

Court No. - 6

Case :- WRIT - A No. - 12599 of 2017

Petitioner :- Ram Kishor

Respondent :- State Of U.P. Thru Prin.Secy.Law And Justice
Lucknow And Ors.

Counsel for Petitioner :- Om Prakash Misra

Counsel for Respondent :- C.S.C.,Gaurav Mehrotra,U.N. Misra

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the petitioner, learned Standing counsel appearing on behalf of the respondent no. 1 & 3 and Sri Gaurav Mehrotra, learned counsel appearing on behalf of the respondent no.

2.

2. Instant writ petition has been filed praying for the following main reliefs:-

(i) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to make payment of regular pension to the petitioner as well as arrears of pension w.e.f 01.08.2013 to till date as well as to make payment of remaining 10 % of the seized gratuity amount alongwith 18 % interest per annum to the petitioner in the interest of justice.

(ii)-----

(iii) -----

(iv) Issue a writ order or direction in the nature of certiorari to quash impugned order dated 20.05.2015 passed by the opposite party no. 2 as contained in (Annexure No. 12) to the writ petition in the interest of justice.

(v) Issue a writ order or direction in the nature of certiorari to quash impugned orders dated 28.05.2015 passed by the opposite party no. 2 as contained in (Annexure No. 20) to the writ petition in the interest of justice.

(vi) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to refund of 5 % deducted amount of gratuity (upadan dhanrashi) from the amount of gratuity of the

petitioner in pursuance to the order dated 20.05.2015 passed by opposite party no. 2 as well as 3 % deducted amount of gratuity (upadan dhanrashi) from the amount of gratuity of the petitioner in pursuance to the order dated 28.05.2015 passed by the opposite party no. 2 total 8 % deducted amount of gratuity from the amount of gratuity of the petitioner along with 12 % interest in the interest of justice."

3. At the very outset, Sri Gaurav Mehrotra, learned counsel for the respondent no. 2 takes a preliminary objection with regard to prayers no. (iv) & (v) to contend that by means of the said prayers, the petitioner has challenged the punishment orders dated 20.05.2015 & 28.05.2015, copies of which are annexures 12 & 20 respectively to the writ petition. Placing reliance on the recent judgment of the Apex Court in the case of **Mrinmoy Maity Vs Chhanda Koley & Ors** passed in Civil Appeal No. 5027 of 2024 decided on 18.04.2024, the argument is that it is only by means of amendment application dated 22.04.2022 that the aforesaid orders dated 20.05.2015 & 28.05.2015 have been challenged i.e a challenge has been raised after a period of almost seven years to the aforesaid orders and keeping in view the law laid down by the Apex Court in the case of **Mrinmoy Maity (supra)** the writ petition so far as it pertains to the aforesaid prayers deserves to be dismissed on the ground of delay and laches.

4. Responding to that, learned counsel for the petitioner contends that on account of legal advise that he had himself tendered to the petitioner he did not deem it necessary to challenge the said punishment orders although admittedly no appeal was also filed against the said punishment orders dated 20.05.2015 & 28.05.2015 yet while preparing the instant writ petition, the petitioner thought it fit now to challenge the aforesaid orders and hence a challenge has been raised.

5. Having heard the learned counsel appearing on behalf of the contesting parties on the preliminary objection as raised by the learned counsel for the respondent no. 2 it emerges that the orders dated

20.05.2015 & 28.05.2015, copies of which have been filed as annexures 12 & 20 to the writ petition pertain to the punishment orders as imposed against the petitioner. Admittedly, the petitioner did not file any appeal against the said orders meaning thereby that the said orders attained finality with the expiry of time period prescribed for filing of an appeal. Even subsequent thereto, no challenge was raised to the said orders rather both the orders have only been challenged by means of amendment application dated 22.04.2022 and thus it is apparent the challenge has been raised to the two punishment orders after a period of almost seven years.

6. Recently, the Apex Court in the case of **Mrinmoy Maity (supra)** has held as under:-

"9. Having heard rival contentions raised and on perusal of the facts obtained in the present case, we are of the considered view that writ petitioner ought to have been non-suited or in other words writ petition ought to have been dismissed on the ground of delay and laches itself. An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.

