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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P. (C) No. 1485/2015 & C.M. APPL. 8012/2015 (Delay)

% *Date of Judgment: 14th of December, 2015*

ISHWAR LAL

.....Petitioner

Through : Petitioner in person.

Versus

NATIONAL INSTITUTE OF PUBLIC COOPERATION
& CHILD DEVELOPMENT / ORS.

.....Respondents

Through : Mr. H.D. Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. Challenge in this writ petition is to the order dated 14.07.2010 passed by the Central Administrative Tribunal (hereinafter referred to as the 'Tribunal') dismissing the Transfer Application No. 1114/2009 filed by the petitioner herein.
2. Briefly stated, facts of the case as unfolded are that in response to an advertisement published by the respondent National Institute of Public Corporation & Child Development, an autonomous body under the Ministry of Social Welfare, Government of India, the petitioner had applied for the post of UDC in 20.05.1984. According to the petitioner, though he appeared in the written test and interview held exclusively for the post of UDC, he was offered appointment for the post of Lower Division Clerk (LDC);

Petitioner before joining his duties on 30.07.1984 as LDC made a representation dated 14.07.1984; petitioner absented himself from his duty and vide order dated 09.02.1988, a Departmental Enquiry was initiated against him. The petitioner approached the Industrial Tribunal against the said order and the Tribunal directed the reinstatement of the petitioner with full back wages and continuity of service.

3. The petitioner preferred a Writ Petition which was dismissed vide order dated 05.03.2002 on the ground that the writ petition was not maintainable as it should have been filed in the Industrial Tribunal. A subsequent Review Petition against this order was also dismissed vide order dated 07.08.2003.
4. However, the petitioner pursued the matter further and filed another writ petition No. 759/03 along with CM 1840/2003 for condonation of delay and the Court vide order dated 10.08.2004 set aside earlier orders dated 05.03.2002 and 07.08.2003 and the W.P. (C) 4711/1997 was directed to be revived and reconsidered on merit.
5. Vide order dated 01.04.2009 passed in Writ Petition No. 4711/1997, the matter was transferred to Tribunal for further adjudication and disposal and it was registered as Transfer Application No. 1114/2009 before the Tribunal. Aggrieved by the order of Tribunal dated 14.07.2010 in Transfer Application No. 1114/2009, the petitioner filed a Review Application No. 140/2011 on 15.04.2011. This review application was also dismissed by the Tribunal vide its order dated 17.08.2011 with following observations:

“6. It is settled in law that the review jurisdiction is limited in scope. Re-agitation of issues or correction of a claimed erroneous order do not come within its purview. The Hon’ble Apex Court in the case of K.A. Ansari & Another Vs Indian Airlines Ltd {(2009) 1 SCC (L&S) 368} had observed as under:

A party is not entitled to seek a review of a judgment merely for the purpose of rehearing and a fresh decision of the case. When the proceedings stand terminated it is by final disposal of the Writ Petition, it is not open to the Court to reopen the proceedings which provides fresh cause of action. If this principle is not followed, there would be confusion and chaos and finality of proceedings would cease to have any meaning.

7. To conclude, the RA is time barred without sufficient reason being shown for condonation of delay. The grounds pleaded too are in the nature of re-agitation of issues. Resultantly, the RA is dismissed.”

6. Mr. Ishwar Lal, petitioner who appeared in person has submitted that there has been no intentional delay in approaching this Court. It is further submitted by the petitioner that the delay is sufficiently explained as his grandson aged below 7 years was seriously ill for a long time and had expired in 2011 for want of proper medical treatment.
7. The petitioner strongly urged that two sets of appointment letters were issued to him i.e. for Upper Division Clerk and Lower Division Clerk and the petitioner who even though chose to be appointed as Upper Division Clerk was granted the post of Lower Division Clerk.

8. To substantiate his arguments on delay and laches, the petitioner has relied upon para 5 of the case of ***Pearey Lal & Anr Vs OP Singla & Anr 60 (1995) DLT 305*** which is reproduced herein below:

“(5) Let me deal with the contentions raised before me by the learned counsel appearing for both the parties regarding limitation for filing the writ petition. The provision of Limitation Act as such do not apply to the granting of relief under Article 226 of the Constitution of India but maximum period fixed by the Legislature for a relief which can be granted by a Civil Court must be claimed and may ordinarily be taken as a reasonable standard by which delay in seeking remedy under Article 226 of the Constitution can be measured. Now I have to see whether in this case there has been an unreasonable delay on the part of the petitioners to file the writ petition. The petitioner has mentioned in the writ petition that he was precluded in filing the writ petition as the papers to file the writ petition were given in the Union Office. The petitioners had also deposited the necessary expenses at the Office of Hospital Employees Union, Aggarwal Bhavan, G.T.Road, Tis Hazari, Delhi. It has also been averred in the writ petition that the petitioners were pursuing the matter with the Union when it was told that the Union has lost the file and, Therefore, the writ petition could not be filed. The petitioners were poor Sweepers and they were illiterate persons. In invoking the extra-ordinary jurisdiction of the Court, the Court will not non suit the petitioners on account of delay in idling the petition, if petitioners were diligent and taking steps for filing this

petition. Another mitigating factor to condone the delay, if any, is that petitioners were poor and illiterate. Petitioners diligently followed the Union Office but on account of misplacing of the file in the Office of the Union, they could not file the writ petition within a period of 3 years. Even otherwise there is no inordinate and unreasonable delay in filing the writ petition. The award was notified, admittedly, somewhere in November'1982 and the present writ petition was filed on 14.11.1985. Therefore, I do not find any force in the arguments of the learned counsel for the respondent that the petition is barred by limitation and be dismissed on account of delay and laches."

9. Per Contra, Mr. H.D Sharma, Learned Counsel appearing on behalf of the respondents submits that the present petition is grossly barred by time. It is vehemently urged by the Counsel that the petitioner approached this Court much belatedly without furnishing any explanation for such delay and therefore, it should warrant dismissal on the ground of unexplained and inordinate delay.
10. Counsel for the respondents further argued that keeping in mind that the petitioner was an ex-serviceman, compassionate view was taken and the post of Lower Division Clerk was offered by relaxing the age limit of the petitioner.
11. To substantiate his arguments learned counsel appearing on behalf of the respondents relied upon the case of Hon'ble Supreme Court in ***State of Orissa and another Vs. Mamata Mohanty (2011) 3 SCC 436*** wherein the Apex Court observed as under :

"32. In the very first appeal, the Respondent filed Writ Petition on 11.11.2005 claiming relief

under the Notification dated 6.10.1989 w.e.f. 1.1.1986 without furnishing any explanation for such inordinate delay and on laches on her part. Section 3 of the Limitation Act 1963, makes it obligatory on the part of the court to dismiss the Suit or appeal if made after the prescribed period even though the limitation is not set up as a defence and there is no plea to raise the issue of limitation even at appellate stage because in some of the cases it may go to the root of the matter.

33. Needless to say that Limitation Act 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the Respondent claimed the relief from 1.1.1986 by filing a petition on 11.11.2005 but the High Court for some unexplained reason granted the relief w.e.f. 1.6.1984, though even the Notification dated 6.10.1989 makes it applicable w.e.f. 1.1.1986.

34. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time.”

12. We have heard petitioner appearing in person and the learned counsel for the respondents. We have also carefully perused the impugned order passed by the Tribunal. The short issue that arises is whether the present writ petition can be entertained after a delay of more than 4 years.
13. Before examining the rival contentions, we may refer to the settled position of Law on delay and laches. The Hon'ble Supreme Court in Pt. ***Girdharan Prasad Missir and Anr. Vs. State of Bihar and Anr. (1980) 2 SCC 83*** dealt with the question of delay. The relevant part of the judgment can be reproduced as under:

“....The High Court found that the delay of more than 17 months from the date of the award has not been satisfactorily explained. Counsel for the appellant refers to a number of decisions of this Court which deal with the question of delay and all of them agree that in such matter each case would depend upon its own facts. We find no reason why the appellants, if they were convinced that the acquisition proceedings was invalid, could not file the writ petition within a reasonable time after the Section 6 Notification was made, which was in 1958. Really therefore, the delay was longer than the High Court thought. On these facts, we are of opinion that the High Court was right in holding that the unexplained delay was a good ground for dismissing the writ petition. As the view we take on the question of delay is sufficient to dispose of the appeal, we do not consider it necessary to go into the other question raised on behalf of the appellants.”

14. The Apex Court in the case of ***State of M.P. and Ors. Vs. Nandlal Jaiswal and Ors.*** reported in ***AIR 1987 SC 251*** on the ground of delay and observed as under:

“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 of 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 with 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....”

15. After perusing the above case laws, we are of the considered view that the courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However, the court while allowing such application has to draw a distinction

between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. Courts have time and again held that when mandatory provision is not complied with and the delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone. The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. The fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both the parties and the said principle cannot be given a total go by in the name of liberal approach.

16. Furthermore, as a constitutional court this Court 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, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not.
17. In the above back drop, no relief can be granted to the petitioner who without any plausible and satisfactory explanation approached this Court under Article 226 after an inordinate delay of more than 4 years. There is no documentary proof to support the delay in relation to the grand son's health. The application finds no mention of the date of receiving the impugned order dated 14.07.2010. Also, the petitioner challenged the aforementioned order by filing a

review application which was also time barred and resultantly, dismissed. It is the duty of every party seeking redress to be vigilant and act with promptness. Though Article 226 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 such inordinate delay. Neither coherent explanation nor sufficient cause is shown by the petitioner for such a delay which clearly indicates that the instant petition is grossly barred by limitation and the same cannot be condoned. As the view is taken on the question of delay, we do not consider it necessary to go into the other issue raised before us.

18. For the reasons stated hereinabove, we are not inclined to interfere with the order of the Tribunal impugned before us and accordingly, the present writ petition is dismissed. No order as to costs.

SANGITA DHINGRA SEHGAL, J

G.S.SISTANI, J

DECEMBER 14, 2015

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