



HPGCL
AN ISO: 9001, ISO:
14001 & OHSAS : 18001
CERTIFIED COMPANY

HARYANA POWER GENERATION CORPORATION LIMITED

Regd. Office: C-7, Urja Bhawan, Sector-6, Panchkula
Corporate Identity Number: U45207HR1997SGC033517

Website: www.hpgcl.gov.in

Telephone No. 0172-5023407

Fax No. 0172-5022432



From

Chief Engineer/Admn.,
HPGCL, Panchkula.

To

1. All Chief Engineers in HPGCL.
2. All Financial Advisors & CAO in HPGCL.
3. SE/FTPS, HPGCL, Faridabad.

Memo No. /Ch. 10/HPGC/ENG/HPU/C-2024/166

Dated: 15/04.2024.

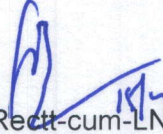
Subject: - 1. CWP No.163 of 2001 titled as Jagbir Singh Vs P.O Labour Court, Faridabad & Ors.
2.CWP No. 6212 of 2023 as M/s Micro Turner Vs State of Haryana & Ors.
3.CWP No. 12662 of 2020 titled as Om Parkash Vs MD, HVPNL & Anr.

Kindly refer to the subject noted above.

In this context, enclosed please find herewith a copy of Memo No. 149/LB-2(237) dated 02.04.2024 and Memo No. 158/LB-3(1090) dated 27.03.2024 and Memo No. Ch-59/LB-2(30) dated 08.04.2024 alongwith copies of judgments dated 22.08.2023, 24.03.2023 and 19.07.2023 respectively, passed by Hon'ble High Court, Chandigarh in the subject cited cases, received from the office of LR/HPU, Panchkula for praying dismissal of similar court cases by placing reliance on the ibid judgments.

This issues with the approval of Chief Engineer/Admn., HPGCL.

DA/As above


Xen/Rectt-cum-LNO,
For Chief Engineer/Admn.,
HPGCL, Panchkula


Endst. No. Ch-10/HPGC/ENG/HPU/C-2024/166

Dated: 15/04.2024

A copy of the same is forwarded to the following for information and further necessary action:-

1. Xen/IT, HPGCL, Panchkula with a request to upload the judgments dated 22.08.2023, 24.03.2023 and 19.07.2023 alongwith office memos dated 02.04.2024, 27.03.2024 and 08.04.2024 (**copies enclosed**) on the official website of HPGCL, please.

DA/As above.


Xen/Rectt-cum-LNO,
For Chief Engineer/Admn.,
HPGCL, Panchkula

CC:

Ps to CE/Admin., HPGCL, Panchkula.



HARYANA VIDYUT PRASARAN NIGAM LIMITED

Regd. Office : Shakti Bhawan, Plot No. C-4, Sector-6, Panchkula 134109

Corporate Identity Number : U40101HR1997SGC033683

Website : www.hvpn.org.in E-mail: companysecy@hvpn.org.in

Correspondence E-mail - lr@hvpn.org.in, hvpnlegalofficer2@gmail.com

Telephone No. - 0172-2560769, 0172-2571841

To

1. The CE/Admn. & IT, HVPNL, Panchkula
2. The CE/PD&C, HVPNL, Panchkula
3. The CE SO & Comml., HVPNL, Panchkula
4. The CE/Financial Officer, HVPNL, Panchkula
5. The CAO, HVPNL, Panchkula
6. CE/P&M, HVPNL, Panchkula
7. CE/IT, HVPNL, Panchkula
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21. The CE/RGTPP, HPGCL, Khedar
22. The CE/PTPS, I & II, HPGCL, Panipat
23. The CE/DCRTPP, HPGCL, Yamunanagar
24. The CE/FTPS, HPGCL, Faridabad
25. The CE/Projects, HPGCL, Panchkula
26. The CE/REO, HPGCL, Panchkula

Diary No. 521.....Xen/Rectt.

Dated.....05/04/24.....

