

C.W.P. No. 20901 of 2017

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 20901 of 2017

DATE OF DECISION:14.09.2017

Paramjeet Singh

.....Petitioner

Versus

Shiromani Gurudwara Parbandhak Committee,
Amritsar

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Ranjan Lakhanpal, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned order dated 26.2.1994, whereby, services of the petitioner have been terminated.

Briefly stated, the facts of the case are that the petitioner joined the services with the respondent as Typist in the year 1983. His services were terminated vide order dated 26.2.1994, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that neither any inquiry was conducted nor any notice was issued to the petitioner. Simply it has been mentioned in the impugned order that the petitioner is being

terminated from his services in view of newspaper report published against him. Learned counsel further submits that because of said news, the petitioner could not contest his case and left the place of working. The impugned order has been passed without following the principles of natural justice and same is bad in law.

Heard the arguments advanced by learned counsel for the petitioner and have also gone through the impugned order and other documents available on the file.

The facts relating to appointment of the petitioner on the post of Typist in the year 1983 and thereafter removal from service vide order dated 26.2.1994 are not disputed. The impugned order has been challenged only on the ground that no notice as well as opportunity of hearing whatsoever was given.

Admittedly, the order of removal was passed in the year 1994 and the petitioner did not challenge the same immediately or within reasonable time. The present petition has been filed to challenge the order passed in the year 1994. The delay of 23 years in filing the petition has not been explained in the petition or addressed during arguments. It has been held in various judgments that law helps those persons who are vigilant. The presumption is that the petitioner was satisfied with the termination order as during the period of 23 years neither he had challenged the order of termination nor approached the respondent-authorities. Although there is no period of limitation for filing the writ petition under Article 226 of the Constitution of India but the remedy should have been availed within some reasonable time. By entertaining the present writ petition after a gap of 23 years, the petitioner cannot be allowed to overcome the hurdle of limitation.

In State of Madhya Pradesh and another Vs. Bhailal Bhai and others AIR 1964 Supreme Court 1006, the Constitutional Bench considered the issue of delay in filing of petitions under Article 226 of the Constitution of India and laid down the following principles:-

“The special remedy provided in Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. The power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion the delay made by the aggrieved party in seeking (seeking ?) this special remedy and what excuse there is for it.

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It is not easy nor is it desirable to lay down any rule for universal application. It may however be stated as a general rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus.

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The provisions of the [Limitation Act](#) do not as such apply to the granting of relief under Article 226. [However](#), the maximum period fixed by the legislature as the time within which relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which

delay in seeking remedy under Article 226 can be measured.

The 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 this period, it will almost always be proper for the court to hold that it is unreasonable.”

In **M/s Tilokchand Motichand and others Vs. H.B. Munshi and another** AIR 1970 Supreme Court 889, another Constitution Bench and in **Mafatlal Industries Ltd. Etc. Vs. Union of India etc.** JT 1996 (1) SC 283, eleven-Judge Bench of the Supreme Court reiterated the principle laid down in **Bhai Lal Bhai's case (supra)** and held that the High Court should not entertain belated petitions.

In relation to service dispute, the Supreme Court in **Kamini Kumar Das Choudhary Vs. State of West Bengal and others** AIR 1972 SC 2060 held that a petition filed for quashing the order of termination after lapse of two years deserves to be dismissed on the ground of delay.

The law is well settled that long and inordinate delay in filing the writ petition, if not explained to the satisfaction of the Court, should not be entertained and must be dismissed on the ground of delay and laches. Hon'ble the Apex Court in case of **Bhoop Vs. Union of India** 1992 (3) SCC 136 did not entertain the petition as the impugned order of termination was challenged after a delay of 22 years without cogent explanation. Similar view has been taken in the cases of **Mohan Kumar Singhania V. Union of India** AIR (S.C.) 1, **Life Insurance Corporation of India and others V. Jyotish Chandra Biswas** 2000 (6) SCC 562 and **Sudhir Vishnu Parvadhak V. Bank of India** AIR 1997 SC 2249.

In State of M.P. and others etc. etc. v. Nandlal Jaiswal and others etc. etc., AIR 1987 SC 251, Hon'ble the Apex Court observed that it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. It has been further stated therein that if there is inordinate delay on the part of the petitioner in filing a 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. Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

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 scrutinize whether he is 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. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. At the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice as it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons – who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. Such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

The above view of the Apex Court was followed in a recent judgment rendered by this Court in **Suraj Mal vs. State of Haryana** reported as **2015 (1) SCT 31**, wherein it has been held as under :-

“9. In view of the above authoritative enunciation of law by Hon'ble the Supreme Court and this Court, the present writ petition filed by the petitioner nearly after 9 years of his retirement to claim certain benefits, which may be due to him while in service, certainly deserves to be dismissed on account

of delay and laches as there is no satisfactory explanation available for delay.”

