

IN THE SUPREME COURT OF INDIA**CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO.2633 OF 2006****RAMESH KUMAR****... APPELLANT****VERSUS****STATE OF HARYANA & ORS.****... RESPONDENTS****O R D E R**

The appellant, appointed as an Assistant Director of Physical Education in Maharshi Dayanand University, Rohtak, claimed revised pay scales at Rs. 550-900 w.e.f. 14.7.1979, Rs.700-1600 w.e.f. 1.4.1980, Rs. 2200-4000 w.e.f. 1.1.1986 and Rs.3000-5000 w.e.f. 14.7.1987. His request for grant of the said revised pay scales was rejected by the University by communication dated 10.04.1991. The said rejection was challenged by the appellant in Civil Writ Petition No.4262 of 1992 in the High Court of Punjab and Haryana. The writ petition was dismissed on 05.08.1992. The appellant challenged the decision of the High Court in Special Leave Petition (C) No.16068 of 1992. This Court dismissed the SLP.

2. The appellant thereafter started a second round of litigation. He approached the Civil Court(Additional Civil Judge(Sr.Division), Rohtak) in Civil Suit No.194 of 1993 for a declaration that the University's action issuing letter dated 10.04.1991 refusing the revision of pay scales was illegal, null and void and for a

direction awarding pay scales of Rs. 550-900 w.e.f. 14.7.1979, Rs.700-1600 w.e.f. 1.4.1980, Rs. 2000-4000 w.e.f. 1.1.1986 and Rs.3000-5000 w.e.f. 14.7.1987. On contest, by a considered judgment the said suit was dismissed on 09.09.2002.

3. During the pendency of the suit a representation filed by the appellant was considered by the Executive Council of the University and a resolution was passed on 20.08.1997 acceding to the request of the appellant for grant of the said pay scales Rs. 550-900 w.e.f. 15.11.1979, Rs.700-1600 w.e.f. 1.4.1980, Rs. 2200-4000 w.e.f. 1.1.1986 and Rs.3000-5000 w.e.f. 14.7.1987. But as there was no representative of the State Government present in the said meeting and as the prior approval of the State Government had not been granted, the resolution was not given effect having regard to the Section 9F and 11A of the Maharshi Dayanand University Act, 1975. There is no dispute that the resolution was not given effect. Apparently that is why the appellant neither sought withdrawal of the suit on the ground that the resolution was passed accepting his request nor sought amendment raising any additional ground that the University had accepted his claim. He proceeded with the suit and as stated above the suit ended in dismissal on 09.09.2002. Not being satisfied, the appellant challenged the dismissal of the suit by filing an appeal before the Additional District Judge, Rohtak. The said appeal (Civil Appeal No.96 of 2002/2003) was dismissed on 05.09.2003. The appellant did not challenge the said dismissal of the appeal and the said dismissal thus attained finality.

4. Thereafter, the appellant commenced the third round of litigation. He filed another Writ Petition -W.P.No.18778 of 2003 for a direction to the University to

grant the said revised pay scales in terms of the decision of the University contained in resolution dated 20.08.1997. It may be noticed that though the prayer was for giving effect to the resolution dated 20.08.1997, the prayer in effect was for grant of revised pay scales Rs. 550-900 w.e.f. 14.7.1979, Rs.700-1600 w.e.f. 1.4.1980, Rs. 2200-4000 w.e.f. 1.1.1986 and Rs.3000-5000 w.e.f. 14.7.1987, which had been earlier rejected by Courts in two rounds of litigation. The High Court therefore dismissed the writ petition on the ground that the suit filed by the appellant for the very same relief and the appeal therefrom having been dismissed, the writ petition was not maintainable. Dealing with the contention that the writ petition was with reference to a different subsequent cause of action based on the resolution dated 20.08.1997, the High Court observed that the plaint ought to have been amended to include a relief with reference to the resolution dated 20.08.1997 and that not having been done, the claim cannot be revived with reference to the resolution dated 20.08.1997. The application for review filed by the appellant was also rejected on 26.06.1994. The appellant has challenged the order of dismissal of the writ petition and review petition in this appeal by special leave.

5. As noticed above, there have been three rounds of litigation seeking the same relief. The first is Writ Petition No.4262 of 1992 and SLP(C)No.16068 of 1992 wherein the prayer has been rejected. The second is in Civil Suit No. 194 of 1993 and in Appeal No.96 of 2002/2003 which also ended in dismissal. The present third round of litigation is for the very same relief. It is clear that the claim is liable to be rejected having regard to Section 11 CPC and Order 2 Rule 2 CPC. Even on merits, we find

that the appellant is not entitled to any relief. The resolution dated 20.08.1997 could not be given effect as the requisite prior approval of the State Government was not obtained and as a representative of the State Government was not present at the time of such resolution. Therefore, Section 9F and 11A came in the way of giving effect to the resolution. Even otherwise we find that the writ petition filed in the year 2003 to enforce the resolution passed in 1997 nearly six years later, was liable to be rejected even on the ground of delay and laches. Viewed from any angle the appeal deserves to be rejected.

6. Learned counsel for this appellant submitted that following the resolution in the case of the appellant, relief has been given to someone else. Whether relief was given to others or not, is totally irrelevant when considering the bar based on Section 11 and Order 2 Rule 2 CPC. Secondly, the relief that has been allegedly given in other cases was also subject to the State Government's approval and not unconditional. In this case the contention of the University is not that it has not passed any resolution acceding to the appellant's request, but that it could not be given effect for want of State Government's approval.

7. There is no merit in this appeal and it is dismissed accordingly.

.....J.
(R.V. RAVEENDRAN)

.....J.
(DR. MUKUNDAKAM SHARMA)

NEW DELHI,
JUNE 24, 2008.