Memo No. 2216.....
Dated.....04/04/24.....
DS/Estt.
US/NGE
DS/General
DS/T&M
EN/HR&TRG
it

dp
3/4/24

Memo No. 149 /LB-2(237)

Dated: 02.04.2024

Subject: CWP No. 163 of 2001 titled as Jagbir Singh Vs P.O Labour Court, Faridabad & others.

Attention is drawn to judgment dated 22.08.2023 passed in subject cited case vide which the Hon'ble High Court dismissed the writ petition on the ground that there is no illegality with the award dated 19.09.2000 which call for interference of this court. Contention of the respondent Nigam was that there was no relationship of employee and employer between the parties as the petitioners were never appointed by it. It was stated that some work was got done through some contractors. Claim of petitioners was denied and prayer for dismissal of claim was made. Findings of Tribunal are as follows:-

"13. Authorized representative for the claimant has contended that the claimants were the employees of the respondent at the relevant time. Their services were terminated by the respondent wrongly and illegally in different dates as mentioned in the claimants statements. He has referred to me statements of WW-1 to WW-18 and WW-21 to WW-38. I have already discussed that WW-1 to WW-18 and WW-21 to WW-38 are the claimants themselves. Their statements are not corroborated by any independent evidence oral or documentary evidence. Authorized representative for the claimants have also referred to me photographs Ex.W-A to Ex.W-F and Ex.W-1 to Ex.W-27. It may be noted that these photographs can not prove the facts that the claimants were employees of the respondent. Such photographs can be procured easily. Photographs can be taken easily while standing near the Electric Pole of the Board. From those photographs, it cannot be established that the claimants are the employees of the respondent Board. Authorized representative for the claimants has stressed on statement of WW-19 and WW-20 who are the employees of the respondent. I have already discussed that in cross-examination they categorically stated that they did not know whether the claimants were the employees of the Board or the contractor. Hence their statements are also of no help to the case of the claimants. Statements of WW-1 to WW-38 cannot be believed in the absence of documentary evidence as referred to above, which were not summoned by the claimants during the trial of the case. Authorised representative for the claimants has further contended that the respondent has not led any evidence to prove the case. Hence inference can be drawn against the respondent. I have already discussed that in the present case, the burden was on the claimants to prove that there was no relationship of employer and employee between the parties and the claimants at the relevant time had completed 240 days in a calendar year. Authorised representative for the respondent has contended that the claimants are not the workmen as defined under Section 2(s) of the Act. The provisions of Section 2(s) of the Act are re-produced below :-

"Workman" means any persons (including an employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied, and for the purpose of any proceedings under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.

It is evident from the provisions of Section 2(s) of the Act that if it was proved that the claimants were employees of the respondent in that case, it could be held that they were workmen. However, in the present case, the claimants have

failed to prove that they were employees of the respondent as discussed above. Hence it can not be held that the claimants were workmen as defined under Section 2(s) of the Act. 13.

Taking an overall view of the facts and circumstances which emerged from the oral and documentary evidence place on record, issue No. 1 to 4 are decided in favour of the respondent and against the claimants."

It is an important judgement on the point that there is no relation of employer and employee between an outsource worker/employee and Nigam. The above judgement be circulated to offices under your control for praying dismissal of similar cases by placing reliance on the judgment dated 22.08.2023 passed by Hon'ble High Court. It is also requested to direct the concerned Deputy Secretary, Technical to host the Judgment dated 22.08.2023 on the website of concerned Power Utility. A complete copy of judgment dated 22.08.2023 is enclosed herewith for ready reference.

This issue with the approval of L.R.

DA/As Above

Emade

Mam

Law Officer,
HPU, Panchkula.



HARYANA VIDYUT PRASARAN NIGAM LIMITED

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- 2) The CE/PD&C, HVPNL, Panchkula
- 3) The CE SO & Comml., HVPNL, Panchkula
- 4) The CE/Financial Officer, HVPNL, Panchkula
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- 6) CE/P&M, HVPNL, Panchkula
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- 16) The CE/Comml., UHBVN, Panchkula
- 17) The CE/Op., UHBVN, Panchkula
- 18) The CE/Op. UHBVN, Rohtak
- 19) The CE/Admn., UHBVN, Panchkula
- 20) The CE/Admn., HPGCL, Panchkula
- 21) The CE/RGTPP, HPGCL, Khedar
- 22) The CE/PTPS, I & II, HPGCL, Panipat
- 23) The CE/DCRTPP, HPGCL, Yamunanagar
- 24) The CE/FTPS, HPGCL, Faridabad
- 25) The CE/Projects, HPGCL, Panchkula
- 26) The CE/REO, HPGCL, Panchkula

Memo No. 158 /LB-3(1090)

Subject:

CWP No. 6212 of 2023 titled as M/s Micro Turner Vs State of Haryana & others.

