



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 03rd AUGUST, 2022

IN THE MATTER OF:

+ **LPA 53/2022**

SUNIL KUMAR

..... Appellant

Through: Dr. Amit George, Mr. Nitesh Mehra,
Mr. Hitaakshi Mehra, Mr. Amol
Acharya, Mr. Rayadurgam Bharat,
Mr. Piyo Harold Jaimon, Advocates

versus

DELHI STATE COOPERATIVE BANK LTD & ANR.

..... Respondents

Through: Mr. Rajesh Srivastava, Mr. Gaurav
Verma, Advocates
Mr. Archit Krishna, Advocate for Mr.
Jawahar Raja, Additional Standing
Counsel for GNCTD

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant LPA arises out of the Order dated 28.10.2021, passed by the learned Single Judge of this Court in W.P.(C) 10111/2021.
2. The facts of the case reveal that the Appellant herein was an employee of Delhi State Co-operative Bank Limited, serving on the post of Banking Assistant. It is stated that the Appellant was placed under suspension on 17.10.2011 on account of alleged misconduct and misappropriation. It is stated that a show cause notice was issued to the Appellant on 10.07.2012, following which a detailed enquiry took place in the matter. It is stated that



upon completion of the enquiry, the Appellant was dismissed from service on 19.07.2013. It is further stated that thereafter the Appellant preferred an appeal before the Chairman of the Delhi State Cooperation Bank and on 17.09.2013 and a representation was submitted by the Appellant to the Lt. Governor of Delhi on 20.05.2015. It is also stated that pending the outcome of the Appeal before the Chairman of the Bank, the Appellant approached this Court by filing a Writ Petition in the year 2021. It is stated that the learned Single Judge dismissed the said Writ Petition *vide* Order dated 28.10.2021 on account of delay and laches. The Appellant has, thereafter, filed the instant LPA.

3. An affidavit has been filed by the Respondent in the matter which reveals that the total amount relating to the fraud was to the tune of Rs. 2,11,10,980.34/- and pursuant to the charges being proved, the Appellant was dismissed from service in 2013. It is further stated in the reply that the Appellant was required to file an appeal before the Board of Directors of the Respondent Bank, however, the Appellant herein preferred an appeal before the Chairman of the Bank, which is not the competent Authority. Therefore, as per Rule 4.2 of the Delhi State Cooperative Bank Limited Service Rules, the appeal of the Appellant was not considered. It is further stated that the Appellant did not approach this Court earlier with a prayer that his appeal should be decided and he woke up from slumber only in the year 2021 and that too when an FIR was lodged against him for his criminal prosecution in respect of misappropriation and misconduct.

4. Learned Counsel appearing for the Appellant has argued that the right of the Appellant to file an appeal could not have been taken away and in all fairness, the learned Single Judge should have directed the Bank to decide the appeal filed by the Appellant herein. A similar prayer has been made by



the Appellant in the instant LPA as well. Learned Counsel for the Appellant places reliance on the judgment of the Apex Court in Inder Pal Yadav & Ors. v. Union of India & Ors., (1985) 2 SCC 648, to contend that in that case the Supreme Court, while dealing with the case of workmen keeping their financial status in mind, had condoned the delay in approaching the Court. In the facts of that case, the dispute was related to casual labour, most of whom were people who had no formal education whereas in the present case, the Appellant is a well-qualified person who was posted as a Banking Assistant in his role as a computer operator and as such, and nothing prevented him from approaching this Court. Therefore, he cannot compare his case with the case of a casual labourer. Therefore, the case of Inder Pal Yadav (supra) is distinguishable on facts. The learned Counsel for the Appellant also places reliance on the judgment of the Apex Court in Tukaram Kana Joshi & Ors. v. Maharashtra Industrial Development Corporation & Ors., (2013) 1 SCC 353. Relevant portion of the said judgment reads as under:

“13. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the courts to exercise their powers under Article 226, nor is it that there can never be a case where the courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the



party's defence must be tried upon principles substantially equitable. (Vide P.S. Sadasivaswamy v. State of T.N. [(1975) 1 SCC 152 : 1975 SCC (L&S) 22 : AIR 1974 SC 2271] , State of M.P. v. Nandlal Jaiswal [(1986) 4 SCC 566 : AIR 1987 SC 251] and Tridip Kumar Dingal v. State of W.B. [(2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119]).

14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide Durga Prashad v. Chief Controller of Imports and Exports [(1969) 1 SCC 185 : AIR 1970 SC 769] , Collector (LA) v. Katiji [(1987) 2 SCC 107 : 1989 SCC (Tax) 172 : AIR 1987 SC 1353] , Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur [(1992) 2 SCC 598 : AIR 1993 SC 802] , Dayal Singh v. Union of India [(2003) 2 SCC 593 : AIR 2003 SC 1140] and Shankara Coop. Housing Society Ltd. v. M. Prabhakar [(2011) 5 SCC 607 : (2011) 3 SCC (Civ) 56 : AIR 2011 SC 2161] .)”

5. This Court has carefully gone through the aforementioned judgment and it is true that no hard and fast rule can be attributed as to when the Court should refuse to exercise its jurisdiction in respect of a party who appears



before it after considerable delay and is otherwise guilty of laches. The judgment in Tukaram Kana Joshi (supra) was delivered in an altogether different context, that is, a matter relating to Land Acquisition Act, wherein, admittedly, the land of poor agriculturists was acquired by the State Government and not a single penny was paid for the said acquisition. Keeping this in view, the Supreme Court held that such people cannot be thrown out only on the ground of delay and laches. In the present case, the Appellant is a person who is well educated and who was aware about his dismissal Order which was passed in the year 2013, yet he did not prefer a proper appeal to the appropriate authority as per the Delhi State Cooperative Bank Limited Service Rules, and woke up from slumber only in the year 2021 when an FIR was lodged against him in lieu of the alleged fraud and misappropriation.

6. This Court is, therefore, of the opinion that the learned Single Judge was justified in dismissing the Writ Petition filed by the Appellant herein. This Court, therefore, does not find any reason to interfere with the Order dated 28.10.2021, passed by the learned Single Judge of this Court in W.P.(C) 10111/2021.

7. Accordingly, the instant LPA is dismissed along with the pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

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