10. The discretion to be exercised would be with care and caution. If the delay which has occasioned in approaching the writ court is explained which would appeal to the conscience of the court, in such circumstances it cannot be gainsaid by the contesting party that for all times to come the delay is not to be condoned. There may be myriad circumstances which gives rise to the invoking of the extraordinary jurisdiction and it all depends on facts and circumstances of each case, same cannot be described in a straight jacket formula with mathematical precision. The ultimate discretion to be exercised by the writ court depends upon the facts that it has to travel or the terrain in which the facts have travelled.

11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, in as

much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226 the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court. This Court in the case of *Tridip Kumar Dingal and Ors Vs. State of W.B and Ors*; (2009) 1 SCC 768 has held to the following effect:

"56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhumed matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide *State of M.P. v. Bhailal Bhai* [AIR 1964 SC 1006 : (1964) 6 SCR 261] , *Moon Mills Ltd. v. Industrial Court* [AIR 1967 SC 1450] and *Bhoop Singh v. Union of India* [(1992) 3 SCC 136 : (1992) 21 ATC 675 : (1992) 2 SCR 969]). This principle applies even in case of an infringement of fundamental right (vide *Tilokchand Motichand v. H.B. Munshi* [(1969) 1 SCC 110] , *Durga Prashad v. Chief Controller of Imports & Exports* [(1969) 1 SCC 185] and *Rabindranath Bose v. Union of India* [(1970) 1 SCC 84]).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose."

12. It is apposite to take note of the dicta laid down by this Court in *Karnataka Power Corporation Ltd. and another v. K. Thangappan and another*, (2006) 4 SCC 322 whereunder it has been held that the High Court may refuse to exercise extraordinary jurisdiction if there is negligence or omissions on the part of the applicant to assert his right. It has been further held thereunder:

"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in *Durga Prashad v. Chief Controller of Imports and Exports* [(1969) 1 SCC 185 : AIR 1970 SC 769] . Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd* [(1874) 5 PC 221 : 22 WR 492] (PC at p. 239) was approved by this Court in *Moon Mills Ltd. v. M.R. Meher* [AIR 1967 SC 1450] and *Maharashtra SRTC v. Shri Balwant Regular Motor Service* [(1969) 1 SCR 808 : AIR 1969 SC 329]. Sir Barnes had stated: "Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy."

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in *Rabindranath Bose v. Union of India* [(1970) 1 SCC 84 : AIR 1970 SC 470] that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in *State of M.P. v. Nandlal Jaiswal* [(1986) 4 SCC 566 : AIR 1987 SC 251] that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

13. Reiterating the aspect of delay and laches would disentitle the discretionary relief being granted, this Court in the case of *Chennai Metropolitan Water Supply & Sewerage Board and others v. T.T. Murali Babu*, (2014) 4 SCC 108 has held:

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in

mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."

7. From a perusal of the judgment of the Apex Court in the case of **Mrinmoy Maity (supra)** it emerges that the Apex Court has held that a person who approaches the Court belatedly or in other words sleeps over his right for a considerable period of time and wakes up from his deep slumber after considerable period of time ought not to be granted the extraordinary relief by the writ Court. The Apex Court has also held that time and again it has been laid down that delay defeats equity. Delay or laches is one of the factors which should be borne in mind by the High Court while exercising discretionary powers under Article 226 of Constitution of India.

8. Considering the aforesaid judgment of the Apex Court in the case of **Mrinmoy Maity (supra)** and the challenge having been raised to the punishment orders dated 20.05.2015 & 28.05.2015 after almost seven years by filing of the amendment application dated 22.04.2022 even though the said order had attained finality long back as no appeal has been filed against both the orders consequently, the writ Court finds that there is gross delay and unexplained laches on the part of the petitioner in challenging the impugned orders dated 20.05.2015 & 28.05.2015 and as such, the writ petition is dismissed so far as it pertains to raising a challenge to the orders dated 20.05.2015 & 28.05.2015.

9. Learned counsel for the petitioner further argues that despite the

petitioner having retired on attaining the age of superannuation on 31.07.2013 while working on the post of Reader under the respondent no. 2, his 10 % gratuity has not been paid. He further states that no reasons were also assigned as to why the gratuity was not paid to the petitioner neither any orders were passed in this regard.

10. Responding the said, Sri Gaurav Mehrotra, learned counsel for the respondent no. 2 argues on the basis of averments contained in paragraph 53 of the counter affidavit dated 28.11.2022 that a decision for grant of sanction against the petitioner under Regulation 351-A of the Civil Service Regulations for holding a full fledged disciplinary proceedings against him is still awaited from His Excellency the Governor and it is only when a sanction is received from His Excellency the Governor that the departmental proceedings would be initiated against the petitioner and as such, the ten percent gratuity of the petitioner has been withheld on his retirement on 31.07.2013.