The benefits of a decision rendered in the case of similarly placed persons cannot straightway be given to a person, who himself approaches the Court belatedly. For getting relief from the Court, he is required to satisfactorily explain the delay on his part in approaching the Court.

In this regard, it would be useful to refer to the following observations made by the Apex Court in the case of **Chairman, U. P. Jal Nigam and another vs. Jaswant Singh and another** reported as **2006 (11) SCC 464 :-**

“6. The question of delay and laches has been examined by this Court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that about 9 writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 0.6.2005 and 31.7.2005. Two writ petitions were filed wherein no relief of interim order was passed. They were

granted interim order. Thereafter a spate of writ petitions followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 & 2006 much after their retirement. Whether such person should be granted the same relief or not?

7. Learned senior counsel for the appellants has invited our attention to various decisions to impress upon that persons who are guilty of such laches and acquiesced with the situation should not be granted any relief because it is going to cost the Nigam a heavy financial burden to the tune of Rs. 17,80,43,108/-. Therefore, relief should be confined to those persons who were continuing in service and filed their writ petitions in time but not to all and sundry who woke up to file the writ petitions much after their retirement. In this connection, our attention was invited to a decision of this Court in the case of **M/s. Rup Diamonds & Ors. v. Union of India & Ors., reported in (1989) 2 SCC 356**, wherein their Lordships observed that those people who were sitting on the fence till somebody else took up the matter to the court for refund of duty, cannot be given the benefit. In that context, their Lordships held as follows :

"Petitioners are re-agitating claims which they had not pursued for several years. Petitioners were' not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared

unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate delay in preferring the present writ petition which is brought after a year after the first rejection. As observed by the Court in Durga Prashad case, the exchange position of this country and the policy of the government regarding international trade varies from year to year. In these matters it is essential that persons who are aggrieved by orders of the government should approach the High Court after exhausting the remedies provided by law, rule or order with utmost expedition. Therefore, these delays are sufficient to persuade the Court to decline to interfere. If a right of appeal is available, this order rejecting the writ petition shall not prejudice petitioners' case in any such appeal. "

8. Our attention was also invited to a decision of this Court in the case of **State of Karnataka & Ors. v. S.M. Kotrayya & Ors., reported in 1997(1) SCT 359 (SC) : (1996) 6 SCC 267.**

In that case the respondents woke up to claim the relief which was granted to their colleagues by the Tribunal with an application to condone the delay. The Tribunal condoned the delay. Therefore, the State approached this Court and this Court after considering the matter observed as under: "Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in subsection (1) or (2) of Section 21, explanation should be given for the delay which

occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under subsection (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay."

9. Similarly, in the case of **Jagdish Lal & Ors. v. State of Harvana & ors., reported in 1998(1) SCT 26 (SC) : (1997) 6 SCC 538**, this Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the Court, then such person cannot stand to benefit. In that case it was observed as follows :

"The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Vir Pal Singh Chauhan case. The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage."

10. In the case of **Union of India & Ors. v. C. K. Dharagupta & Ors., reported in 1997(2) SCT 117 (SC) : (1997) 3 SCC**

395, it was observed as follows:

"We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P. Joshi gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit of Joshi case. In view of our finding that the benefit of the judgment of the Tribunal dated 17-3-1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief."

11. In the case of **Government of W.B. v. Tarun K. Roy & Ors., reported in 2004(1) SCT 78 (SC) : (2004) 1 SCC 347**, their Lordships considered delay as serious factor and have not granted relief. Therein it was observed as follows :

"The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in Debdas Kumar. The plea of delay, which Mr. Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their

cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others there from who may be found to be entitled thereto by a court of law."

12. The statement of law has also been summarized in Halsbury's Laws of England, Para 911, pg. 395 as follows: "In determining whether there has been such delay as to amount to laches, the chief points to be considered are :

(i) acquiescence on the claimant's part; and
(ii) any change of position that has occurred on the defendant's part. Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

13. In view of the statement of law as summarized above, the respondents are guilty since the respondents has acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed

writ petitions as others did in the matter. 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. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussion on the financial management of the Nigam. Why the Court should come to the rescue of such persons when they themselves are guilty of waiver and acquiescence.”[Emphasis supplied by me”

In view of the facts and law position as explained above, the present petition is dismissed on the ground of delay itself.

September 14, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes