

In the High Court of Judicature at Madras

Dated : 13.09.2017

Coram

The Honourable Mr. Justice S. MANIKUMAR
and
The Hon'ble Mrs. Justice V. BHAVANI SUBBAROYAN

Writ Appeal No.1093 of 2017

M. Murugesan

.....Appellant

..vs..

The Additional Director General of Police,
(Administration), Mylapore,
Chennai - 600 004

.....Respondents

Appeal filed under Clause 15 of the Letters Patent Act
against the Order dated 07.06.2017 in W.P No.14168 of 2017.

WP.NO.14168/17

Prayer: Writ Petition filed Under Article 226 of the Constitution
of India, praying for the issuance of Writ of Mandamus directing
the respondent to consider and pass orders on merits by
disposing the written representation made by the petitioner on
05.05.2017 within a stipulated time as this Honourable Court
fixes.

For Appellant : Mr.C. Prakasam

For respondent : Mr.V. Jayaprakash Narayanan
Spl. Government Pleader

JUDGMENT

(Judgment of the court was delivered by S. MANIKUMAR, J.,)

The writ petitioner, selected and issued with an order of
appointment, as Constable Grade II by Order dated 25.01.2013 by
Commandant of Tamil Nadu Special Police, 6th Battalion, Madurai-
14, could not report the Principal Training Centre on
17.02.2013 at TNPRS TSP VI BN, Madurai has made a representation
dated 5.5.2017 to the The Additional Director General of Police,
(Administration), Chennai, respondent herein, to permit him, to
report for the ensuing training.

2. Contending inter-alia that the representation dated 05.05.2017 has not been considered, the petitioner has sought for a Mandamus directing The Additional Director General of Police, to dispose of the representation, within a time frame.

3. Before the Writ Court, the petitioner has contended that his father was seriously ill and treated in Government Hospital, Dharmapuri and that there was nobody in the family to take care. In the above said circumstances, he could not join the training programme.

4. Adverting to the above said submissions, the Writ Court at Paragraph No.5 of the Order in W.P No.14168 of 2017 dated 07.06.2016, ordered as hereunder:

" 5. This Court is not inclined to entertain this writ petition. The reason is when the petitioner was selected as Police Constable Grade-II in the year 2013, he failed to join and keeping quiet for long. For the first time, he has given his representation after almost four years, making a request to permit to participate in the forthcoming training course on the lame excuse that his father was admitted as an inpatient in hospital and he had to take care of him. The only document relied upon by him to fortify his stand is the medical certificate dated 20.03.2013, which simply shows that his father was taking treatment from 10.02.2013 to 20.03.2013 only. Therefore, the reason assigned by the petitioner for not attending the training course is only misconceived.

In view of the foregoing reason, the writ petition is dismissed as being devoid of merits. No costs.

5. Assailing the correctness of the order made in the Writ Petition, the instant Writ Appeal has been filed. Though Mr.C. Prakasam reiterated the same averments, by inviting the attention of this Court to the appointment order dated 25.01.2013, Mr.V. Jayaprakashnarayanan, learned Special Government Pleader submitted that while issuing the appointment order, the Commandant of Tamil Nadu Special 6th Battalion, Madurai has made it clear that the selected candidate/writ petitioner should report to the Principal Training Centre on 17.02.2013 at TNPRS TSP VI BN, Madurai, failing which, his

selection would be cancelled. He further submitted that on the failure of the writ petitioner reporting to the Centre, on the said date, as directed, the selection stood automatically cancelled and the resultant vacancy, would have been filled up by a candidate in the waiting list or carried forward to the next recruitment. Learned Special Government Pleader further submitted that mere selection does not confer any right and this has been taken note of by the Writ Court. For the above reasons, he prayed to sustain the order of the Writ Court.

6. Heard both sides and perused the materials available on record.

7. As rightly contended by the learned Special Government Pleader, in the appointment order dated 25.01.2013 itself, there is a specific direction that the candidate/writ petitioner should report before the Principal Training Centre on 17.02.2013, failing which, selection would be cancelled. Though Mr.C. Prakasam, learned counsel for the appellant seeks for a sympathetic consideration on the merits of the case that the writ petitioner had to take care of his ailing father in the hospital and though we are aware that the remedy under Article 226 of the Constitution of India is equitable in nature, still on the facts and circumstances of the case, when the appellant has not approached the respondent or this Court within a reasonable time, we cannot grant the relief sought for. What is reasonable time to approach the High Court is not defined in any statute.

8. The words "reasonable time", as explained in *Veerayeeammal v Seeniammal* reported in 2002 (1) SCC 134, at Paragraph 13, is as follows:

"13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's *The Law Lexicon* it is defined to mean:

"A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

9. Reference can also be made to few decisions of the Supreme Court, where inordinate delay and laches, on the part of a litigant, in approaching the Court, has been disapproved:

(i) In State of M.P vs Nandlal Jaismal reported in 1986 (4) SC 566, the Hon'ble Supreme Court, at paragraph 24, held as follows:

"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 or 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 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.Of course, this rule of laches or delay is not a rigid rule which can be cast in a strait jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it."

(ii) In *State of Maharashtra vs Digambar* reported in AIR 1995 SC 1991, the Hon'ble Supreme Court, considered a case, where compensation for the acquired land, was claimed belatedly and at Paragraphs 12, 18 and 21, held as follows:

"12. How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State invoking writ jurisdiction of the High Court under article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decision of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blame-worthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the

State against which relief is sought is a welfare State, is also difficult to comprehend. Where the relief sought under Article 226 of the Constitution by a person against the welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blame-worthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State.

18. Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining

discretionary relief which disentitled for grant of such relief was explained succinctly by Sir Barnes Peacock, long ago, in *Lindsay Petroleum Co. v. Prosper Armstrong* (1874) 5 PC 221) thus :

"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 or 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 it relates to the remedy."

21. Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement of such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily."

(iii) *State of Rajasthan v. D.R. Laxmi* reported in 1996 (6) SCC 445, the Hon'ble Supreme Court observed that though the order may be void, if the party does not approach the Court within a reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner.

(iv) In Chairman, U.P. Jal Nigam and another v. Jaswant Singh reported in AIR 2007 SC 924, the Hon'ble Supreme Court, after considering a catena of decisions on the aspect of delay, at Paragraph 13, held as follows:

"13.....Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted."

10. Added further, when failure to report before the Principal Training Centre, resulted in cancellation of selection, this Court, by directing the respondent to take him for training should not unsettle the cancellation.

11. Looking at from every angle, this Court is not inclined to extend the equitable relief to the writ petitioner. The Writ Appeal stands dismissed. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

The Additional Director General of Police,
(Administration), Mylapore,
Chennai - 600 004

+ 1 cc to M/s.C.Prakasam, Advocate, SR.66984
+ 1 cc to The Govt.Pleader, SR.67742

W.A.No.1093 of 2017

SK(CO)
NR 09/10/2017