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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 7639 of 2011

1. Krishna Kumar, S/o Bishau Singh, Aged about 52 years, Ex-Constable No. 48, Now R/o Kohka, P.S. Supela, Distt. Durg, (C.G.)

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department D.K.S Bhawan, Mantralya, Raipur Chhattisgarh.
2. State of Madhya Pradesh, Through: The Secretary Home Department, Vallabh Bhawan, Bhopal, Madhya Pradesh.
3. Superintendent of Police Raipur, District Raipur Chhattisgarh.
4. Deputy Inspector General of Police, State of M.P. Bhopal.
5. Director General of Police, State of Madhya Pradesh, at Bhopal.

---Respondents

For Petitioner	:	Mr. Uttam Pandey, Advocate.
For State	:	Mr. Anshuman Shrivastava, P.L.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23.07.2019

1. The Challenge in the present Writ Petition is to the four orders Annexure P/4, P/5, P/7, and P/9. The petitioner, in the instant case, was working as a constable under the respondent before the creation of the State of Chhattisgarh.

2. On account of certain misconduct that, the petitioner had committed, he was served with a charge-sheet and subsequently on the charges been proved, the Disciplinary Authority vide order Annexure (P/4) dated 22.11.1996 inflicted the petitioner dismissal from service.

3. The petitioner preferred three further appeals to the higher authorities, all of which stood rejected on 26.05.1997 (Annexure P/5), 07.11.1997 (Annexure P/7) and 29.10.2001 (Annexure P/9).

Though the last appeal of the petitioner stood rejected on 29.10.2001, it appears that the petitioner, thereafter, did not challenge the same before any forum and the present writ petition has been filed after about 11 years i.e. 05.12.2011.

4. The only justification that the petitioner has given for delay caused in approaching this Court is that the petitioner had, at the first instance, contacted some advocate/clerk who had assured him for getting the petition filed but it seems that he had not filed the said writ petition and meanwhile the said advocate/clerk has expired. Thereafter, the petitioner immediately came into the contact with the present counsel. This explanation which the petitioner has rendered, does not seem to be a plausible explanation for the in-ordinate delay that has caused in the filing of the present writ petition.

5. The petitioner can not be said to be a rustic villager or an ignorant person. He was working as a constable with the Police department and therefore, it has to be presumed that he was well aware of the proceedings, particularly judicial and legal proceedings and Court proceedings.

6. The petitioner was dismissed from service in the year 1996, the petitioner pursued his remedies before the Appellate Authorities till the year 2001; this itself shows that he was aware with the procedure and remedies available to him after 2011. When all the other remedies available to the petitioner stood exhausted, the only remedy available to the petitioner was to challenge the dismissal order and the Appellate Authority's order before the Competent Court.

7. The fact that the petitioner was a police constable is sufficient to draw an inference that he was quite aware of the procedure required for the purpose of filing a petition in the High Court.

8. Petitioner should also have pursued with the person whom he had contacted for the purpose of filing of the writ petition. It is hard to believe that the petitioner was told to believe the petition having already been filed. It appears that, on the contrary, the petitioner slept over for all these years by not filing the writ petition and has now cooked up a story for contacting some advocate/clerk who died in the recent past for the purpose of making an explanation for justifying the delay.

9. Recently, the Division Bench of this High Court in Writ Appeal No. 200 of 2016, decided on 17.08.2016 under a similar factual backdrop had held as under:

> "11. We must remember that the writ jurisdiction vested in this Court under Article 226 of the Constitution is an extraordinary jurisdiction. It is a discretionary jurisdiction. No doubt, the jurisdiction has to be exercised in a judicious manner but some of the principles which have been evolved in exercise of this jurisdiction are that the claims which are stale should not be entertained. It is now an accepted part of writ jurisprudence that the Court would refrain to grant relief to a client who is guilty of delay and laches and has been indolent in pursuing the matter. In grant of extraordinary discretionary jurisdiction, the Court expects that the affected party should come to the Court at the earliest.
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> 12. One of the principles with regard to delay and laches is that though there can be no hard and fast rule and each case should be decided on its own merits. Where limitation for filing a suit has expired then Writ Court would normally not exercise its extraordinary writ jurisdiction. In this behalf, reference may be made to the judgment of the Apex Court in M.K. Krishnaswamy & Others vs. The Union of India and Others (AIR 1973 SC 1168) and Shri Vallabh Glass Works Ltd. and another vs. Union of India and Others (AIR 1984 SC 971) in which the Apex observed as follows:
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>> "9. In regard to the relief of refund of excess duty paid in respect of the other goods, the case stands on an entirely different footing. This is a case where the Department had assessed the duty payable by the appellants under a wrong provision. The appellants were obliged to pay the duty so assessed. They did not, no doubt, question the assessments

