

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2015

CORAM

THE HON'BLE MR. JUSTICE S.MANIKUMAR
and
THE HON'BLE MR. JUSTICE G.CHOCKALINGAM

W.P.No.25682 of 2015

Dr.Alfred Ponnudasan

...Petitioner

vs

The State of Tamil Nadu
rep. by the Secretary,
Animal Husbandry and Fisheries (AH-1)
Department, Fort St. George,
Chennai-9.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the Tamil Nadu Administrative Tribunal, Madras-104 made in his Order dated 04.12.1996 and made in O.A.No.1204 of 1989 and quash the same.

For Petitioner : Ms.T.Renu

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Vide G.O.Ms.No.253, Animal Husbandry and Fisheries (AH.1) Department, dated 22.06.1989, petitioner, Veterinary Assistant Surgeon, has been imposed with a penalty of dismissal from service. On corruption allegations, there was an enquiry before the Commissioner for Disciplinary Proceedings, Madras, vide charge memo dated 15.3.1978. Contending inter alia that the findings recorded against him, by the Tribunal, which the Government has taken note for imposing the punishment of dismissal, as not proved and that there were procedural errors, an Original Application No.1204 of 1989 has been filed under Section 19 of the Tamil Nadu Administrative

Tribunal Act, 1985, before the Tamil Nadu Administrative Tribunal, Madras.

2. Considering the rival submissions, the Tribunal vide order dated 04.12.1996, at paragraph Nos.7 to 10 has ordered as follows:

'7. Before going into the merits of the rival cases, I would like to mention, at the outset, that this Tribunal while exercising the powers of 'Judicial Review' would interfere only in a case, where there is no evidence or in a case where the approach of the enquiry officer and disciplinary authority are perverse and not according to law. In that backdrop, I shall now consider the submissions with regard to the findings of the charge against the applicant. In D.E.33/77, the charge reads as follows:

'You, accused Officer II, by utilising the sale of milk on 25% concessional rate allowed to the staff of District Livestock Farm, Orathanad as in the other case of other Livestock Farms in the State, had purchased milk every month or in frequent intervals for the amount disproportionate to your monthly regular income in the following two instances are stated namely purchase of milk for Rs.194.40 in March, 1976 and for Rs.262.20 in May, 1976, the applicant net pay was Rs.443/-. That is stated in the Charge memo.'

The learned Senior Counsel would point out that it is not the case of prosecution that the applicant sold the milk for any profit and that there is no order prescribing or restricting the quantum of milk which can be purchased at concessional rate and in the absence of the same, the mere purchase of some larger quantity of milk for two months cannot afford the basis for any charge. I find force in this submission. Unless there is some restriction or unless there is some allegations that this milk was purchased at a concessional rate and sold by him to others at the market rate and he received some profits, mere purchase of larger quantity of milk during two months cannot be a delinquency.

8. Regarding the charge in D.E.34/77 is that, actuated by corrupt motive and in abuse of their position and authority, accused officers I and II, in collusion with each other and accused Officer-I, has sold large number of eggs on cash payment to a Muslim lady by name Ayesha of Adhirampattinam on most of the days in a month and accused officer-II has allowed him to sell large number of eggs without taking any action. The fact is that for long

period, they have sold eggs to a Muslim lady, which establishes the charge that actuated by corrupt motive, it was done and the charge was held as proved. I do not find any infirmity with this finding.

9. In so far as the 3rd charge in D.E.No.35/77 is concerned, it contained positive allegations that those acts were done, actuated by corrupt motive, and in abuse of their position and authority. In the allegations contained in those charges full particulars are given. Before the enquiry officer, evidence has been let in to substantiate those charges and the enquiry authority has found those charges as proved. When there is evidence to substantiate the charges, this Tribunal could not reappraise the entire evidence and come to a different conclusion. This is not a case of 'no evidence' regarding charges in D.E.Nos.34 and 35/77. The charges are serious in nature so after taking into consideration the findings, the Government has rightly awarded the extreme penalty of dismissal from service. The impugned order is a detailed one, giving the charges, explanation and findings of the Tribunal and acceptance of the same after examination of the whole matter carefully and independently. I find no infirmity in the same.

