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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.1861 of 2018

M.Ramu

.. Appellant

versus

1. The General Manager,
Cordite Factory,
Aruvankadu, Nilgiris - 643 202.

2. The Deputy General Manager,
Cordite Factory,
Aruvankadu, Nilgiris - 643 202.

3. Senthil Kumar,
Semi Skilled Labour,
Cordite Factory,
Aruvankadu, Nilgiris - 643 202.
Respondents

..

Writ Appeal filed against the order dated 15.12.2017 in WP No.32661 of 2017.

WP 32661/2017 Petition Under Article 226 of the constitution of India, Praying for the issue of a writ of mandamus, directing the 1st respondent to consider the petitioner for appointment to the post of Semi Skilled Labour by considering the representation preferred by the petitioner dated 03.03.2017

For Appellant : Mr.K.Sudhakar

JUDGMENT

(Order of the Court was delivered by S.MANIKUMAR, J.)

Writ appeal is directed against the order dated 15.12.2017, made in WP.No.32661 of 2017, by which the writ Court declined to grant the relief prayed for.

2. Pursuant to a notification dated 28.09.2012, inviting applications for recruitment to the post of Semi Skilled labourer in the office of the 1st respondent, appellant has



applied for the same. Written examination has been conducted on 02.11.2014. Appellant has secured 70 marks in the written examination. Appellant has also participated in the practical examination on 02.11.2014. According to him, he was orally informed that he was selected and that appointment order would be issued. Before the Writ Court, appellant has further contended that the 3rd respondent, who had not attended practical examination has been selected.

3. Contending inter alia that though he had attended both practical and written examination and fared well, but not appointed to the post of Semi Skilled labourer, appellant has sent a representation dated 03.03.2017 to the General Manager, Cordite Factory, Nilgiris, 1st respondent, and further contending that the said representation has not been considered, has filed W.P.No.32661 of 2017, for a mandamus, directing the 1st respondent to cancel the appointment of the 3rd respondent, and to consider the appellant for appointment to the post of Semi Skilled labourer, by considering his representation dated 03.03.2017.

4. Adverting to the relief sought for, writ Court, dismissed W.P.No.32661 of 2017 vide order dated 15.12.2017, as hereunder.

"This writ petition has been filed with a delay of three years from the date of examination held on 2.11.2014 for the post of Semi Skilled labourer. When a notification was issued by the first respondent-General Manager, Cordite Factory, Aruvankadu on 25.9.2014 inviting applications from the eligible candidates for the post of Semi Skilled labourer, the petitioner applied along with others and a written examination was held on 2.11.2014. On the very next day, practical examinations were also held. However, the claim of the petitioner is that the third respondent, who did not even appear for the practical examination, has been selected.

2. Although the contention of the learned counsel appears to be one deserves examination, in view of the long delay of three years from the date of holding the practical examination on 3.11.2014, this Court is not inclined to entertain the writ petition. Therefore, the petitioner is held guilty of laches and accordingly, the writ petition is dismissed."

5. Assailing the correctness of the order, writ appeal has been filed on the following grounds.

(i) Writ Court has erred in dismissing the writ petition by holding that the appellant herein, has filed the above writ petition, after three years from the date of holding the practical examination, which according to the appellant is not sustainable, since the appellant herein, has made repeated



requests to the respondents herein, to furnish the details of the attendance register and other particulars, as regards the appointment of the 3rd respondent. However the respondents herein refused to furnish the same. Later, the appellant herein has obtained the above said documents, through an application made under the Right to Information Act, 2005 and immediately thereafter, has filed the writ petition and the said fact is clearly stated in the affidavit, in support of the writ petition, but the Writ Court, has dismissed the writ petition, on the ground of delay, in filing the above writ petition, which requires to be set aside.

(ii) Writ Court ought to have appreciated that the 1st respondent herein, has issued a notification on 28.09.2012, inviting applications from open market, for recruitment to the post of Semi Skilled labourer and in response to the said notification, the appellant, 3rd respondent and others had applied. Later, written examination has been conducted on 02.11.2014 and in the said examination, the appellant has secured 70 marks, and that the appellant was declared as provisionally selected.

