

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP (C) No.5892 of 2007

% Reserved on: 26.05.2008
Date of decision: 30.05.2008

SHIV CHARAN ...PETITIONER

Through: Mr.R.M.Bagai, Advocate.

Versus

HIGH COURT OF DELHI & ANR ...RESPONDENTS

Through: Mr.Viraj R.Datar, Advocate for R-1.
Ms.Jyoti Singh, Advocate for R-2.

+ WP (C) No.2577 of 2007

% Reserved on: 26.05.2008
Date of decision: 30.05.2008

D.S.SIDHU ...PETITIONER

Through: Mr.R.M.Bagai, Advocate.

Versus

HIGH COURT OF DELHI & ANR ...RESPONDENTS

Through: Mr.Viraj R.Datar, Advocate for R-1.
Ms.Jyoti Singh, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers

- | | | |
|----|--|-----|
| | may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

SANJAY KISHAN KAUL, J.

1. The petitioners herein were appointed as the members of the Delhi Judicial Service in 1972-73 and were promoted to the Delhi Higher Judicial Service on an adhoc basis. The petitioners along with Sh.M.S.Rohilla were reverted to Delhi Judicial Service on 15.02.1995. Sh.Rohilla challenged the order of reversion by filing a WP(C)4589/1995 but the petitioners herein accepted the reversion. Sh. M.S.Rohilla succeeded in the writ petition which was decided by the Full Bench of this Court in M.S.Rohilla v. High Court of Delhi at New Delhi; 129 (2006) DLT 737. It was held that though the High Court had the control over the subordinate judiciary including disciplinary jurisdiction, it had no authority to pass an order against a judicial officer which had the effect of removal from service or reduction in rank as such power is vested with the Lieutenant Governor. The recommendation of the High Court for reverting the petitioner had not been sent to the Administrator of Delhi for formal approval as required under Article 233 r/w Article 235 of the Constitution of India and thus the impugned order was not sustainable apart from the fact

that no opportunity of hearing had been given to the petitioner before reduction in rank.

2. The petitioners herein filed the writ petitions seeking parity with Sh.M.S.Rohilla as they had also been reverted by the same order and thus claimed all financial benefits treating the petitioners as members of the Delhi Higher Judicial Service till the date of their retirement.
3. It may be noticed that the petitioners have, in the meantime, attained the age of superannuation.
4. Learned counsel for the petitioners pleaded that the representations made by the petitioners after the said Full Bench Judgment should have elicited a favourable response as the same principles would apply in the case of the petitioners and thus the grounds for setting aside the order would equally be applicable to the case of the petitioners. It was submitted that, in fact, the respondent no.1 should itself have passed the necessary orders without even any representations having to be made by the petitioners or at least without the petitioners being compelled to approach the Court.
5. Learned counsel for the petitioners claimed that the alleged delay and latches would not come in the way of the grant of relief to the petitioners and referred to the judgment of the Supreme Court in Ramchandra Shankar Deodhar and Ors v. The State of Maharashtra and Ors;

AIR 1974 SC 259. It was observed in the said judgment that the principle on which the Court proceeds in refusing relief to the petitioner on the ground of delay or latches is that the rights, which have accrued to others, by reason of delay in filing the petition should not be allowed to be disturbed unless there was reasonable explanation for the delay. This is so since each person ought to be entitled to sit back and consider that his appointment and promotion, effected a long time ago, would not be set aside after the lapse of a number of years. However, where no rights had accrued in favour of others by reason of the delay in filing the petition, and the promotions being provisional, no rights could have been conferred on those promoted, the same were liable to be set at naught in terms of the correct legal position as may be finally determined. It was thus submitted that in the present case there were no rights accrued to the petitioners which would be disturbed.

6. On the same issue learned counsel also referred to the judgment in Hindustan Petroleum Corporation Ltd v. Dolly Das; (1999) 4 SCC 450 where it was observed in para 8 as under:

“ So far as the contention regarding latches of the respondent in filing the writ petition is concerned, delay, by itself, may not defeat the claim for relief unless the position of the appellant had been so altered which cannot be retracted on

account of lapse of time or inaction of the other party. This aspect being dependent upon the examination of the facts of the case and such a contention not having been raised before the High Court, it would not be appropriate to allow the appellants to raise such a contention for the first time before us. Besides, we may notice that the period for which the option of renewal has been exercised has not come to an end. During the subsistence of such a period certainly the respondent could make a complaint that such exercise of option was not available to the appellants and, therefore, the jurisdiction of the High Court could be invoked even at a later stage. Further, the appellants are not put to undue hardship in any manner by reason of this delay in approaching the High Court for a relief.”

7. Learned counsel for the petitioners invited the attention of this Court to the Constitution Bench Judgment of the Supreme Court in K.C.Sharma & Ors.v.Union of India & Ors; JT 1997 (7) SC 58. In the facts of the said case, a notification seeking to effect pension having retrospective effect was held to be invalid by a Full Bench Judgment of the Central Administrative Tribunal, which decision was upheld by the Apex Court. In such a case, it was held that the Tribunal was not justified in refusing to condone the delay in filing of the application for giving relief on the same terms as given by the Full Bench.
8. Learned counsel for the petitioners lastly referred to an order passed by the Supreme Court in a Civil Appeal

arising out of SLP(C)14005/1992 titled Girdhari Lal v. Union of India & Ors; decided on 03.01.1996. The matter pertained to the retirement benefits and it was held that the Union of India should treat all persons alike to grant the same benefit instead of driving each one of them to litigation when the matter in issue stands settled.

