

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (S) NO. 1642 OF 2009

Smt. Sushila Parganiha, aged 61 years, wife of late Shri Dr. Sharad Kumar Parganiha, resident of MIG-C-2345, Housing Board Industrial Estate, Bhilai, District- Durg (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Health Services, Raipur.
2. The Director of Ayurved, Homeopathy & Unani System, Government of Chhattisgarh, Raipur.
3. The Joint Director of Ayurved, through the Director of Ayurved, State of C.G., Raipur.
4. The District Officer of Ayurved-cum-Superintendent, Office of the Divisional Officer of Ayurved, Raipur (C.G.)
5. The District Officer of Ayurved-cum-Superintendent, District Ayurved Hospital, Nutan Colony, Bilaspur (C.G.)
6. The Superintendent-cum-District Ayurved Officer, Durg (C.G.)

... Respondents

For Petitioner	:	Mr. Somnath Verma, Advocate.
For Respondent-State	:	Mr. UNS Deo, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/11/2015

1. The Petitioner through the present writ petition has claimed for the following relief:-

“10.1 that, the respondents may kindly be directed to submit entire record as regards the petitioner's case like service book, case of departmental enquiry with note-sheets, complete case of the Committee (constituted by the State for redresses of grievances regarding retirement dues) relating to petitioner.

10.2 that, this Hon'ble Court may be pleased to pass any order or issue any suitable writ as the Hon'ble Court may deem fit under the circumstance of the case including cost of the petition.

10.3 that, the respondents may be directed to fix his salary with increments and arrears of two increments since 15.9.1969 to 1972 which was sanctioned by order 9.8.1972 (ann.P/8). The entire arrears of salary, increments and other allowances up to 14.7.1976 when the respondent contemplated departmental

enquiry (ann.P/17) may kindly be directed to pay the petitioner with interest @ 18% pa.

10.4 that, the respondents may be directed to pay difference of salary since 14.7.1976 (the date of serving charge) to 31.7.2001 (the superannuation date of retirement age) to the petitioner as arrears with the interest. Further, the respondents may be directed to pay the salary up to the acceptance of retirement i.e. 11.11.2008 or till his death 8.6.2004.

10.5 that, the respondents had never suspended, terminated, dismissed neither retired nor ever accepted the resignation in life time of Dr. Parganiha and neither communicated the acceptance of resignation to Dr. Parganiha therefore, the respondents may kindly be directed to pay the entire salary till his superannuation age of retirement i.e. 31.7.2001.

10.6. that, the appropriate writ may kindly be issued against the respondents that they could not continue without prior permission of the Governor of the State the departmental proceedings after the death of Dr. Parganiha and for indefinite period more than 30 years without any salary.

10.7. that, the respondents may kindly be directed to immediate start family pension in favour of the petitioner; further be directed to pay all arrears of salary with interest as stated above.

10.8. that, a direction may be given to the respondents for giving all benefits as the petitioner's husband would have been retired from Director. Further it is prayed that they may kindly be directed to give benefits taking into consideration of the fact that the employee would have normally been given Time Bound Advancement thrice in his service career.

10.9. that, in addition to other retirement benefits, for loss of consortium the respondents may kindly be directed for paying compensation for the death of Dr. Parganiha due to unnecessary harassment and cruel treatment given by the respondents.

10.10.that, the order passed by the respondent no.1 vide No. F/2-41/2005/IX/55 on 11.11.2008 (ann.P/1) and the order passed on 3.10.2008 (ann.P/2) by the Committee (constituted by the State of Chhattisgarh, department of General Administration, Raipur, vide order No. F/17-2/2006/1-3 dated 20.3.2008 for redresses of grievances regarding retirement benefits of Government servants) may kindly be quashed as illegal.

10.11.that, the respondents may kindly be directed for sanctioning medical leave for the period commencing 8.4.1974 to 29.7.1974 and for payment of the same."

