

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 29722 of 2018

Date : 29.8.2018

Between:

P Shankaraiah

S/o Late P Kishtaiah Aged about 83 years Occu Formerly Civil Assistant

Surgeon Resident of H No 10241 Old Bazar Karimanagar Telangana State

....Petitioner

And

The State of Telangana

Represented by the Principal Secretary Health Medical and Family Welfare

Department Secretariat Hyderabad & others

....Respondents



The Court made the following:

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ORAL ORDER:

Heard learned counsel for petitioner Sri Polati Venkatesh and learned Government Pleader for Medical, Health and Family Welfare (TG) for respondents.

2. Petitioner claims to have been appointed as Civil Assistant Surgeon on 2.1.1962. According to petitioner, after rendering about 13 years of service, he proceeded on medical leave and thereafter requested the Director of Public Health and Family Welfare /second respondent to retire him on medical invalidation grounds. The request of the petitioner to permit him to retire on medical invalidation grounds was not acted upon, though petitioner went on requesting them. At later point of time, petitioner was informed that his service book was misplaced and not traceable.

3. Though, petitioner was suffering from chronic ill-health, he took the help of Pensioners' Association in Karimnagar and through them approached respondents 2 and 3 to seek permission for reconstruction of his service book and consequently to seek permission to retire him on medical invalidation grounds. The said permission was granted vide memo dated 16.8.2013 and consequent thereon the service book was reconstructed. After reconstruction of service book, petitioner further pursued his request to retire him on medical invalidation grounds. According to petitioner medical examination was conducted in the year 1975 and the Medical Officer certified that he was unfit to discharge duties with effect from 1.1.1975. It is further submitted that application of the petitioner was further processed, proposals were submitted to the Government by the Director vide letter dated 19.4.2016 requesting to retire the petitioner from service on medical invalidation grounds, but so far no orders are passed by Government. Petitioner also placed strong reliance on order passed by the Government in favour of Dr V Bhoom Reddy

retiring him from service retrospectively on medical invalidation grounds and seeks extension of said benefit.

4. In other words, claim of petitioner is to retire him on medical invalidation grounds retrospectively from 1975, i.e., 43 years back.

5. Though, petitioner claims that he went on medical leave, no material is placed on record to show that leave was sanctioned. Averments in the affidavit are vague, does not disclose when he applied for leave, what was the ailment he was suffering and for how long he was suffering. When an employee seeks leave on medical grounds, he must enclose supporting medical record to show that he was sick and leave has to be granted. Petitioner being a medical officer, cannot be vague of his sickness and period of sickness. Order to retire an employee on medical grounds is not as a matter of course. Such course is adopted only when employee is subjected to medical examination and was declared as unfit to continue in service.

6. According to learned counsel for petitioner, service record was misplaced and therefore his application to retire him on medical grounds was not processed. Assuming what he stated is right, there is no averment as to when he applied for retirement on medical invalidation grounds and when his service record was misplaced.

7. Even in the entries as per the reconstructed service book, there is no mention of petitioner proceeding on medical leave. There is a vague reference to applying for retirement on medical grounds. The reconstructed service record stops in the year 1974. Further, basis for those entries are not disclosed. Even according to averments of the petitioner, service record was reconstructed in the year 2014 or later. The averments are silent as to what steps petitioner had taken from 1975 to 2014 regarding his claim to permit him to retire on medical invalidation grounds, where he was taking treatment and whether there was correspondence between petitioner and competent authority on his health condition, his absence from duty, etc. Further, petitioner failed

to explain as to how his claim to retire on medical invalidation grounds was linked to misplacement of service record and the issue was kept pending for so long in order to claim that he has been continuously prosecuting the matter.

8. No Government servant can proceed on leave without prior sanction of leave. Even if an employee has health problem and required to be on medical leave, he has to satisfy competent authority about the ailment and the claim for grant of medical leave should be supported by medical record. Petitioner sought to place heavy reliance on so called certificate issued by Deputy Superintendent in the year 1975 declaring him as unfit, copy of the same is not placed on record, but reference is made in his representation and same is also referred to in the letter dated 10.10.2014 written by the Director to the Commissioner, TVVP and in the letter dated 19.4.2016 written to Principal Secretary to Government holding that petitioner was declared unfit to discharge duties from 1.1.1975. Simply a statement of the Doctor declaring him as unfit, cannot alone be the basis to hold that petitioner was declared as medically incapacitated to discharge his duties. Further, it appears from the reading of these letters that even the Director points out that Deputy Civil Surgeon is not competent to issue medical certificate and the Medical Superintendent is alone competent. It is also pertinent to note that even according to petitioner, he discharged duties till December, 1974. It appears from facts noted above, petitioner was not sick before 1.1.1975. Thus, it is necessary for petitioner to explain when he became sick, for how long he was sick.

9. It is not stated by petitioner as to what action was taken against petitioner for his absence. As the issue is of more than 40 years old, State cannot be asked to dig into the record to find out what transpired then.

10. On the face of it the claim made by petitioner is stale. Assuming that petitioner was seriously ill and therefore could not attend to duties, he can not claim the relief of declaring him as medically invalidated retrospectively from 1.1.1975, as a matter of right. Having regard to inordinate delay, burden

is heavy on him to show his medical record, his whereabouts, the correspondence made and reason why he makes an application in the year 2013 to reconstruct his service record and thereafter makes an application to treat him as retired on medical invalidation grounds retrospectively.