10. The learned counsel would urge that there was an inordinatge delay in passing the orders. But, though there is some delay, there is no evidence of any prejudice caused to the applicant because of the delay. While the applicant has not suffered any prejudice, simply because, there is some delay, the order cannot be quashed. That apart, min the reply affidavit, it has been pointed out that the time delay in passing final orders on the charges against the applicant, was due to the stay order obtained by the other accused Officers in W.P.No.10427/86 to 10434/86. It is also stated in the reply affidavit that since the writ petitions filed by the other accused officers were pending and the views of the Tamil Nadu Public Service Commission were awaited, there was delay in finalising the disciplinary proceedings against the applicant.''

Orders of the Tribunal seemed to have been despatched to the Writ Petitioner in 1996 itself. After a long lapse of nearly two decades, Writ Petition has been filed before this Court assailing the correctness of the same.

3. Reasons assigned by the learned Counsel for the petitioner is that others who were involved in similar charges were taken back to duty. The petitioner was also unwell and hence, could not move this Court in time.

4. Heard the learned Counsel for the petitioner and perused the materials available on record.

5. Under Article 226 of the Constitution of India, there is no time limit for filing a Writ Petition. What is reasonable time is not prescribed in the rules framed under Article 229 of the Constitution of India. The words "reasonable time", as explained in *Veerayeeammal V. Seeniammal* reported in 2002 (1) SCC 134, at Paragraph 13, is as follows:

"13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's *The Law Lexicon* it is defined to mean:

"A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

6. There is inordinate delay and laches on the part of the petitioner. What is laches is also given as follows:

"Laches or reasonable time are not defined under any Statute or Rules. "Latches" or "Lashes" is an old french word for slackness or negligence or not doing. In general sense, it means neglect to do what in the law should have

been done for an unreasonable or unexplained length of time. What could be the laches in one case might not constitute in another. The laches to non-suit, an aggrieved person person from challenging the acquisition proceedings should be inferred from the conduct of the land owner or an interested person and that there should be a passive inaction for a reasonable length of time. What is reasonable time has not been explained in any of the enactment. Reasonable time depends upon the facts and circumstances of each case.'

7. Statement of law has also been summarized in Halsbury's Laws of England, Para 911 , pg. 395 as follows:

"In determining whether there has been such delay as to amount to laches, 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 laches."

8. In State of M.P. v. Bhailal Bhai reported in AIR 1964 SC 1006, the Supreme Court held that it is not either unreasonable delay denies to the petitioner the discretionary extraordinary remedy of mandamus, certiorari or any other relief.

9. In State of M.P., v. Nandlal Jaismal reported in 1986 (4) SCC 566, the Supreme Court, at Paragraph 24, held as follows:

"24. Now, 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. 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. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal.Of course, this rule of laches or delay is not a rigid rule which can be cast in a strait jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it."

(emphasis supplied)

10. Though the petitioner has contended that he was unwell and could not pursue his remedy immediately, after dismissal order made in O.A.No.1204 of 1989 dated 4.12.1996, we are not inclined to accept the said contention. During the course of hearing, the attention of the learned Counsel for the petitioner was invited to the inordinate delay and laches on his part. Reply of the learned Counsel for the petitioner was that, now only the petitioner came to know that others involved have been taken back to duty. Reply of the learned Counsel for the petitioner also indicates that there was lack of diligence on the part of the petitioner to know what has happened to similar others, alleged to have been involved in the incident, which culminated into proceedings, before the Commissioner for Disciplinary Proceedings Tribunal, Chennai and the final orders passed thereon.