9. Learned counsel for the respondents on the other hand referred to the judgment of the Supreme Court in the case of Ex.Captain Harish Uppal v. Union of India & Ors; 1994 (Supp (2) SCC 195. The High Court while exercising jurisdiction under Article 226 of the Constitution of India had dismissed a writ petition impugning rejection of post-confirmation petition against sentence of court martial filed on the grounds of delay and laches as the same was filed after about 11 years. The said decision was upheld by the Supreme Court and it was observed that the mere fact that the delay had not effected the rights of any third parties could not cure the defect. This was held equally applicable even if any subsequent order passed by the Government in compliance of the Supreme Court's orders that the representation, if not already decided, should be disposed of at an early date, would not have the effect of curing the said defect.

10. A reference was also made to the judgment of the Apex Court in Bhoop Singh v. Union of India and Ors; AIR 1992 SC 1414. The matter pertained to the challenge to the termination of services of the petitioner therein along with many others which was not challenged by the petitioner for a long period of time without any explanation offered for delay. It was held that the challenge could not be allowed merely because others, whose services were similarly terminated, had been re-instated and the refusal of relief was held not to be discriminatory.
11. We have noticed that in a recent judgment New Delhi Municipal Council v. Pan Singh & Ors; (2007) 9 SCC 278, the Supreme Court considered the consequences of delay and latches while seeking remedy under Article 226 of the Constitution of India. It was held that delay and latches are relevant factors for exercising of the said equitable jurisdiction and the relief claimed for by the private parties of parity in pay scale with other workmen, who had been granted relief by the Court, was held as not maintainable after a period of 17 years even though they may be similarly situated.
12. The doctrine of latches especially in respect of the service jurisprudence was once again examined in the matter of U.P.Jal Nigam and Anr. V. Jaswant Singh & Anr;

(2006) 11 SCC 464. In the same vein as in the case of NDMC v. Pan Singh & Ors' case (supra), it was observed that the employees who had not woken up to challenge their retirement and accepting the same had collected their post retirement benefits could not be granted relief in view of a subsequent decision delivered by the Supreme Court. A reference was made to the Halsbury's Laws of England and it was observed in para 12 & 13 as under:

“ 12. The statement of law has also been summarized in Halsbury's Laws of England, para 911, p.395 as follows:

“In determining whether there has been such delay as to amount to latches, the chief points to be considered are:

- i) Acquiescence on the claimant's part; and
- ii) Any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of latches”

13. In view of the statement of law as summarized above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not

challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or wiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or a waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?"

13. On examination of the principles of law laid down aforesaid, we are of the considered view that the petitioners are not entitled to any relief on grounds of delay and laches. No doubt the petitioners are identically positioned as Mr. M.S.Rohilla but for the last twelve years took no steps to challenge their reversion. They accepted the reversion and the pay package as a consequence thereof and retired from service accepting the retirement and pensionary benefits which accrued to them as a consequence of the reversion. The benefits

are personal to the petitioner and there is no explanation as to why the petitioners did not join in and file writ petitions challenging their reversion. They, in fact, acquiesced and accepted their reversion without being vigilant of their rights. The services which were rendered by the petitioners were also of the subordinate judicial service for which they have been paid.

14. Any change of position which may have occurred on the respondent's part or may affect other officers is not the only reason to deny relief to a party which approaches the Court belatedly. It is only one of the two material considerations. The acquiescence on the part of the petitioner is another material consideration as observed in the judgment of U.P.Jal Nigam and Anr. V. Jaswant Singh & Anr's case (supra). Such acquiescence is not just standing while the violation of a right is in progress, but assent after the violation has been completed and the petitioner has become aware of it. The petitioners in the present case were not only aware of the reversion but joined after reversion and worked in the subordinate judicial service from where they retired and took their pensionary benefits.
15. The observations made in Bhoop Singh v. Union of India and Ors's case (supra) also squarely apply to the facts of the present case where it has been held that the

challenge cannot be allowed merely because other similarly situated persons have got relief in respect of their service grievance. In the case of Ex.Captain Harish Uppal v. Union of India & Ors's case (supra), the Supreme Court went as far as to observe that even if the Government in compliance of Supreme Court's orders to decide a representation had taken a decision on the representation, it would not cure the defect of delay and latches.

16. In our considered view, the aspect of pension and retirement benefits stand on a different footing as pension is a continuing cause of action and thus the judgments in K.C.Sharma & Ors.v.Union of India & Ors's case(supra) and Girdhari Lal v. Union of India & Ors's case (supra) would not come to the aid of the petitioners. The other judgments in Ramchandra Shankar Deodhar and Ors v. The State of Maharashtra and Or's case (supra) and Hindustan Petroleum Corporation Ltd v. Dolly Das would equally not apply to the petitioners which only lay down general principles on delay and latches. The subsequent elucidation of the legal position both in U.P.Jal Nigam and Anr. V. Jaswant Singh & Anr's case (supra) and NDMC v. Pan Singh & Ors' case (supra) leave no doubt that unexplained delay of almost 12 years on the part of the petitioners in approaching the Court

disentitles them to grant of any relief on grounds of delay and laches and the mere fact of Mr. M.S.Rohilla succeeding in his writ petition would not *ipso facto* make available the benefits of the said judgments to the petitioners.

17. The writ petitions being devoid of any merit are dismissed leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J.

MAY 30, 2008
dm

MOOL CHAND GARG, J.