Diary No... 622 Xen/Rectt.
Dated... 05/04/24.....

Memo No... 2217
Dated... 04/04/24...
DS/Estt.
US/NGE
DS/General
DS/T&M
XEN/HR&TRG
XEN/Rectt.

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VBC

Dated: 27.03.2024

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CE/Admn.
3/4/24
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Attention is drawn to judgment dated 24.03.2024 passed in subject cited case vide which the Hon'ble High Court dismissed the writ petition on account of delay and latches.

The operative part of judgment dated 24.03.2024 is given here under:-

"Learned counsel appearing on behalf of the petitioner fairly concedes that the order passed by the HERC is appealable under Section 111 of the Electricity Act, 2003 before the Appellate Tribunal for Electricity. He further concedes that this Court has already held in the matter of "M/s A.K. Automobiles Private Limited versus State of Haryana and others" bearing CWP-9063-2020 that where statutory remedy is prescribed, a litigant must ordinarily approach the Court just through the procedure prescribed in the Statute and exhaust his remedies available/prescribed thereunder. Merely because existence of alternative remedy is not a bar to the institution of the writ petition does not ipso facto mean that the alternative remedy is to be by-passed on each and every occasion.

In view of the aforesaid counsel for the petitioner does not press the instant petition at this stage so as to take recourse to the alternative remedies provided to him as per law.

Disposed of as not pressed with liberty as aforesaid.

A copy of this order be given to learned counsel for the petitioner under the signatures of Bench Secretary of this Court."

It is an important judgement on that in case where statutory remedy is prescribed, it is not necessary and ipso facts means that alternative remedy is to be by passed meaning thereby that alternative remedy must be exhausted before taking recourse to statutory remedy. The above judgement be circulated to offices under your control for praying dismissal of similar cases by placing reliance on the judgment dated 24.03.2023 passed by Hon'ble High Court. It is also requested to direct the concerned Deputy Secretary, Technical to host the Judgment dated 24.03.2023 on the website of concerned Power Utility. A complete copy of judgment dated 24.03.2023 is enclosed herewith for ready reference.

This issue with the approval of L.R.

DA/As Above

mailed

Mguy
Law Officer,
HPU, Par.chkula.

Fwd: CWP No. 12662 of 2020 titled as Om Parkash Vs. MD, HVPNL & Anr.

From : C D Chawala <ceadmin@hpgcl.org.in>
Subject : Fwd: CWP No. 12662 of 2020 titled as Om Parkash Vs. MD, HVPNL & Anr.
To : Sumit Banger <xen.rect@hpgcl.org.in>

Tue, Apr 09, 2024 01:14 PM

1 attachment

Forwarded for information and further necessary action please.

Chief Engineer/Admn.,
 Haryana Power Generation Corporation Ltd.
 C-7, Urja Bhawan, Sec-6, Panchkula.
 Tel: +91 (0172)-5023407, Fax No. 0172-5022432

