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

+ W.P.(C) 2676/2015

UNION OF INDIA

..... Petitioner

Through: Mr. Anurag Ahluwalia, CGSC,
Ms.Noor Anand, Mr.Prashant
Ghai, Advocates

versus

M.N. SRIDHAR RAO

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

18.03.2015

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C.M. Appl. No. 4781/2015 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

W.P. (C) No. 2676/2015 & C.M. Appl. No. 4780/2015 (Stay)

The petitioner – Union of India has filed the instant petition under Article 226 and 227 of the Constitution of India, to challenge the impugned order passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi vide orders dated 15th September, 2011.

On perusal of the contents of Writ Petition, we find that in the entire petition the petitioner has not given any reasons for such inordinate

delay on their part to challenge the impugned order dated 15th September, 2011. The petition is also not accompanied by any separate application for seeking condonation of delay in preferring the instant Writ Petition.

The respondent had preferred the O.A.No. 1159/2004 before the learned Tribunal to seek directions against the petitioner to hold the review DPC after rectifying the irregularity committed by them in respect of ACRs for four out of five relevant years viz. 1989-90, 1990-91, 1991-92 and 1993-94. The respondent also sought quashing of the order dated 2.11.1995 and notification dated 13.11.1995 whereby he was superseded by four junior officers.

Deciding the aforesaid Original Application filed by the respondent, the learned Tribunal directed the petitioner to constitute a Review DPC and to consider the case of the respondent for promotion to the Junior Administrative Grade in treating three of his ACRs as 'outstanding', one as 'very good' and the other, whatever would it be, for the preceding year i.e., 1988-89 and not of the year i.e. 1989-90. It was also directed that in this exercise if any of the officer who may be adversely affected, shall be given hearing in the matter before any final orders are passed. It was further directed that this exercise be done by the

petitioner as expeditiously as possible and preferably within a period of eight weeks from the receipt of certified copy of that order. This eight weeks period, even after giving a concession of period of one month for obtaining certified copy of the order, must have come to an end in the month of 15th December, 2011 by which time, the petitioners ought to have complied with the directions given by the learned Tribunal. Having not complied with the directions, and having slept like Rip Van Winkle and got up from slumber at their own leisure the petitioner have now filed the present petition to challenge the legality and correctness of the impugned order dated 15.09.2011.

It is correct that no period of limitation has been prescribed for filing a petition under Articles 226 and 227 of the Constitution of India yet one of the several rules of self imposed restraint evolved by Superior Courts is that High Court ought not to entertain petitions filed after long lapse of time so as to adversely affect the settled rights of parties. The following observations of the Supreme Court and other High Courts in this connection are pertinent:

The Hon'ble Gauhati High Court in the case of *C. Lianthanga v. State Of Mizoram And Ors.*, decided on 28 May, 2002 held:

“Undoubtedly Article 226 of the Constitution of India prescribes no period of limitation. But ordinarily under this provision of power of exercising writ jurisdiction no application will be entertained unless it is made immediately after the right sought to be protected infringed. Accordingly, no relief is ordinarily granted to a person who does not seek his remedy under the provisions of Article 226 with due diligence. This writ Court being a Court of equity, has also to see whether one has approached this Court within a reasonable time. In order to exercise the extraordinary power under Article 226, the aggrieved party must be very vigilant and seek relief at the earliest date. If he fails to do so, and has no satisfactory explanation for the delay then his writ petition is liable to be thrown out in limine. It also settled that whether there is a delay or not the question being one of discretion that must be decided with respect to the facts of each particular case. In the instant case, as already seen, there is a delay of more than 10 (ten) years in seeking relief by invoking Article 226 of the Constitution, that too, without any explanation for such delay. Therefore, applying the maxim "delay defeats equity" in the case in hand, it may be safely said that there was laches and negligence on the part of the petitioner in approaching this Court within a reasonable time and no relief can be given to the petitioner for approaching this Court after inordinate delay.”

Reliance in this regard can be placed on the case titled ***State of M.P. Vs. Bhailal Bhai AIR 1964 SC 1006*** wherein the Supreme Court had observed as under:

“the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226. It appears to us however that the maximum period fixed by the Legislature as the time within which the relief by a suit in the Civil Court must be brought may ordinarily be taken to be a reasonable standard by which the delay is seeking remedy under Article 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a Civil action for the remedy but where the delay is more than the period it will almost always be proper for the Court to hold that it is unreasonable.”

Taking note of the judgment in the case of *State of M.P. and others etc. etc. v. Nandlal Jaiswal and others etc. etc.*, AIR 1987 SC 251, the Supreme Court in the case of *Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu*, (2014) 4 SCC 108 held as under:

“In State of M.P. and others etc. etc. v. Nandlal Jaiswal and others etc. etc. the Court observed that it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in 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 9 if there is inordinate delay on the part of the petitioner in filing a 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.

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 scrutinize 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. In the case at hand, though there has been four years’ delay in approaching the court, yet the writ court chose not to address the same. It is the

duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

We are amazed at the fact that the petitioner has not even offered any explanation for such an inordinate delay on their part in filing the present petition, and it is a settled principle that if delay is inordinate, credible excuse is necessary to explain it otherwise natural inference would be that it is inexcusable. Article 226 is not a blanket Power, regardless of temporal and discretionary restraints. If a party is inexplicably insouciant and unduly belated due to laches, the Court may deny redress. (***Ref: Raja Jagdambika Prasad Narain Singh v CBDT, [1975] 100 ITR 698(SC)***).

In the instant case, in the absence of any explanation offered by the petitioner we find no reason to entertain the present petition, which in our

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view, is certainly hit by the principles of inordinate delay and laches on the part of the petitioner and the Writ Petition filed by the petitioner is dismissed on this short ground alone.

The Writ Petition and the pending application are disposed of.

KAILASH GAMBHIR, J

I.S. MEHTA, J

MARCH 18, 2015

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