(iii) Pursuant to the practical examination held on 02.11.2014, the appellant attended the same, but, in the said examination, the 3rd respondent did not appear and therefore, he was declared, as absent. The 1st respondent had declared the appellant, as selected for the said post. But pursuant to the selection, the appellant was not served with the appointment order. On enquiry, the appellant came to know that the 3rd respondent was appointed to the said post, despite his absence in the practical examination. Hence, the appellant has made several repeated representations, to the General Manager, Cordite Factory, Aruvankadu, Nilgiris, 1st respondent herein, requesting him to furnish details of the appointment of the 3rd respondent, and attendance sheet, for the practical test held on 03.11.2014, but he has not furnished the same. Later, the Deputy General Manager, Cordite Factory, Aruvankadu, Nilgiris, 2nd respondent herein, provided the said details, on the application made by the appellant, under the Right to Information Act on 27.01.2017.

(iv) In the affidavit filed along with the writ petition, the appellant has specifically mentioned that, after receipt of the information from the 2nd respondent, under Right to Information Act, on 27.01.2017, the appellant herein, came to know that on 03.11.2014, the 3rd respondent did not appear for the practical examination and that attendance sheet also revealed that he was absent in the practical examination, whereas, the said entry was struck off, as if the 3rd respondent attended the practical examination on 04.11.2014. Thus, after



receipt of the above information, the appellant came to know about the circumstances under which the 2nd respondent, appointed the 3rd respondent, as Semi Skilled Labourer, hence immediately filed, the writ petition without any delay, for the relief, stated supra.

6. Heard Mr.K.Sudhakar, learned counsel for the appellant and perused the materials available on record.

7. Averments disclose that selection and appointment to the post of Semi Skilled Labourer, in the office of Cordite Factory, Nilgiris, 1st respondent, have been made in the year 2014. Though, the petitioner has contended that he had made several representations, under the Right to Information Act, and only after getting the required information in 2017, filed the instant writ petition, for the relief stated supra and that there was bonafide and prompt action, we are not inclined to accept the said contention.

8. Indisputedly, selection and appointment to the post of Semi Skilled Labourer, in the office of Cordite Factory, Nilgiris, were made in 2014. Though the appellant has contended that he has made repeated representations seeking information regarding the appointment of the 3rd respondent, as a Semi Killed Labourer, and that the same was refused, repeated representations and refusal, are not substantiated. Even taking it for granted, there was repeated representations, refusal by the competent authorities or unanswered within a reasonable time, that would not be a cause to approach the writ court at any time, and on the facts and circumstances of this case, 3 years after selection.

9. From the pleadings, it could be deduced that,

(i) appellant was aggrieved over his non-selection and appointment, and

(ii) appointment of the 3rd respondent, to the post of Semi Skilled Labourer, in the year 2014.

10. But the writ petition No.32661 of 2017 has been filed, in the year 2017 with the prayer, to issue a Writ of Mandamus, directing the first respondent to consider the petitioner for appointment to the post of Semi Skilled labourer, by considering the representation dated 03.03.2017.

11. The appellant has not furnished the details, as to when he has approached the Competent Authority, under the Right to Information Act 2005. But merely stated that he obtained the required particular in 2017. From the averments made in the writ petition, it could be deduced that the appellant, has not approached the writ court, to vindicate his grievance over the non-selection of the appellant to the post of Semi Skilled



Labourer, in the office of the 1st respondent, within a reasonable time.

12. Selection of the 3rd respondent to the post of Semi Skilled Labourer made in 2014, has been indirectly challenged, by issuance of Mandamus. Writ of Mandamus is not a substitute for a writ of certiorari.

13. Though before the writ court the appellant has contended that the respondents have declared him, as provisionally selected, there are no materials, to substantiate the said contention.

14. Mere filing of repeated representations, cannot be a valid ground to condone delay and laches, in approaching the Court. Such an explanation, cannot be a ground for exercise of the extraordinary jurisdiction of this Court. Though selection has been made in the year 2014, writ petition has been filed in 2017. As rightly observed by the writ Court, there is an inordinate delay and laches.