Sumit Banger
10/4/24

From: legalnodalofficeruhbvnpl@gmail.com

To: "Chief Engineer SO Commercial" <cesocomml@hvpn.org.in>, "Chief Financial Officer CFO" <cfo@hvpn.org.in>, "Chief Accounts Officer CAO" <cao@hvpn.org.in>, "Chief Engineer Purchase and Monitoring" <cepm@hvpn.org.in>, cemm@dhbvn.org.in, cepdc@dhbvn.org.in, cecommercial@dhbvn.org.in, ceophsr@dhbvn.org.in, ceopdelhi@dhbvn.org.in, ceadmin@dhbvn.org.in, courtcelltps@gmail.com, cemm@uhbvn.org.in, cepdc@uhbvn.org.in, cecommercial@uhbvn.org.in, ceoppanchkula@uhbvn.org.in, ceoprohtak@uhbvn.org.in, ceadmin@uhbvn.org.in, "C D Chawala" <ceadmin@hpgcl.org.in>, "Amod Jindal" <cergtpp@hpgcl.org.in>, "M K Aggarwal" <ceptps@hpgcl.org.in>, "Rajeev Gupta" <cedcrtp@hpgcl.org.in>, ceftps@hpgcl.org.in, "Amit Uppal" <cereo@hpgcl.org.in>, ceoproject@hpgcl.org.in, "Chief Engineer Planning Design and Contracts" <cepdc@hvpn.org.in>, "Chief Engineer Admn" <ceadm@hvpn.org.in>

Sent: Wednesday, April 10, 2024 1:33:35 AM

Subject: CWP No. 12662 of 2020 titled as Om Parkash Vs. MD, HVPNL & Anr.

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HARYANA VIDYUT PRASARAN NIGAM LIMITED

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16. The CE/Comml., UHBVN, Panchkula.
17. The CE/Op., UHBVN, Panchkula.
18. The CE/Op. UHBVN, Rohtak.

Diary No. 66.2...Xen/Rectt.

Dated...10/04/24.....

20. The CE/REO, HPGCL, Panchkula
21. The CE/RGTPP, HPGCL, Khedar
22. The CE/PTPS, I & II, HPGCL, Panipat
23. The CE/ DCRTPP, HPGCL, Yamunanagar
24. The CE/FTPS, HPGCL, Faridabad
25. The CE/Projects, HPGCL, Panchkula
26. The CE/REO, HPGCL, Panchkula

Memo No. Ch.-59/LB-2(30)

Dated: 08.04.2024

Subject: CWP No. 12662 of 2020 titled as Om Parkash Vs. MD, HVPNL & Anr.

Attention is drawn to judgment dated 19.07.2023 passed in subject cited case vide which Hon'ble High Court dismissed the writ petition.

The relevant part of judgment dated 19.07.2023 is reproduced hereunder:-

10. The present writ petition has been filed by the petitioner after a delay of 4 years and 8 months after his superannuation for the grant of 3rd ACP, which is an increment to be encashed during the tenure of service and not after the retirement. Moreso, the petitioner allegedly was entitled for the 3rd ACP w.e.f 01.01.2012 and he retired on 31.12.2015 meaning thereby, that he, for 4 years was sleeping over his rights and the law does not permit one to sleep and rise like a phoenix. This court has relied upon the judgment of Tarseem Pal vs Punjab State Power Corporation Limited and others, 2013(3) SLR 314. In the case of Tarseem Pal (supra), the petitioner was serving as a clerk with the respondent-Corporation and had retired on 31.03.2005. Claim in the writ petition was to grant him the benefit of proficiency set up in the pay scale on completion of 23 years of service from the due date as per policy of the Corporation. During the service career, he had not agitated the claim for increments. For the first time, such claim had been made on 28.02.2005 i.e just one month prior to superannuation. While non suiting the petitioner on account of delay and laches it was held as follows:-

"11. In the aforesaid judgments, it has been clearly laid down that discretionary relief in a writ jurisdiction is available to a party who is alive of his rights and enforces the same in court within reasonable time. The judgment in another case does not give cause of action to file a writ petition at a belated stage seeking the same relief. Such petitions can be dismissed on account of delay and laches. As has already been noticed above in the present case as well, the petitioner joined service in the year 1965 and retired in the year 2005, but raised the issue regarding benefit of proficiency step up in the pay scale on completion of 23 years of service from the due date more than five years after his retirement referring to a judgment of this court and filed the petition claiming the same relief.

11. The petitioner retired from service on 31.3.2005 and the claim pertaining to the benefit of proficiency step up, which may be admissible to the petitioner during his service career, was sought to be raised more than five years after his retirement, the claim made at such a late stage deserves to be dismissed on account of delay and laches only. The petitioner could raise a grievance about the pay scales admissible to him or the last pay drawn by him within a reasonable time after his retirement. He cannot be permitted to raise the same at any time on the plea that the same is recurring cause of action.

