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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 24.04.2014

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W.P.(C) 2235/2014

SHREE ADYA KATYAYANI SHAKTI PEETH MANDIR
KARAMCHARI WELFARE ASSOCIATION & ANR. Petitioners

versus

SHREE ADYA KATYAYANI SHAKTI PEETH (MANDIR)
TRUST & ORS Respondents

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner : Mr Rishi Kesh, Advocate
For the Respondents : Mr C.M. Oberoi, Adv. for R- 1 to 3.
Mr Shoaib Haider, Adv. for R-4.

**CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER**

RAJIV SHAKDHER, J

1. This is a second round of litigation. This round of litigation has been initiated pursuant to a direction issued by the learned Single Judge vide its judgement dated 21.07.2009, passed in the petitioner's own case. The said writ petition was numbered as: WP(C) no. 4390/1998. The direction issued was, that the petitioners, should make a representation to respondent no.1 trust, within four weeks of the date of the judgement, which was, required to be considered by the governing body of the said trust after giving them an opportunity of hearing. Respondent no.1 trust was directed to decide the representation within a period of twelve weeks. It is the decision, on that

representation, taken by the governing body, which has been communicated by the secretary of respondent no. trust vide letter dated 18.11.2011.

2. It may be worthwhile to note that the learned Single Judge in his judgement dated 21.07.2009 had indicated that the writ petition gave rise to disputed questions of fact, which required adjudication by an appropriate forum. Reference in respect of the same was placed by the learned Single Judge on the judgement of the Supreme Court in the case of ***A. Jithendernath vs. Jibilee Hills Coop. House Building Society & Anr. (2006) 10 SCC 96*** and ***Raj Kumar Singh vs Union of India & Ors. JT 2009 (2) SC 58***. The learned Single Judge, however, observed that permitting the petitioner to undertake an amendment at that stage, would serve no purpose, and, therefore, the request for amendment was declined. Apart from this, the learned Single Judge also made an observation with regard to the question, as to whether a writ would be maintainable qua respondent no.1 trust. This question, however, was left open in view of the direction issued to respondent no.1 trust to consider the representation of the petitioners.

2.1 The chairman of the respondent no. 1 trust, however, assailed the judgement in an appeal, which was numbered as: LPA 467/2009. The Division Bench disposed of the appeal vide judgement dated 20.09.2011. By the said judgement, the Division Bench while sustaining the operative directions of the learned Single Judge, observed that if, the representation of the petitioners herein, was rejected by respondent no.1 trust and, the same, was assailed in any court of law, the said challenge would be dealt with having regard to the issue of maintainability, as well as, the aspect pertaining to limitation.

3. It is in this background that the petitioners have approached this court, again, under Article 226 of the constitution. The two reliefs which are sought in the petition are, broadly, as follows: First, the letter dated 18.11.2011 be quashed. Second, a writ, in the nature of mandamus, be issued to respondent nos. 1 to 3, their agents, office bearers and representatives, commanding them to pay, all terminal benefits, arrears of salary etc. along with interest at the rate of 18%.

4. It may be pertinent to note that there are two petitioners arrayed in the present writ petition. The first petitioner, is an employees' association, going by the name Shri Adya Katyayani Shakti Peeth Mandir, Chhattapur, New Delhi, Karamchari Welfare Association, while the second petitioner is the President of the said employees association. The second petitioner, as per the cause title set out in the petition filed, is also representing the employees association.

5. The claim for terminal benefits is based on the following averments: that petitioner no.2 alongwith 67 (sic 73) members of petitioner no.1 association were in service of respondent no.1 trust for several years before discontinuation of their services on 04.07.1998; the discontinuation was carried out by a verbal order; several attempts were made to persuade the management including attempts at settlement during the pendency of the earlier writ petition; upon disposal of the writ petition, 73 members of petitioner no.1, as directed by the court, made a representation dated 17.08.2009; by the said representation a demand was made for grant of all service benefits including monetary benefits in terms of 4th, 5th and 6th pay commission along with interest at the rate of 18% per annum on arrears of

all such benefits; fixation of pay of pujaris and archaks, as was available to those in well established temples, such as Mata Vaishno Devi Temple, Mansa Devi Temple etc.; the impugned decision contained in letter dated 18.11.2011 has been passed mechanically; no effective hearing was given; and lastly, with regard to maintainability of the writ petition it is averred that the respondent no.1 is a public trust performing public duties and, is thus, amenable to writ jurisdiction of this court. In support of the last averment judgement in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & ors. vs V.R. Rudani & Ors. (1989) 2 SCC 691*, was cited.

