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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 8694/2015

Date of Judgment : 6th October, 2015

HARI DUTT SHARMA

..... Petitioner

Through : Mr. Virender Mehta, Advocate

Versus

DELHI JAL BOARD

..... Respondent

Through : Mr. Sumeet Pushkarna, Standing
Counsel with Mr. Siddhartha
Nagpal, Advocates DJB

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. In the present petition , the petitioner seeks quashing and setting aside of the order dated 05.03.2015 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi in TA No. 13/2011.
2. The facts of the present case in a nutshell are as under:

“The petitioner was initially appointed as Lower Division Clerk in the Municipal Corporation of Delhi w.e.f 05.02.1956. Admittedly, the applicant was imposed with a penalty of stoppage of two increments w.e.f 1.8.1978. He was due for his promotion as Upper Division Clerk w.e.f 29.1.1978 on which date his juniors have also been promoted. In view of the pendency of the aforesaid punishment, he was actually promoted as Upper Division Clerk only on 23.10.1982.”

3. Mr. Virender Mehta, learned counsel appearing on behalf of the petitioner submits that the order passed by the Central Administrative Tribunal is unjust, illegal, arbitrary and against the principles of natural justice. It is further contended that the Tribunal has failed to appreciate that even though the promotion has been postponed to 23.10.1982 due to the pendency of the aforesaid punishment, his seniority in the cadre of Upper Division Clerk should not have been disturbed for future promotions.
4. The counsel for the petitioner strongly urged that the Tribunal has grossly erred in its finding that the cause of action became available to the petitioner only after September, 1996 i.e. when the dues of the petitioner were not paid to him by the respondent, however, the cause of action had only arisen only after 16.01.2001 i.e. after refusal of the respondent to consider his case for promotion.
5. On the other hand, Mr. Sumeet Pushkarna, Standing counsel for Delhi Jal Board submits that since the petitioner was facing enquiry at the time when his promotion was due i.e. 29.01.1978, he was entitled to be promoted only after the expiry of the punishment period and consequently his seniority for further promotions was to be reckoned from that date of promotion.
6. Counsel for the respondent further emphasised on the aspect of delay and laches, and submitted that the claim of the petitioner is hopelessly barred by limitation.
7. We have heard the learned counsel for the parties and considered their rival submissions and have also perused the record which was before the Tribunal, copies of which were produced before this

Court. It is the case of the petitioner that on account of his erroneous suspension w.e.f 23.12.1972, the case of the petitioner for promotion to the post of UDC was not considered by the Department which was due w.e.f. 29.1.1978, which resulted in lowering his seniority and future promotions. The Central Administrative Tribunal dismissed the petitioner's TA as it was "time barred". It would be useful to reproduce para 7 of the judgment of the Central Administrative Tribunal, which reads as under:

"7. The cause of action for instituting the suit to seek promotion as UDC w.e.f. 29.1.1978 had lastly accrued to the applicant on 28.8.1984 when the Additional Director of Vigilance of MCD (Delhi Water Supply & Sewer Disposal Undertaking) passed the order No.3906 dated 28.8.1984 declaring the suspension order as illegal. Nevertheless the applicant instituted the suit only on 4.7.2001, i.e., after almost seventeen years of the aforementioned order. The period of limitation, mentioned in the Schedule under Section 2 (j) of the Limitation Act, 1963 prescribed for filing a suit for mandatory injunction/declaration, is three years, thus the suit was hopelessly barred by limitation. It may be so that the learned Civil Court had not framed any preliminary issue of limitation regarding maintainability of the suit but in terms of the provisions of Section 29 of the Administrative Tribunals Act, 1985, on transfer of a suit before it, the Tribunal has to proceed to deal with the same in the same manner in which an application under Section 19 of the Act is dealt with by it."

8. At the outset, before delving into the merits of the submissions made by the learned Counsel for the parties, the relevant statutory provision is required to be noticed. Section 21 of the

Administrative Tribunal Act, 1985 which is relevant for the disposal of this petition is reproduced as under :

“ 21. Limitation -

(1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where –

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates ; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or , as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one

year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.”

After perusing the aforementioned provision, we are of the considered view that though the provision of Section 21(2) of the Act could be liberally construed and the proceedings, if within limitation at the time of institution before the concerned forum cannot be treated as time barred despite the cause of action being older than three years at the time of application of Section 14(3) of the Act to the subject matter involved in the T.A. However, in the present case, the civil suit was instituted by the petitioner after a period of seventeen years and was hopelessly time barred.

9. In ***State of M.P. v. Nandlal Jaiswal and Ors. (1986) 4 SCC 566***, the Hon'ble Supreme Court observed that 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 and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. 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 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 further observed by the Apex Court that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which High Court also weighs in deciding whether or not to exercise such jurisdiction.

10. In *State of Orissa & Anr. v. Mamata Mohanty*, 2011 (3) SCC 436 the issue of limitation came up for consideration before the Hon'ble Supreme Court. In para 52, 53 and 54, the Hon'ble Supreme Court observed that even in the case of pay scale, which may give rise to a recurring cause of action, the petition may be dismissed on ground of delay and laches:

"52. 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. (See: Lachmi Sewak Sahu v. Ram Rup Sahu & Ors. AIR 1944 Privy Council 24; and Kamlesh Babu & Ors. v. Lajpat Rai Sharma & Ors. (2008) 12 SCC 577).

53. 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.

54. 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. (See: M/s. Rup Diamonds & Ors., v. Union of India & Ors. AIR 1989 SC 674; State of Karnataka & Ors. v. S.M. Kotrayya & Ors. (1996) 6 SCC 267; and Jagdish Lal & Ors. v. State of Haryana & Ors. AIR 1997 SC 2366).”

11. After perusing the above case laws, we are of the considered view that the principles indicated above would give a clear indication that 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.

12. Normally, in the cases of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be borne in mind by the Courts when they exercise their discretionary powers under Article 226 of the Constitution of India, 1950. In an appropriate case the Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the petitioner to assert his right as taken in conjunction with the lapse of time and other circumstances which causes prejudice to the opposite party. In the instant case, the petitioner preferred to sleep over his rights for a period of seventeen years and approached the concerned forum in 2011, hence, we are of the considered view that the claim of the petitioner must fail on the ground of delay and laches in approaching the appropriate forum.
13. For the reasons stated hereinabove, we do not find any infirmity in the order of the Tribunal impugned before us and accordingly, the present writ petition being devoid of any merit is dismissed.

SANGITA DHINGRA SEHGAL, J

G.S.SISTANI, J

OCTOBER 6, 2015/sc