11. Responding to that, learned counsel for the petitioner while referring to the provisions of Regulation 351-A of the Civil Service Regulations argues that proviso (a) (ii) of Regulation 351-A provides that if the departmental proceedings are not instituted while the officer was on duty either before retirement or during re-employment shall not be instituted in respect of an event which took place not more than four years before institution of such proceedings.

12. Placing strong reliance on the aforesaid proviso, the contention of learned counsel for the petitioner is that even if the respondents are within their right to initiate proceedings under the provisions of Regulation 351-A of the Civil Service Regulations even then the same cannot be with respect to an event which occurred more than four years prior to initiation of proceedings. It is contended that once the petitioner has retired on 31.07.2013 and now it is the year 2024 meaning thereby that a period of eleven years have lapsed since the retirement of the petitioner and even if a charge sheet were to be issued after approval of His Excellency the Governor it could not be

for an event relating to four years from the date of issuance of the charge sheet and as such, even if the sanction is obtained it would be a mere formality which considering the specific provisions of Regulation 351-A would not empower the respondents to initiate any proceedings against the petitioner.

13. Having heard the learned counsel appearing on behalf of the contesting parties and having perused the records it emerges that admittedly the petitioner retired on attaining the age of superannuation on 31.07.2013. Without passing any formal order, the respondents have not paid ten percent of gratuity. The reason as emerges from a perusal of the counter affidavit filed on behalf of the respondent no. 2 as specifically referred to in paragraph 53 is that a sanction from His Excellency the Governor has been requisitioned for the purpose of initiation of disciplinary proceedings against the petitioner.

14. Regulation 351-A of the Civil Service Regulations reads as under:-

"351-A The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave mis-conduct, or to have caused. Pecuniary loss to government by misconduct or Negligence, during his service, including service rendered on re-employment after retirement;

Provided that—

(a) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment—

(i) shall not be instituted save with the sanction of the Governor,

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings, and

(iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

(b) judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have

been instituted in accordance with sub-clause (ii) of clause (a), and(c) the Public Service Commission, U.P., shall be consulted before final orders are passed.

Provided further that if the order passed by the Governor relates to a case dealt with under the Uttar Pradesh Disciplinary Proceedings, (Administrative Tribunal) Rules, 1947, it shall not be necessary to consult Public Service Commission.

Explanation—For the purposes of this article—

(a) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or, if the officer has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted :

(i) in the case of criminal proceedings, on the date on which a complaint is made, or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court.

NOTE—As soon as proceedings of the nature referred to in this article are instituted the authority which institutes such proceedings shall without delay intimate the fact to the Audit Officer concerned."

15. From a perusal of Regulation 351-A of the Civil Service Regulation it emerges that His Excellency the Governor reserves to himself the right of withholding or withdrawing a pension or any part of it whether permanently or for a specified period if the pensioner is found in departmental or judicial proceedings to have been guilty of grave mis-conduct. However, proviso (a) (ii) provides that such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment shall be in respect of an event which took place not more than four years before the institution of such proceedings. Explanation (a) provides that a departmental proceeding shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or if the officer has been placed under suspension, from an earlier date.

Admittedly, till date no charge sheet has been issued to the petitioner nor the charges have been framed against the petitioner. A period of more than almost eleven years have lapsed since the retirement of the petitioner and consequently, considering proviso (a) (ii) as well as explanation (a) of Regulation 351-A of the Civil Service Regulations it is apparent that even if a sanction were to be obtained by the respondents, no charges could be framed against the petitioner with respect to the events which more than four years old and the petitioner having retired in the year 2013 obviously no such charge sheet or charges can be framed against the petitioner at this stage.

16. Keeping in view the aforesaid discussion, the writ petition is allowed so far as it pertains to the prayer of the petitioner for release of ten percent withheld amount of gratuity. A writ of mandamus is issued commanding the respondent no. 2 to pay the ten percent withheld amount of gratuity to the petitioner along with admissible interest from the date the same fell due i.e 01.08.2013 till the date of actual payment along with admissible interest. Further as the withholding of gratuity has been held to be illegal by this Court consequently, the same would also entail payment of full pension to the petitioner

17. Let the order be complied within a period of four weeks from the date of receipt of a certified copy of this order.

Order Date :- 23.4.2024

Pachhere/-