by taking a specific stand as they had done earlier in the case of wired glass. The appellants, however, questioned the validity of the levy only on February 20, 1976 on the ground that tariff Item 23A (1) of the First Schedule to the Act under which the duty has been levied was not applicable to the goods. While the Department refused to accept the said plea, the High Court has upheld it. In view of the decision of the High Court, the fact that the appellant had paid duty in excess of what they were bound in law to pay should be now taken as having been established. It is not disputed that if the appellants had filed a suit within the period of limitation the excess amount would have become refundable by virtue of Section 72 of the Indian Contract Act. Section 17(1)(c) of - the Limitation Act, 1963 provides that where in the case of any suit or application for which a period of limitation is prescribed under that Act, the suit or application is for relief from the consequence of a mistake, the period of limitation shall not begin to run until the plaintiff or applicant had discovered it or could have with reasonable diligence discovered it. In the instant case the date on which the mistake was discovered by the appellants or the date on which the appellants could with reasonable diligence have discovered it is not clear from the record before us. No efforts also was made in the course of the arguments urged on behalf of the appellants to establish it. We have, therefore, to assume that on the date each payment of excise duty made by the appellants in excess of the proper duty payable by them, the appellants could have discovered with due diligence that the duty claimed from them was excessive. Under Article 113 of the Limitation Act, 1963 which is applicable to this case, a suit for recovery of such excess duty had to be filed within three years from the date of payment to the Department. But the appellants instead of filing a suit, first filed a writ petition in Special Civil Application No. 1365 of 1976 on September 28, 1976 and that petition had to be withdrawn in view of clause (3) of Article 226 the Constitution as it stood then because the alternative remedy by way of an appeal was available. The appellants could, therefore, file the writ petition out of which the appeal arises only after the disposal of the revision petition by the Government of India as mentioned earlier. It is not disputed that the High Courts have power, for the purpose of enforcement of fundamental rights and statutory rights, to make consequential orders for repayment of money realised by the Government without the authority of law under Article 226 of the Constitution. This is an alternative remedy provided by the Constitution in additional to but not in supersession of the ordinary remedy by way of suit in the absence of any provision which would bar such a suit either expressly or by necessary implication. While there are different periods of limitation prescribed for the institution of different kinds of suits by the limitation Act, 1963, there is no such period prescribed by law in respect of petitions filed under Article 226 of the Constitution. Whether relief should be granted to a petitioner under Article 226 of the Constitution where the cause of action had arisen in the remote past is a matter of sound judicial discretion governed by the doctrine of laches. Where a petitioner who could have availed of the alternative remedy by way of suit approaches the High Court under Article 226 of the Constitution, it is appropriate ordinarily to construe that any unexplained delay in the filing of the writ petition after the expiry of the period of limitation prescribed for filing a suit as unreasonable. This rule,

> however, cannot be a rigid formula. There may be cases where even a delay of a shorter period may be considered to be sufficient to refuse relief in a petition under Article 226 of the Constitution. There may also be cases where there may be circumstances which may persuade the court to grant relief even though the petition may have been filed beyond the period of limitation prescribed for a suit. Each case has to judged on its own facts and circumstance touching the conduct of the parties, the change in situation, the prejudice which is likely to be caused to the opposite party or to the general public etc. In the instant case, the appellants had in fact approached the High Court on September 28, 1976 itself by filing Special Civil Application No. 1365 of 1976 for directing repayment of the excess duty paid by them. But no relief could be granted in that petition in view of the provisions of Article 226 of the Constitution as it stood then and the petition had to be withdrawn. Hence even granting that on the date of making each payment of excise duty in excess of the proper duty payable under law, the appellants should be deemed to have discovered the mistake, all such excess payments made on and after September 28, 1973 which would fall within the period of three years prior to the date on which Special Civil Application No. 1365 of 1976 was filed should have been ordered to be refunded under Article 226 of the Constitution. But the High Court declined to do so on grounds of estoppel and acquiescence. While we do agree that the appellants should not be granted any relief in respect of payment made between October 1, 1963 and September 27, 1973 which would fall beyond three years from the date of the first writ petition filed in this case we do not find it proper and just to negative the claim of the appellants in respect of excess payments made after September 28, 1973. In the instant case the appellants had made excess payments on being assessed by the Department and such payments cannot be treated as voluntary payments precluding them from recovering them. (See Sales Tax officer, Banaras v. Kanhaiya Lal Mukundlal Saraf 1959 SCR 1350 : (AIR 1959 SC 135). We do not also find that the conduct of the appellants is of such a nature as would disentitle them to claim refund of excess payments made in respect of goods other than wired glass.)"

The order of termination was passed in the year 1975 and limitation for setting aside such order would be three years. This writ petition has been filed after 27 years. Therefore, the writ petition was miserably barred by principles of delay and laches.

13. Even if an order is illegal, it must be challenged within a reasonable time. Though there is no specific period of limitation prescribed under Article 226 of the Constitution, it is well settled law that where the Petitioner is guilty of laches for undue delay and does not give any satisfactory explanation to explain delay, he is not entitled to claim any relief. In this behalf reference may be made to the judgment of the Apex Court in State of Haryana and others vs. Ch. Bhajan Lal and others (AIR 1992 SC 604). There is plethora of judgments in this regard and they need not be multiplied. However, same view has been taken in many cases thereafter and this case still holds field.

14. The petitioner in this case is not a rustic villager. This is a case of a person who was employed as a Lower Division Clerk/Cashier in the year 1967. He claims that that his services were terminated in the year 1975 illegally. There is not even an iota of explanation as to why

> he did not file the writ petition till 2002 except to state that because the criminal cases were pending, he was waiting for the decision of the criminal cases. In fact, the order of 27.09.1975 can be said to be illegal only on the ground that the order has been passed without waiting for the criminal cases to attain fruition. If that be so, the Petitioner should have challenged the order in the year 1975 itself. The writ court does not come to aid of those persons who sleep over their rights and do not approach the Court within a reasonable time."

10. Given the aforesaid facts of the case, this Court is of the opinion that no strong case has been made out by the petitioner for entertaining the petition at this belated stage. The petition thus suffers from delay and laches and deserves to be and is accordingly rejected on the ground of delay.

Sd/-
(P. Sam Koshy)
Judge

Jyotijha