12. Considering the enunciation of law, as referred to above, in my opinion, the petitioner herein is not entitled to the relief prayed for

and the petition deserves to be dismissed merely on account of delay and laches.

In this case, petitioner invoked the writ jurisdiction of the Hon'ble High Court for issuing the directions to grant 3rd ACP after 4 years 8 months, after his retirement. This is important judgment on the delay and laches. The claim made by the petitioner was dismissed on account of delay and laches. The petitioner could raise a grievance about the pay scale admissible to him or last pay drawn by him within a reasonable time after his retirement. The petition cannot be permitted to raise the said grievances at any time on the plea that same is recurring cause of action.

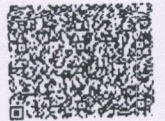
The above judgment be circulated to offices under your control for praying dismissal of similar cases by placing reliance on the judgment dated 19.07.2023 passed by Hon'ble High Court. It is also requested to host the Judgment dated 19.07.2023 on the website of concerned Power Utility. A complete copy of judgment dated 19.07.2023 is enclosed herewith for ready reference.

This issue with the approval of L.R.

DA/As Above

Deputy District Attorney,
HPU, Panchkula.

CWP_12662_2020_19_07_2023_FINAL_ORDER (4).pdf
122 KB



CWP-12662-2020

- 1-

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2023:PHHC:166559

CWP-12662-2020
DECIDED ON:19.07.2023

OM PRAKASH

.....PETITIONER

VERSUS

MANAGING DIRECTOR AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Thakan, Advocate
for the petitioner.

Mr. R.S. Longia, Advocate
for the respondents.

SANDEEP MOUDGIL (J)

1. The jurisdiction of this court has been invoked under Article 226/227 of Constitution of India for issuance of writ in the nature of Certiorari for quashing of impugned order dated 29.09.2017 (Annexure P-6) and further directing the respondents to grant 3rd A.C.P scale after the completion of twenty four years of service.

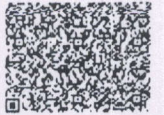
2. The petitioner was appointed on the post of Store Munshi on the basis of work charge in the respondent department where he was regularised on 01.01.1988. After the completion of 10 years of service, he was granted 1st A.C.P and on completion of 20 years of service, he was granted 2nd A.C.P w.e.f 01.01.2008. After his completion of 24 years of service, his 3rd A.C.P was due to be granted w.e.f 04.03.2014.

3. The counsel for the petitioner contends that the petitioner moved the representation for the grant of 3rd A.C.P on 31.12.2015 (on his superannuation) to the Executive Engineer T.S Division, HVPNL, Rohtak (Annexure P-2). To further contend, the counsel states that despite giving various oral and written representations, the respondent did not pay any heed to it and on 19.06.2017, the Executive Engineer TS Divisional Rohtak wrote letter to the Superintendent Engineer TS Circle Rohtak to grant the petitioner 3rd A.C.P which was further recommended by the Superintendent Engineer Rohtak to Superintendent Engineer Adm-II, HVPNL PANCHKULA on 11.07.2017 which was rejected by passing a non-speaking order dated 29.09.2017 (Annexure P-4 & P-5 & P-6 respectively).

4. The counsel for the petitioner states that the respondent cannot go beyond the A.C.P pay rules 1988 (amended in 2014) and vide letter of Executive Engineer dated 09.11.2017 petitioner being a store munshi is not required to pass account exams for the 3rd ACP. (Annexure P-7). Reliance has also been placed upon the letter of Chief Accounts Officer, HVPNL, PANCHKULA dated 15.03.2000 whereby it is clearly stated that the store munsis are not required to pass the account exam. (Annexure P-9).

5. He further submits that the petitioner has earlier filed a writ petition which was withdrawn with a liberty to file a fresh one and in the light of CWP NO. 21630 of 2010 titled as Jai Kanwar versus State Of Haryana, the counsel for the petitioner submits that his case is covered by the said judgment.