11. Reference can also be made to few decisions of the Supreme Court, where inordinate delay and laches, on the part of the litigant in approaching the Court has been disapproved:

(i) In P.S.Sadasivaswamy v. State of Tamil Nadu reported in AIR 1974 SC 2271, relating to promotion, the Apex Court held as follows;-

"..... A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal."

(ii) In State of M.P. v. Bhailal Bhai reported in AIR 1964 SC 1006, the Supreme Court held that it is not either unreasonable delay denies to the petitioner the discretionary extraordinary remedy of mandamus, certiorari or any other relief.

(iii) In State of M.P., v. Nandlal Jaismal reported in 1986 (4)

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(iv) In State of Maharashtra v. Digambar reported in AIR 1995 SC 1991, the Supreme Court, considered a case, where compensation for the acquired land was claimed belatedly and at Paragraphs 12, 18 and 21, held as follows:

"12. How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State invoking writ jurisdiction of the High Court under article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decision of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blame-worthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a welfare State, is also difficult to comprehend. Where the relief sought under Article 226 of the Constitution by a person against the welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly

justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blame-worthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State.

18. Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled for grant of such relief was explained succinctly by Sir Barnes Peacock, long ago, in *Lindsay Petroleum Co. v. Prosper Armstrong* (1874) 5 PC 221) thus :

"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 or limitations, 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."

21. Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentanglement

of such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily."

(v) In *State of Rajasthan v. D.R. Laxmi* reported in 1996 (6) SCC 445, the Supreme Court observed that though the order may be void, if the party does not approach the Court within a reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner.

(vi) In *Chairman, U.P. Jal Nigam and another v. Jaswant Singh* reported in AIR 2007 SC 924, the Supreme Court, after considering a catena of decisions on the aspect of delay, at Paragraph 13, held as follows:

"13.....Therefore, whenever it appears that the claimants lost time or while 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 waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted."

12. While dealing with a belated claim and filing of a Writ Petition on the basis of the order obtained in some other Writ Petitions, the Supreme Court in *M/s. Rup Diamonds and Ors. v. Union of India and Ors.*, reported in (1989) 2 SCC 356, has observed that those people who were sitting on the fence till somebody else took up the matter to the court for refund of duty, cannot be given the benefit. In that context, Their Lordships held as follows:

"Petitioners are re-agitating claims which they had not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate delay in preferring the present writ petition which is brought after a year after the first rejection. As observed by the Court in *Durga Prasad* case, the exchange position of this country and the policy of the government regarding

international trade varies from year to year. In these matters it is essential that persons who are aggrieved by orders of the government should approach the High Court after exhausting the remedies provided by law, rule or order with utmost expedition. Therefore, these delays are sufficient to persuade the Court to decline to interfere. If a right of appeal is available, this order rejecting the writ petition shall not prejudice petitioners' case in any such appeal."

8. In *S.S. Balu v. State of Kerala*, (2009) 2 SCC 479, wherein at paragraph No.17, the Supreme Court has held as follows:

"17. It is also well-settled principle of law that "delay defeats equity". The Government Order was issued on 15-1-2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal thereagainst, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage. In *NDMC v. Pan Singh*⁹ this Court held: (SCC p. 283, para 16)

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction."

13. On the merits of the contention that the Tribunal has erred in accepting the finding recorded by the Disciplinary Proceedings Tribunal, Chennai, and taken note of by the Government, we are not inclined to re-appreciate the same. In the light of the decisions stated supra, exercise of discretion of interference with an order, after a period of more than two decades, is not permissible.

14. In the result, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Secretary,
State of Tamil Nadu,
Animal Husbandry and Fisheries (AH-1)
Department, Fort St. George,
Chennai-9.

1 CC to Mr.R.Thamodaran, Advocate SR.No. 45800

1 CC to the Government Pleader, SR.No. 45438

SCD (CO)
PSI (31.08.2015)

W.P.No.25682 of 2015

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