2. According to the Petitioner, her husband, Late Dr. Sharad Kumar Parganiha, was appointed as Vaidya under the Respondents on 6.3.1963 and subsequently was again re-appointed on 29.5.1964 and

he continued to work with the Respondents till 8.7.1974. In between, from June, 1969 to 1972, the Respondent authorities had not released the salary of the husband of the Petitioner on account of non-availability of service book and non-receipt of Last Pay Certificate from the transferred place to the place of posting of the Petitioner. It was further contended by the Petitioner that from 8.4.1974 her husband on account of illness went on medical leave, however, his medical leave was not sanctioned by the competent authority.

3. Counsel for the Petitioner submits that when her husband made a representation to the authorities for sanctioning the period of absence towards medical leave, the Respondent authorities on 14.7.1976 issued a charge-sheet to the Petitioner on the charge of remaining unauthorized absence since 8.7.1974 onwards and also on other grounds of misconduct by the husband of the Petitioner.

4. Counsel for the Petitioner further submits that after the charge-sheet was served on the husband of the Petitioner, the Respondent authorities did not permit him to discharge his duties and till he crossed the age of superannuation on 31.7.2001 he was not permitted to resume his duties. It was also contended that in between a departmental enquiry initiated also was not concluded nor was any punishment imposed upon the husband of the Petitioner. As such it has to be presumed that he was deliberately not permitted to join his duties and treating the said period as on duty, the Respondents immediately should release the entire benefits to him including all salary for the period that he would have got from 1974 to July, 2001 and also the unpaid salary for the period June, 1969 to 1972 i.e., the period during which the husband of the Petitioner had worked with the Respondents.

5. Counsel for the Petitioner further contended that the Petitioner would also to be entitled for the retiral benefits as well as pensionary benefits that would be accrued in favour of her husband on his superannuation in 2001 because there was no order of punishment against the husband of the Petitioner.

6. He next submitted that the husband of the Petitioner after having crossed the age of superannuation had died on 8.6.2004 and after the death of the husband of the Petitioner, she filed a writ petition that was registered as Writ Petition No. 3545 of 2004 which ultimately got disposed of on 24.8.2008, vide Annexure P-8, whereby it was directed that the case of the Petitioner shall be considered by the high power committee constituted by the State Government in respect of grant of retiral dues and pensionary benefits to the government servants. However, the said committee also vide Annexure P-2, dated 3.10.2008, rejected the claim of the Petitioner holding that the Petitioner is not entitled for any benefits as claimed for on the ground that firstly the husband of the Petitioner was not having the sufficient pensionable service to his credit and further it was found that he in-fact had not worked with the Respondent department since 8.9.1974 and further that the husband of the Petitioner while he was in service on 8.9.1974 tendered his resignation which is further established from another correspondence made by him on 25.11.1981.

7. In view of the same, the committee has rejected the claim application of the Petitioner which according to the Petitioner is arbitrary, illegal and without application of mind for the reason that neither the resignation was at any point of time while her husband was alive accepted or rejected nor was there any order of terminating the service of her husband discontinuing him from employment nor was

there any final order passed on the departmental enquiry initiated so that her husband could resume his duties. It is this order dated 3.10.2008 which has also been challenged in the present writ petition seeking its quashment.

8. Per contra, Counsel appearing for the State submits that the writ petition in-fact suffers from delay and laches inasmuch as the Petitioner has filed the writ petition for the first time on 27.9.2004, that is to say that right from 1974 when the husband of the Petitioner was allegedly discontinued from service, he had not raised any grievance in respect of his not being taken in employment nor did the husband of the Petitioner all along had raised any objection with regard to the salary and other benefits which otherwise would have accrued to him had he was in service.

9. Counsel for the State further submitted that from the records it appears that the husband of the Petitioner had been transferred to Bilaspur and while serving at Bilaspur he remained absent for a considerable long period and subsequently he tendered his resignation letter and did not return back to Bilaspur for performing his duties and thereafter he had literally abandoned his services and has never discharged his duties thereafter till his death.

