

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (S) No. 3384 of 2014

Ram Kumar Pandey, S/o Late Shri Madho Prasad Pandey, aged about 66 years, registered Additional O.A. Grade-I, resident of Plot no. 57, Block no. 3, Phase-I, Aryan School Gali, Rajkishore Nagar, Bilaspur, P.S. Sarkanda, Tahsil and Civil and Revenue District Bilaspur (C.G.)

... Petitioner

Versus

1. Chhattisgarh State Power Distribution Company Ltd., through its Secretary, C.S.P.D.C.L. Daganiya, Raipur, District Raipur (C.G.)
2. Executive Engineer, (O&M), C.S.P.D.C.L., Daganiya, Raipur, District Raipur (C.G.)
3. Superintendent Engineer, S.T./R.E. Circle Bilaspur, C.S.P.D.C.L., Tifra Bilaspur, District Bilaspur (C.G.)
4. Additional Superintending Engineer, S.T/R.E. Circle Bilaspur, C.S.P.D.C.L, Tifra, Bilaspur, District Bilaspur (C.G.)
5. Executive Engineer Civil Division, C.S.P.D.C.L, Tifra Bilaspur, District Bilaspur (C.G.)
6. Sr. Accounts Officer, C.S.P.D.C.L., Tifra Bilaspur, District Bilaspur (C.G.)
7. Chhattisgarh State Power Transmission Company, through its Officer incharge, C.S.P.D.C.L, Tifra Bilaspur, District Bilaspur (C.G.)

... Respondents

For Petitioner	:	Mr. I.S. Sahu, Advocate.
For Respondents	:	Mr. K.R. Nair and Ms. Veena Nair, Advocates.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

31/07/2015

1. The grievance of the Petitioner is that the Respondents have *mala fidely* withheld salary of the Petitioner from 4.2.2003 to 1.9.2003.
2. Brief facts relevant for the disposal of the present writ petition are that the Petitioner was working as Additional Office Assistant Grade-I with the Respondents at Bilaspur and that vide order dated 19.6.2002, the Petitioner's services were transferred from Bilaspur to Ambikapur.

The said order of transfer was challenged by way of a writ petition i.e. W.P. No. 2347 of 2002. Pending the writ petition for consideration before this Court, the Petitioner stood relieved on 28.12.2003 to Ambikapur from Bilaspur. The writ petition came up for hearing after the Petitioner was relieved on 31.1.2003 and the writ Court vide its order dated 31.1.2003 entertained the writ petition and as an interim measure ordered for maintaining status-quo in respect of the posting of the Petitioner.

3. Needless to mention that on the date when the Petitioner had obtained the order of status-quo, his services already stood relieved to Ambikapur. Subsequently, the Petitioner in due course of time retired from services on 31.5.2006. In between, the Petitioner's services for the period 29.12.2002 to 3.2.2003 were regularised as extraordinary leave. However, the Petitioner continued to remain on unauthorised leave subsequent to 3.2.2003 also and remained absent till 1.9.2003, that is till the Petitioner was again transferred back at Bilaspur. It is this period from 4.2.2003 till 1.9.2003 that the Petitioner claims that his salary has not been prepared by the Respondents and it has been illegally retained/withheld by the Respondents.

4. The writ petition that the Petitioner had filed challenging the earlier transfer order dated 19.6.2002 was finally dismissed as withdrawn on 12.9.2006 holding it to have become infructuous. Relevant part of the order dated 12.9.2006 is reproduced herein below:-

“Shri Ottalwar submits that during the pendency of this writ petition, the petitioner has retired from service on 31.5.2006 and in this view of the matter, this petition filed for quashment of the transfer order dated 19.6.2002, contained in Annexure P-6, renders infructuous. He prays for dismissal of this petition as not pressed being infructuous.

This petition is dismissed as not pressed being infructuous.”

5. A perusal of the order dated 12.9.2006 itself would reveal that there was no adjudication by the High Court in respect of the intervening period during which the Petitioner remained unauthorisedly on leave. Neither has the department regularised the services at any point of time till his retirement on 31.5.2006.

6. After the disposal of the said writ petition on 12.9.2006 that is much after the Petitioner had retired from services on attaining the age of superannuation on 31.5.2008, the Petitioner has in the year 2014 on 17.7.2014 to be precise filed the present writ petition claiming for the salary to the intervening period, that is almost after 8 years from the date when the earlier writ petition has been disposed of.

7. Counsel for the Petitioner relying upon the decision of this High Court in Writ Petition (S) No. 3151 of 2005 which was disposed of on 28.8.2006, claims for the regularisation of the said period and for the salary for the said intervening period, that is from 4.2.2003 to 1.9.2003. However, the perusal of the order dated 28.8.2006 by itself would show that the facts in the said case were entirely different from the facts of the present case wherein in the present case the Petitioner had obtained an order of status-quo much after he stood relieved from his place of posting and therefore the order of status-quo would mean that he stood relieved to Ambikapur and unless he resumes his duties at Ambikapur and performs at Ambikapur, he could not have claimed any salary for the intervening period in the light of the order of status-quo passed by the High Court.

8. Another aspect which has to be considered is the fact that though the writ petition was disposed of in 2006 and the Petitioner also stood retired in 2006, the Petitioner waited for all these 8 years to file a writ petition which itself shows that the petition suffers from delay and

laches and the delay is totally unexplained in the writ petition. Only because the Petitioner has been pursuing his remedy by approaching the authorities in making repeated representations alone would not justify the delay caused in the filing of the writ petition.

9. The Supreme Court in a series of decisions has held that where the Petitioner himself is not vigilant about his right and does not approach the Court of law within a reasonable time, such Petitioner would not be entitled for any relief.

10. The Supreme Court in the case of Chennai Metropolitan Water Supply and Sewerage Board and others v. T.T. Murali Babu [2014 (4) SCC 108] has held that:

“15. In *State of M.P. v. Nandlal Jaiswal* (1986 (4) SCC 566) the Court observed that:

“24. ...it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic.”

It has been further stated therein that:

“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 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.”

11. The said ratio of the Supreme Court is further fortified by the earlier decisions in this regard in the cases of U.P. Jal Nigam & Anr. v. Jashwant Singh & Anr. (2006 (11) SCC 464), State of M.P. v. Nandlal (AIR 1987 SC 251) and R.N Bose v. Union of India (AIR 1970 SC 470).

12. Taking into consideration the inordinate and unexplained delay in filing the present writ petition and also considering the fact that the earlier round of litigation was disposed of without any adjudication as to how the intervening period has to be treated, the present writ petition in the opinion of this Court suffers from delay and laches and is totally devoid of merits, liable to be dismissed and is accordingly dismissed. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge