this Hon'ble Court may kindly be pleased to allow this review petition and be further pleased to review the order dated 22/05/2024 passed by this Hon'ble Court in W.P. No. 11926/2024, up to the extent that Respondent's arrears will be restricted for a period of three years prior to the date of filing of the present writ

petition i.e. three years prior to 01/05/2024, while his salary will be updated to present stage on notional basis as revised from time to time and he will be paid corrected salary in future, in the light of the law laid down by the Supreme Court in the case of **M.R. Gupta Versus Union of India and Others (supra) & Tarsem Singh (supra)**, in the interest of justice.

Place: Indore

Date:

Humble Petitioner

State of M.P.

Through OIC
Executive Engineer,
PHE, Division Indore

Through Counsel