6. In the background of these facts, Mr Rishi Kesh, learned counsel for the petitioners stated that a mandamus could be issued both for quashing the impugned decision and for grant of compensation for illegal termination of the 73 employees, who are members of petitioner no.1 association. Mr Rishi Kesh submitted that the principles of equal pay for equal work were applicable, and that, compensation should be paid as prayed along with costs. The termination of employment of both Archaks and karamcharis was bad in law, since, it was done without following the principles of natural justice. Mr Rishi Kesh also submitted that since the employees whose services were discontinued, were not workmen within the meaning of the provisions of the Industrial Disputes Act, 1947, the employees could not take recourse to a remedy available under the said Act. It was also submitted, that a civil suit would not lie “for want of contract of service” or “master and servant relationship”. A specific averment to that effect is

made in paragraph 11 of the petition. It was thus the submission of Mr Rishi Kesh that the only remedy available was that of a writ action.

6.1 The delay was sought to be explained by Mr Rishi Kesh by adverting to the averments made in paragraph 10 of the petition, which simply stated that the petition was not barred by delay and laches, and that, it was within time as the cause of action was recurring. Based on this, it was submitted by the learned counsel that the writ petition having been filed within three years of the impugned decision, the same could not be rejected on the ground of delay.

7. In opposition, I have heard Mr C.M. Oberoi, who appears on advance notice for contesting respondents, i.e., respondent nos. 1 to 3.

8. A perusal of the facts on record would show that there are several difficulties in the way of the petitioners in so far as the present action is concerned. These being as follows:

(i) As noticed above, apart from petitioner no.2, none of the so called affected employees are arrayed as parties to the present action. It is not known as to whether they are interested in agitating the issue, especially, given the fact that the impugned decision was passed nearly two years and four months ago.

(ii) The petitioner no.2, who has filed the petition, along with petitioner no.1 association, has made no averments as to the dates on which either he or the other archaks/ karamcharis were engaged purportedly in service by respondent no.1 trust. It may be noted, though there is a reference to the fact that their services were discontinued on 04.07.1998; albeit by verbal

orders. There is, as indicated above, no reference to the dates on each one of them was engaged. Consequentially, there is also no quantification of the terminal benefits claimed in respect of each of the 73 persons, in respect of which, the present action is filed.

(iii) Contrary to what Mr Rishi Kesh sought to contend during the course of arguments, an action, such as this, cannot be instituted, at the behest of the employees, by the petitioner association or its president. The president of petitioner no.1 association, i.e., petitioner no.2, has not given details, even with respect to, his own claim.

(iv) There is no denial of the fact that the said 73 persons have no written contracts or letters of appointment issued in their favour. Consequently, each of the 73 persons would have to place necessary evidence on record to demonstrate that they were firstly employed by respondent no.1 trust and, secondly, that their termination was wrongful and was carried out on 04.07.1998. In the impugned decision, while there is reference to the fact that ten *sewadars* including certain archaks were debarred from entering the temple premises on account of having conducted themselves in a manner which hurt the sentiments of the devotees; a specific assertion was made that no document/ record or proof was placed on record by the said 73 persons of having been employed by respondent no.1 trust. Squarely, the issue pertaining to employment, therefore, would require proof.

(v) There is unexplained delay of nearly two years and four months from the date of the impugned decision. As a matter of fact, the Division Bench while disposing of the appeal in the first round, had, as noticed above, observed that while examining the issue of maintainability the aspect of

limitation should also be examined. In a writ action though, the provisions of the Limitation Act, 1963 are not applicable, the aspects of delay and latches attain criticality. The assertion of the petitioners that merely because the captioned writ petition has been filed within a period of three years and hence the delay should be condoned, or that the cause of action is continuing is, in my view, a submission which is misconceived. In the present case, quite clearly, the cause of action arose, even according to the petitioner, on 04.07.1998, when the services of the said 73 persons were wrongfully terminated. The fact that the court granted liberty to the petitioners to make a representation without examining the merits of the case itself, would not infuse life into a “dead” or a “stale” issue or dispute. The court’s direction to consider the representation and its disposal would not supply a fresh cause of action. Delay and latches, or even the period of limitation, in a given case, will have to be considered from the date when the cause of action first arose. [See *Union of India & Ors. vs M.K. Sarkar (2010) 2 SCC 59* at paragraphs 14 to 16 at page 66]. If this dicta is applied, the unexplained delay of nearly two years and four months would attain particular significance.

(vi) Even assuming that a petition under Article 226 of the Constitution could have been filed against respondent no.1 trust, on the basis that it was discharging that public duties, the fact that disputed issues arise for consideration, would not make a writ petition, an appropriate remedy.

(vii) lastly, there is no way of knowing, except for petitioner no.2 as to whether other 72 persons are interested in pursuing the action, given the

fact that no document has been filed which would demonstrate that such an authority has been conferred on the petitioners.

8. For the foregoing reasons, I am of the view that a writ action is not, the appropriate remedy. The petition is, accordingly, dismissed with liberty to the petitioners to take recourse to an appropriate remedy, if available; albeit in accordance with law.

RAJIV SHAKDHER, J

APRIL 24, 2014

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