

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 479 OF 2011

Jagdish Vishandas Gursahani

... Petitioner.

V/s.

Air India Limited and Anr.

... Respondents.

Mr.Prakash V.Dhopatkar, Advocate for the Petitioner.

Mr. Sudhir Talsania with Ms.Kavita Anchan with Mr.Arsh Misra
i/by M.V.Kini & co., Advocate for the Respondents.

Mr.B.V.Samant, AGP for the State.

**CORAM : S. C. DHARMADHIKARI AND
SMT.BHARATI H. DANGRE, JJ.**

DATE : 05th OCTOBER, 2017

PC :

1 By this petition under Article 226 of the
Constitution of India, the Petitioner is challenging the order of
his termination dated 16.03.1996.

2 The writ petition is filed on 14.12.2010.

3 Since the party, the petitioner, earlier was
appearing in person has now engaged an Advocate, we have
sympathetically perused the papers.

4 We find is that order of 16th March, 1996 could not have been challenged as belatedly as on 14th December, 2010, by a petition presented to this court under Article 226 of the Constitution of India.

5 When we questioned Mr. Dhopatkar, who is now engaged as Advocate by the Petitioner, about this enormous and unexplained delay in filing the petition all that he would say is that the Petitioner was seeking some information particularly about two of the co-employees who, though terminated from services, were reinstated by Respondent No.1 - Air India Limited. The only explanation that has found in the entire petition for this delay is in para 23 of the petition. Para 23 reads thus :

“23. There is no deliberate delay or latches in filing this petition as the Petitioner has not challenged any Order or Judgment in this Writ Petition as the issue pertains to the constitutional validity of the Act of the Respondents and the documents have been obtained after the enactment

of the RTI Act, 2005 and the act of discrimination is continuous in nature and it is still continuing.”

When we questioned Mr. Dhopatkar, as to how this can be considered to be a satisfactory and reasonable explanation for this enormous delay, when that is seriously disputed, he would submit that as there are co-employees and whose instances have been set out in the petition. The Petitioner has referred to the cases of the other employees stated to be involved and in the same activity. The activity was smuggling of the gold.

6 The cases of five co-workers, whose names are set out in para 9 of the petition would reveal that the petitioner raises a plea of discrimination and favoritism. He says that only he has been singled out for termination; whereas other workers have now been reinstated in the service.

7 We specifically invited the attention of Mr. Dhopatkar to the list of documents which consists of the papers relating to the co-employees namely C. M. Khavshe and

M.S. Pol. These persons were also stated to be suspended way back on 14th August, 1990 and the order of their reinstatement is 04th June, 1993. There is complete silence on the part of the petitioner as to why he waited, firstly, for the Right to Information Act, 2005 to be enacted and later on to come to this court on 14th December, 2010 if the co-workers / employees, similarly situated, have been reinstated in the service. On that Mr. Dhopatkar would say that until the RTI Act came to be enacted there were no means, to obtain any information, available to the petitioner. This, we do not find to be bonafide explanation at all. The Petitioner was aware that the co-workers/employees have been reinstated in the service. The Petitioner did not approach the competent authority and particularly the Regional Labour Commissioner (Central), Mumbai till 2006. The Petitioner's Advocate relies upon a report of this Regional Labour Commissioner (Central) that the case of the petitioner should be considered for similar reliefs and, if not, the petitioner must approach this court.

Then, the petitioner relies upon some of the judgments rendered by this court.

8 We are not at all impressed for the cases of other co-employees, whose instances have been set out to allege discrimination, have been reinstated in the services, pending departmental enquiry, on 14th July, 1988. Then there is an internal confidential communication of 1991 which is relied upon. All this would mean that the petitioner was aware of their order of reinstatement, the developments relating thereto but he still gives an excuse of not being in possession of the relevant documents or information. Thus the explanation, as placed before us, is an after-thought. We do not find any justification for entertaining the request for reinstatement of an employee like the petitioner, who has been terminated in March, 1996, admitting this petition filed on 14th December, 2010. Once we find that the time consumed from his termination till the filing of this petition and the delay that has occurred is wholly attributable to the petitioner, there is no

reasonable or bonafide explanation for this enormous delay;
we can proceed to dismiss the petition on that ground itself.

9 Hence, we dismiss the petition accordingly. No
costs.

(SMT.BHARATI H.DANGRE,J.)

(S.C.DHARMADHIKARI,J.)

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