6. On the other hand, the counsel for the respondent strenuously



CWP-12662-2020

- 3-

argues that the writ is hit by delay and laches, hence prima facie it should not be maintainable. The petitioner has no sound reasons to support his inordinate delay in filing the said writ petition with a delay of 4 years and 8 months after his retirement. The counsel for the respondent contends that the claims of grant of increments, ACPs, Promotion etc has to be made during service and not after retirement.

7. In support of his arguments, the counsel for respondent submits that for the grant of 3rd ACP, the employee should be eligible for promotion to the next higher post in hierarchy and in present case the petitioner was holding the post of Store Munsif which is equal to the post of Store Assistant and the next higher post in hierarchy was the post of store keeper for which the passing of paper -V was a pre-requisite condition. HE mentions the Rules/Policy framed by HVPNL vide office order dated 15.07.2008, specifically the definition 2.(a) which clearly states that assistant store keepers and Store keepers is covered under the staff following in Ministerial Establishment and is required to pass the Departmental Accounts Examination i.e paper-V.

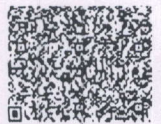
8. The counsel for the respondent vehemently argues while relying upon State of Haryana and others vs Sita Ram and others 2009 wherein the apex court has held that the work charge services cannot be considered as a qualifying regular satisfactory service for the grant of ACP scales, therefore the respondent vide order dated 02.05.2013 has withdrawn the 1st and 2nd ACP of the petitioner which was challenged by the petitioner and the same was rejected vide order dated 18.05.2015(Annexure R-1 & R-2 respectively).

Furthermore, the petitioner has misled the hon'ble court by referring to the letter dated 15.03.2000 of Chief Accounts Officer which is applicable for confirmation on the post of store munsif and not for becoming eligible for promotion.

9. Heard both the counsels.

10. The present writ petition has been filed by the petitioner after a delay of 4 years and 8 months after his superannuation for the grant of 3rd ACP, which is an increment to be encashed during the tenure of service and not after the retirement. Moreso, the petitioner allegedly was entitled for the 3rd ACP w.e.f 01.01.2012 and he retired on 31.12.2015 meaning thereby, that he, for 4 years was sleeping over his rights and the law does not permit one to sleep and rise like a phoenix. This court has relied upon the judgment of ***Tarseem Pal vs Punjab State Power Corporation Limited and others, 2013(3) SLR 314***. In the case of Tarseem Pal(supra), the petitioner was serving as a clerk with the respondent-Corporation and had retired on 31.03.2005. Claim in the writ petition was to grant him the benefit of proficiency set up in the pay scale on completion of 23 years of service from the due date as per policy of the Corporation. During the service career, he had not agitated the claim for increments. For the first time, such claim had been made on 28.02.2005 i.e just one month prior to superannuation. While non suiting the petitioner on account of delay and laches it was held as follows:-

"11. In the aforesaid judgments, it has been clearly laid down that discretionary relief in a writ jurisdiction is available to a party who is alive of his rights and enforces the same in court within reasonable time. The judgment in another case does not give Q



CWP-12662-2020

- 5-

cause of action to file a writ petition at a belated stage seeking the same relief. Such petitions can be dismissed on account of delay and laches. As has already been noticed above in the present case as well, the petitioner joined service in the year 1965 and retired in the year 2005, but raised the issue regarding benefit of proficiency step up in the pay scale on completion of 23 years of service from the due date more than five years after his retirement referring to a judgment of this court and filed the petition claiming the same relief.

11. The petitioner retired from service on 31.3.2005 and the claim pertaining to the benefit of proficiency step up, which may be admissible to the petitioner during his service career, was sought to be raised more than five years after his retirement, the claim made at such a late stage deserves to be dismissed on account of delay and laches only. The petitioner could raise a grievance about the pay scales admissible to him or the last pay drawn by him within a reasonable time after his retirement. He cannot be permitted to raise the same at any time on the plea that the same is recurring cause of action.

12. Considering the enunciation of law, as referred to above, in my opinion, the petitioner herein is not entitled to the relief prayed for and the petition deserves to be dismissed merely on account of delay and laches.

(SANDEEP MOUDGIL)
JUDGE

19.07.2023

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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>