10. Counsel for the State also submits that the from record that was available with the State it reflects that the husband of the Petitioner had not discharged his duties beyond 1974 and that there is no record to this effect that he had worked with the Respondents after 1974 making him entitled for any sort of payment. State Counsel further submits that the name of the husband of the Petitioner was not even reflected in the list of employees whose names were allocated to the State of Chhattisgarh which also goes to establish the fact that the Petitioner

had abandoned his services in the year 1974 itself and that he had never been keen to work with the Respondents or had ever tried to claim any service benefits from the Respondents.

11. Counsel for the State further submits that so far as the unpaid salary for the period that the husband of the Petitioner had served during 1969 to 1972 is concerned is of a period under the erstwhile State of Madhya Pradesh. It would be the responsibility of the State of Madhya Pradesh for releasing the same as the responsibility of the payment of salary to the husband of the Petitioner if at all payable would only accrue upon the State of Chhattisgarh from the date the State has been created and the service of the husband of the Petitioner was never allocated to the State of Chhattisgarh to which effect there is no document or evidence. He further submits that in the present case, the State of Madhya Pradesh also has not been made a party and the petition also suffers from non-joinder of necessary party and therefore prays for rejection of the present writ petition.

12. Considering the entire facts and circumstances of the case what is an admitted position is the fact that all along during the period when the husband of the Petitioner was alive from 1974 till 8.6.2004, he at no point of time had ever tried for getting his rights enforced so far as the payment of salary and other service related benefits including joining which would have accrued to him during his service period. Further, from the records it is also an admitted fact that the husband of the Petitioner during his life time had never filed any petition or had approached any court of law for redressal of his grievances except for the alleged representations that he had made during his life time. Further, from the records it is also reflected that there is no proof adduced by the Petitioner either before the writ court or before the high

power committee which had scrutinized the case of the husband of the Petitioner pertaining to his discharging duties from 1974 onwards till his crossing the age of superannuation by which it could be said that the husband of the Petitioner having discharged his duties is entitled for the service benefits that of salary and other benefits. It is also reflected that in the writ petition that was filed in the year 2004 also the Petitioner has not given any explanation for not approaching the court of law during the life time of her husband. In the present writ petition also the Petitioner has not explained as to what prevented the husband of the Petitioner from not approaching the competent court of law promptly while her husband was alive in between 1974 to June, 2004. The delay in filing of the writ petition has not been properly explained by giving plausible reasons whatsoever.

13. Further, from the reply of the State Government it also reflects that the husband of the Petitioner on 7.9.1974 had submitted his resignation requesting the authorities for accepting his resignation with effect from 8.9.1974 and reminder to that effect was also sent vide Annexure R-2. Though the reply of the State Government was filed as early as about 2 years back, the Petitioner has not filed any rejoinder to the same rebutting the contents of the reply and as such it has to be presumed that the husband of the Petitioner in-fact in the year 1974 itself had tendered resignation and left the services of the State Government. Since then he had not worked with the Respondents and thus the husband of the Petitioner it is to be presumed had abandoned his services in the year 1974 itself.

14. In the given facts and circumstances of the case, since the claim by the husband of the Petitioner was never made during his life time itself gives rise to create an element of doubt as to why the employee

did not raise his claim. If he was not given salary nor was permitted to perform his duties for almost 30 years, this itself leave to draw an inference that the husband of the Petitioner had abandoned his services.

15. Further, the delay in approaching this Court also has a great impediment in the way of the Petitioner inasmuch as no proper explanation or plausible justification has been given by the Petitioner.

16. In 2014 (4) SCC 108 (Chennai Metropolitan Water Supply and Sewerage Board and others v. T.T. Murali Babu), the Supreme Court after relying on its decision rendered in 1986 (4) SCC 566 (State of M.P. v. Nandlal Jaiswal), held thus at paragraphs 15 and 16:-

“15. xxx xxx xxx

“24. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction.”

Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

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 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 list.”

17. For the foregoing reasons, the present writ petition is totally misconceived and devoid of merits and is also suffers from delay and laches and therefore the same is dismissed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/