11. The grant of relief prayed by petitioner would burden the State to grant pension to petitioner retrospectively from 1.1.1975 and financial obligation on State would be very heavy. The State can not be mulcted with such heavy financial obligation at this distance of time. There is no material placed on record to show that State authorities were negligent all along in attending to his grievance. The correspondence placed on record only relates to the years 2013 to 2016.

12. In the facts analysed above, the point for consideration is whether the claim of petitioner to treat that he was deemed to have retired from service on medical invalidation grounds from 1.1.1975 is hit by delay and laches?

13. The writ remedy is discretionary remedy. Though no limitation is prescribed to entertain a writ petition under Article 226 of the Constitution of India and no fetters are imposed on writ Court to entertain a writ petition, the principle of law is well settled that a person, who seeks intervention of the High Court under Article 226 of Constitution of India, should invoke the jurisdiction of this Court immediately after cause of action arises and at any rate within a reasonable time. Ordinarily, the reasonable time in prosecuting the writ remedy is the time available to prosecute civil law remedy. Anything beyond that cannot be said as reasonable for prosecuting the writ remedy. Whenever, there is delay in filing writ petition, detailed reasons must be assigned with supporting material. The burden is heavy on petitioner to explain the delay in filing the writ petition when such delay is unreasonably long.

14.1 In ***Shankara Co-op. Housing Society Ltd., Vs M. Prabhakar and others***¹, on detail consideration of the various judgments on the issue of maintainability of the writ petition filed after long lapse of time, the Supreme Court laid down the parameters for entertaining the writ petition. They read as under:

“The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are : (1) there is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts. (2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners. (3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. ***If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay.*** It is immaterial what the petitioner chooses to believe in regard to the remedy. (4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts. (5) That representations would not be adequate explanation to take care of the delay” (Para 53). (emphasis supplied)

14.2. In that case there was delay of 15 years and the court noticed that there was no serious effort made to prosecute the litigation and the reasons for delay in instituting the writ petition were not properly explained and on the ground of inordinate delay in instituting the writ petition, the issue was answered against the State.

15. In ***City Industrial Development Corporation V Dosu Aardeshir Bhiwandiwalla and Others***², the Supreme Court held as under :

“A writ of Mandamus is highly discretionary. The relief cannot be claimed as of right. One of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained delay and the laches. Inordinate delay in moving the court for a writ is an adequate ground for refusing a writ. The principle is that courts exercising public law jurisdiction do

¹(2011) 5 SCC 607

² AIR 2009 SC 571

not encourage agitation of stale claims and exhuming matters where the rights of third parties may have accrued in the interregnum.”
(emphasis supplied)

16. In **S.S.Rathore Vs State of M.P.**³, question considered by Constitution Bench of 7 Judges, was when the right to sue first occurs. On review of precedent decisions, Supreme Court held:

“18. We are satisfied that to meet the situation as has arisen here, it would be appropriate to hold that the cause of action first arises when the remedies available to the public servant under the relevant Service Rules as to redressal are disposed of.

22.It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the head of the establishment shall not be taken into consideration in the matter of fixing limitation.” (emphasis supplied).

17. A reading of the affidavit and the prayer would make it clear that the petitioner filed this writ petition as if he has reserve right to assert his claim to declare that he must be deemed to have retired on medical invalidation grounds w.e.f. 1.1.1975 and that he can enforce such right at any time he would wish, to be precise, after 43 years.

18. Fence-sitters cannot be allowed to raise the dispute. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the court is guilty of delay and the laches. The court exercising public law jurisdiction does not encourage agitation of stale claims (**Shiba Shankar Mohapatra Vs State Of Orissa**⁴).

19. A person who intends to assert his right must be diligent in prosecuting the litigation. Writ Court do not come to the rescue of a person not diligent in prosecuting legal remedy. Even if there is merit in the claim of a person and that he was wrongly denied his entitlement to declare him as retired on medical invalidation grounds. Further, the State would have to be

³(1989) 4 SCC 582

⁴(2010) 12 SCC 471

mulcted with financial liability to pay financial benefits. It is not in the interest of justice, public interest and fair play to grant relief on a stale claim.

20. The A.P. Administrative Tribunal was constituted under Article 371-D of the Constitution of India. This was replaced by new Tribunal under the Administrative Tribunals Act, 1985. Provisions constituting both Tribunals prescribed limitation to invoke their jurisdiction. Admittedly, no case was filed within the period of limitation and right vested to avail judicial remedy was extinguished long ago. Merely because, the Tribunal is abolished and under Article 226 of the Constitution of India, no limitation is prescribed, petitioner cannot seek to resurrect cause extinguished long ago, assuming there is a valid grievance. Even if the Government entertains his belated representations, not supported by any statutory provision, cannot resurrect such cause.

21. Having regard to the facts of this case, the prayer to treat him as deemed to have retired on medical invalidation grounds in the year 1975, without any iota of doubt is a stale claim. The writ petition is hit by delay and laches and is liable to be dismissed. It is accordingly dismissed. No costs. Pending Miscellaneous Petitions are closed.

DATE: 29-08-2018

TVK

P NAVEEN RAO,J

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