15. In K.V.Rajalakshmiah Setty and others v. State of Mysore and others reported in A.I.R. 1967 S.C. 993, the Hon'ble Apex Court, on the facts and circumstances of the said case, held that,

"There is also a good deal of force behind the contention that the appellants are guilty of laches. After the passing of the order of May 17, 1950, they should have made an application within a reasonable time thereafter. Merely because the Chief Engineer had espoused their cause and was writing letters from time to time to the State Government to do something for them did not mean ;that they could rest upon their oars if they were really being discriminated against. As we cannot hold that the appellants were entitled to any particular indulgence or concession, the only way, of meting out equality to all surveyors who had been promoted to the cadre of Assistant Engineers would be to say that promotions, should in all cases be effective from the date of the notification."

16. In Gian Singh v. the State of Punjab and Haryana, reported in AIR 1980 SC 1894, the Hon'ble Apex Court, held as follows:-

"The writ petition was filed in this Court in 1978, about eleven years after the dates from which the promotions are claimed. There is no valid explanation for the delay. That the petitioner was making successive representations during this period can hardly justify our overlooking the inordinate delay."



17. In Karnataka Power Corporation Ltd vs. K.Thangappan and Another reported in 2006 (4) SCC 322, the Hon'ble Supreme Court at paragraph Nos.6 to 10 held thus:-

"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. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad v. Chief Controller of Imports and Exports (AIR 1970 SC 769). Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Company v. Prosper Armstrong Hurd etc. (1874 (5) P.C. 221 at page 239) was approved by this Court in Moon Mills Ltd., v. Industrial Courts (AIR 1967 SC 1450) and Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service (AIR 1969 SC 329). Sir Barnes had stated:

"Now, the doctrine of laches in Courts of Equity is not an arbitrary or 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 of limitation, 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 relates to the remedy."

8. It would be appropriate to note certain decisions of this Court in which this aspect has been



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dealt with in relation with Article 32 of the Constitution. It is apparent that what has been stated as regards that Article would apply, a fortiori, to Article 226. It was observed in *R.N. Bose v. Union of India* (AIR 1970 SC 470) that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in *State of M.P. v. Nandlal* (AIR 1987 SC 251), that 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.

10. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in *K.V. Raja Lakshmiah v. State of Mysore* (AIR 1967 SC 973). This was re- iterated in *R.N. Bose's case* (supra) by stating that there is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In *State of Orissa v. P.Samantraaj* (AIR 1976 SC 1617) making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay



alone. (See State of Orissa v. Arun Kumar (AIR 1976 SC 1639 also)."

18. In State Of Orissa and Another vs Mamata Mohanty, reported in 2011 3 SCC 436 at paragraph No.53, the Hon'ble Apex Court held thus:-

"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."

19. Laches or reasonable time are not defined under any Statute or Rules. "Laches" or "Lashes" is an old french word for slackness or negligence or not doing. In general sense, it means neglect to do what in the law should have been done for an unreasonable or unexplained length of time. What could be the laches in one case might not constitute in another.

20. What is reasonable time has not been explained in any of the enactment. Reasonable time depends upon the facts and circumstances of each case.

(i) 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



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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."

21. Laches on the part of the appellant is per se apparent. Reference can also be made to few decisions of the Hon'ble Supreme Court, where inordinate delay and laches, on the part of the litigant, in approaching the Court, has been disapproved:

(i) In State of M.P., v. Nandlal Jaismal reported in 1986 (4) SCC 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.

(ii) In State of Maharashtra v. 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.

Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they



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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



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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) In 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."

22. In view of the above decisions and discussion, we are of the view that there are no merits in the appeal warranting interference. Hence, writ appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

ars/dm
To

1. The General Manager,
Cordite Factory,
Aruvankadu, Nilgiris - 643 202.
2. The Deputy General Manager,
Cordite Factory,
Aruvankadu, Nilgiris - 643 202.

W.A.No.1861 of 2018

GMV (07/09/2018)