

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No. 10715 of 2017

Date: 03.04.2017

Between:

Omer Bin Salam, S/o Salam Bin Abdullah,
Aged about 83 years, Occu: Attender (Rtd),
O/o Collectorate, Mahabubnagar,
R/o H.No.18-11-67/A/45/26/12,
Barkas, Salala, Chandrayangutta,
Hyderabad.

.....Petitioner

and

The State of Telangana, rep.by its Principal
Secretary, Revenue Services-III, Secretariat
Buildings, Hyderabad and others.

.....Respondents



The Court made the following:

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ORDER:

Petitioner worked as Attender / Driver between 1960 and 1972. From the year 1972, petitioner absconded from duties. He reached the age of superannuation in the year 1994. In 2006, petitioner filed O.A.No.854 of 2006 before the Tribunal claiming the service benefits. The said O.A., was dismissed for non-prosecution. In this writ petition, petitioner claims that he is entitled to pension and his pension papers have to be processed by regularizing the absence period as medical leave and he should be paid all other benefits including gratuity.

2. The brief facts noted above would disclose that petitioner was out of employment from 1972 onwards and he started claiming the benefits from the year 2004. The O.A. filed by him in the year 2006 was dismissed for non-prosecution. He did not take steps against dismissal of the said OA. Eleven years later, this writ petition is instituted claiming that he should be treated as a person on medical leave and he be granted all the benefits. The dates noted above are sufficient to reject the writ petition in limini on the ground of inordinate delay and laches even assuming that there is merit in the contention of the petitioner that his absence from 1972 was not willful and deliberate and no action was taken against him by employer. Petitioner sets up the claim for the first time after 32 years from the date of his absence.

3. The identical issue was considered by Supreme Court in **C.Jacob v. Director of Geology and Mining and another**¹.

Supreme Court held as under:

“12. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for the purpose of pension. That will be a travesty of justice.

13. Where an employee unauthorisedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches the court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back wages.”

4.1. In **State of Jammu and Kashmir v. R.K.Zalpuri and others**², the very issue of delay in instituting the writ petition after long lapse of time was considered. It was a case of dismissal and challenge was on the ground of violation of procedural safeguards incorporated into the Jammu & Kashmir Civil Services (Classification, Control and Appeal) Rules. Disciplinary action resulted in imposing punishment of dismissal from service by order dated 6.9.1999. This was challenged by filing writ petition in

¹ (2008) 10 SCC 115

² (2015) 15 SCC 602

the High Court on 18.2.2006. The delay was of 7 years, Supreme Court held that the delay and laches were not satisfactorily explained and, therefore, writ petition was not maintainable.

4.2. The State Government raised objection on maintainability of writ petition on the ground of delay and laches. Without accepting this plea, punishment was set aside on the ground that Rule 34 of the Classification, Control and Appeal Rules was not complied. Even in appeal the Division Bench has not considered objection on delay in filing writ petition. Hence, appeal before Supreme Court.

4.3. Supreme Court reviewed the precedent decisions:

“20. Having stated thus, it is useful to refer to a passage from *City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla* [*City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla*, (2009) 1 SCC 168] , wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus: (SCC p. 175, para 30)

“30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.”

21. In this regard reference to a passage from *Karnataka Power Corpn. Ltd. v. K. Thangappan* [*Karnataka Power Corpn. Ltd. v. K. Thangappan*, (2006) 4 SCC 322 : 2006 SCC (L&S) 791] would be apposite: (SCC p. 325, para 6)

“6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. 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 right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party.”

After so stating the Court after referring to the authority in *State of M.P. v. Nandlal Jaiswal* [*State of M.P. v. Nandlal Jaiswal*, (1986) 4 SCC 566] restated the principle articulated in earlier pronouncements, which is to the following effect: (SCC p. 326, para 9)

“9. ... the High Court in 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 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.”

22. In *State of Maharashtra v. Digambar* [*State of Maharashtra v. Digambar*, (1995) 4 SCC 683] a three-Judge Bench laid down that: (SCC p. 692, para 19)

“19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.”

23. Recently in *Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu* [*Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu*, (2014) 4 SCC 108 : (2014) 1 SCC (L&S) 38] , it has been ruled thus: (SCC p. 117, para 16)

“16. 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 scrutinise 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.”
(emphasis supplied)

4.4. Supreme Court held,

“26. In the case at hand, the employee was dismissed from service in the year 1999, but he chose not to avail any departmental remedy. **He woke up from his slumber to knock at the doors of the High Court after a lapse of five years.** The staleness of the claim remained stale and it could not have been allowed to rise like a phoenix by the writ court.”
(emphasis supplied)

5. The claim of petitioner is stale. Petitioner was in deep slumber for 45 years. As held by Supreme Court in **Chennai Metropolitan Water Supply and Sewerage Board Vs. Murali Babu³**, ‘**law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis**’. Thus granting relief to petitioner is not just and equitable in a petition filed after 45 years. Having regard to inordinate delay of 45 years the Court declines to exercise discretionary and equitable jurisdiction. This Writ Petition is liable to be dismissed on the ground of delay and laches in invoking the jurisdiction of this Court.

³ (2014) 4 SCC 108

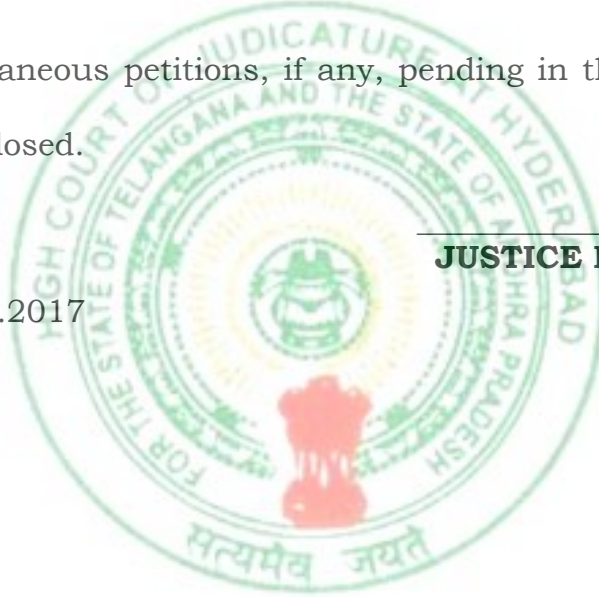
6. Writ petition is also not maintainable as on the same cause of action, O.A.No.854 of 2006 was dismissed by A.P.Administrative Tribunal and no further litigation can be instituted on the same cause of action when earlier litigation resulted in dismissal for non-prosecution.

7. The writ petition is instituted clearly in abuse of process of the Court and writ petition is liable to be dismissed with exemplary costs. Writ petition is dismissed accordingly with costs quantified at 10,000/- (Rupees ten thousand only).

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

Date: 03.04.2017
Kkm

JUSTICE P.NAVEEN RAO



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