

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

Date of Decision: 28.09.2015

+W.P.(C) 8341/2015

SURAJ PAL

..... Petitioner

Through: Mr Rishi Jain, Adv.

versus

JAMIA HAMDARD (HAMDARD UNIVERSITY)

..... Respondent

Through: Mr Ankit Verma, Adv.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J. (ORAL)

CM 17678/2015 (exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

W.P.(C) 8341/2015

1. The challenge in this writ petition under Article 226 of the Constitution of India is to the order dated 17.01.2004 passed by the respondent and order dated 25.02.2004 passed by the Executive Council of the respondent in Appeal No.Estab/ED/68.

2. It is the case of the petitioner that he was appointed on the post of Steward in the scholar house of Institute of History of Medicine and Medical Research on 23.06.1988 for a consolidated payment of Rs.800/- per month. On 07.03.2003 the petitioner and Mrs. Shamim Mufti, Assistant, Examination Section were assigned the duty relating to sale of admission forms. While Mrs Shamim Mufti, Assistant Examination Section was assigned the sale of admission forms and prospectus for diploma and post graduate courses, the petitioner was assigned the sale of admission forms and prospectus for undergraduate courses. There was a specific direction to the cashier to receive the sale amount twice a day from the sale assistant. The period scheduled for the sale of admission forms and

prospectus was from 10.03.2003 to 19.04.2003. There was a huge rush on all these days and while depositing the cash to the counter, proper receipts were not issued by the cashier on the very same day. He used to issue the receipts on subsequent dates. While remitting the amount a form had to be filled up. The petitioner used to remit the amount after duly filling up the form. There was no complaint from the cashier that no payment was made on any day but subsequently on verification it was found that an amount of Rs.1,47,900/- and DD of Rs.1,450/- have been short deposited and the petitioner was suspended from the service on the allegation of carelessness of duty and misappropriation of funds. The enquiry was conducted without following the due procedure established by law. A notice dated 27.10.2003 was served upon the petitioner calling him upon to deposit the aforesaid amount. The petitioner submitted a representation before the respondent. However, the Executive Council without making any enquiry vide the impugned order dated 17.01.2004 dismissed the petitioner from service. The petitioner preferred an appeal before the Vice-Chancellor of the University which was also dismissed. As such, by way of this writ petition, the petitioner seeks quashing of the impugned orders dated 17.01.2004 and 25.02.2004 and his reinstatement in service with full back-wages.

3. On advance notice, learned counsel for the respondent appears. At the outset, he objects to the entertainment of the writ petition on the ground of delay and laches as the petitioner is approaching this Court after a lapse of approximately eleven years.

4. Learned counsel for the petitioner fairly conceded that there is delay and lapses on the part of the petitioner in approaching this Court, however, he submits that the petitioner had approached an advocate to file a writ petition but after accepting brief from the petitioner he had filed a writ petition but did not revive it and kept on lingering the matter from 2007 to 2014 as such the delay in approaching the Court is attributable to the advocate and not to the petitioner.

5. Needless to say there is inordinate delay on the part of the petitioner in approaching this Court. Delay and laches is one of the factors that is required to be borne

in mind by this Court while exercising discretionary powers under Article 226 of the Constitution of India.

6. It is repeatedly laid down by the Apex Court that although in writ petitions, there is no period of limitation prescribed, but nevertheless the principles of limitation prescribed under the Limitation Act broadly will govern the period for filing the writ petition. 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 in 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.”

7. Again, in ***M/s Bharat Barrel & Drum MFG Co. v The Employees State Insurance Corporation***, 1971(2) SCC 860, the Hon’ble Supreme Court held as under:

“The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant, without asserting them in a court of law. The principle which forms the basis of this rule is expressed in the maxim *vigilantibus, non dormientibus, jura subveniunt* (the laws give help to those who are watchful and not to those who sleep). Therefore the object of the statutes of limitations is to compel a person to exercise his right to action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims.”

8. Again in *Shankara Co-op Housing Society Ltd. v M. Prabhakar and Ors.*, AIR 2011 SC 2161 it was observed as under:

"Delay and laches is one of the factors that requires to be borne in mind by the High Courts when they exercise their discretionary power under Article 226 of the Constitution of India. In an appropriate case, the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his rights taken in conjunction with the lapse of time and other circumstances. The *Privy Council in Lindsay Petroleum Company Vs. Prosper Armstrong Hurd etc*; (1874) 5 PC 221 at page 229, which was approved by this Court in *Moon Mills Ltd. Vs. Industrial Courts* AIR 1967 SC 1450 and *Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service* AIR 1969 SC 329, has stated :-

"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 of 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 relates to the remedy."

47) In *Amrit Lal Berry Vs. CCE* (1975) 4 SCC 714, this Court took the view that "if a petitioner has been so remiss or negligent as to approach the Court for relief after an inordinate and unexplained delay, he certainly jeopardises his claims as it may become inequitable, with circumstances altered by lapse of time and other facts, to enforce, a fundamental right to the detriment of similar claims of innocent third persons."

48) In *State of Maharashtra Vs. Digambar* (1995) 4 SCC 683, this

Court observed that "unless the facts and circumstances of the case at hand clearly justify the laches or undue delay, writ petitioners are not entitled to any relief against anybody including the State."

49) In ***Shiv Dass Vs. Union of India*** (2007) 9 SCC 274, this Court opined that "the High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

50) In ***City and Industrial Development Corporation Vs. Dosu Aardeshir Bhinandiwalla and others*** (supra), this court held :-

"It is well settled and needs no restatement at our hands that under Article 226 of the Constitution, the jurisdiction of a High Court to issue appropriate writs particularly a writ of Mandamus is highly discretionary. The relief cannot be claimed as of right. One of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained delay and the laches. Inordinate delay in moving the court for a Writ is an adequate ground for refusing a Writ. The principle is that courts exercising public law jurisdiction do not encourage agitation of stale claims and exhuming matters where the rights of third parties may have accrued in the interregnum."

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53) The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are: (1) there is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts. (2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court

should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners. (3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy. (4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts. (5) That representations would not be adequate explanation to take care of the delay.”

9. In *Delhi Jal Board v Its Workman (Sri Balbir Singh)*, 2009 (122) FLR 486, there was a delay of four years in filing the writ petition challenging the award passed by the Labour Court. The Ld. Single Judge of this Court refused to entertain the writ petition on account of delay and laches. Substantially similar view was taken in *Ajay Kumar & Ors. v Killburn Office Automation Ltd.*, MANU/DE/4753/2009 where the delay in filing the writ petition after expiry of more than two years from the date of award was considered to be fatal and the writ petition was dismissed on account of delay and laches.

10. Let me now advert to the contention canvassed by learned counsel for the petitioner that the delay was attributable to the counsel to whom the petitioner had engaged in filing the writ petition. It is alleged as under:

“xvii. That the petitioner engaged one advocate to file the writ petition against the impugned order but after accepting the brief from the petitioner he had filed the writ petition but did not re-file it inasmuch as never bother to pursued it. A true copy of the correspondence of letter dated 06.01.2006 is annexed herewith and marked as ANNEXURE P-13.

xviii. That the advocate kept lingering the petitioner on one pretext or another that the matter has been filed and re-filed but the same was never filed by the advocate which amounts to gross professional misconduct on the part of the advocate. The advocate from 2007 to 2014 kept fooling the petitioner about the filing of the case. Then the petitioner obtained the file

on 01.10.2014 on the defect form given by the registry bears endorsement to that effect. A true copy of the endorsement dated 01.10.2014 is annexed herewith and marked as Annexure P-14.”

11. A perusal of Annexure P-13 reflects that a letter dated 06.01.2006 was sent by Mr N.A. Sebastian, Advocate addressed to the petitioner, calling upon him to meet the counsel as the case was lying ready for filing in the High Court. There is no averment as to whether thereafter the petitioner met the counsel or not but it is merely alleged that from 2007 to 2014, he kept on fooling the petitioner about filing of the case.

12. I am at a loss to fathom that not even once in seven year, the petitioner thought it fit to inquire from his advocate as regards the status of the writ petition. After engaging an advocate, a litigant cannot go off to sleep and wake up from a deep slumber after a lapse of about seven years. Moreover, there is nothing on record to show that if the advocate kept befooling the petitioner for a long period of seven years, what action was taken by him against the said advocate.

13. True, an advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is also true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex-parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult.

14. Even if it is presumed, for the sake of arguments, that the counsel engaged by the petitioner was not very serious in filing the writ petition, that itself is no ground to entertain the instant petition after such a long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings which are required to be initiated at his instance. The litigant,

therefore, should not be permitted to throw the entire blame on the head of an advocate and thereby disowning him at any time to seek relief.

15. Moreover, as per the petitioner himself, he obtained the defect form on 01.10.2014 from the Registry. Even thereafter no prompt action was taken by him to file the writ petition challenging the impugned order. The casual and callous attitude of the petitioner is reflective from the fact that this petition was filed only on 28.08.2015. Inordinate and unexplained delay in approaching court is adequate ground for refusing to exercise the jurisdiction in favour of the petitioner.

16. Law Courts never tolerate an indolent litigant since the delay defeats the equity. As a matter of fact, the lapse of time is a species for forfeiting of right as held in *Manby v Bweicke* (1857) 3 K&J 342.

17. Even on merit, there is no ground for interference. The petitioner himself has placed on record the enquiry report which reflects that the petitioner accepted the correctness of the records of issue of forms and deposit of cash and DDs. He also admitted that an amount of Rs.1,47,900/- and DDs of Rs.1,450/- was unaccounted. He accepted his carelessness and agreed to pay the said amount. Keeping in view the fact that he accepted his fault, the enquiry was closed and he was found guilty of dereliction of duty and carelessness resulting in misplacement of university funds. Thereafter, a show-cause notice was given to him proposing to impose a penalty of dismissal from service. He submitted a reply wherein he admitted his carelessness and improper maintenance of record. However, he denied misappropriation of funds. If the petitioner was aggrieved, he should have approach the Court immediately after his dismissal and not waited for a long span of eleven years.

18. Taking into consideration the totality of facts and circumstances of the case, coupled with the fact that the remedy under Article 226 of the Constitution of India is discretionary in nature, and, in a given case, even if some action or order challenged in the petition is found to be inappropriate, this Court, while exercising extraordinary

jurisdiction therein, can refuse to upset it with a view to do substantial justice between the parties. On account of such inordinate delay and lapses a valuable right has also accrued in favour of the respondent.

19. For the foregoing reasons, the writ petition is dismissed, leaving the parties to bear their own costs.

(SUNITA GUPTA)
JUDGE

SEPTEMBER 28 2015/rd