

10.04.2023

WPST 42 of 2023

Court : 04
Item : 88
Matter : WPST
Status : DWC
Bench Id : 266048
Transcriber : NANDY

The State of West Bengal & Ors.

Vs.

Sudip Ghosh

Mr. Tapan Kumar Mukherjee, Learned AGP

Ms. Debdooti Dutta, Advocate

.....for the Petitioner/State

Ms. Sonali Mitra, Advocate

Mr. Biswarup Nandy, Advocate

Ms. Samriddihi Bose, Advocate

.....for the Respondent

The deadwood is sought to be resurrected by filing the instant writ-petition after a gap of more than eight years solely on the ground that the said order is contrary to the accepted proposition of law. There has been a considerable delay and lapses which can be attributed to the conduct of the petitioner having slept in slumber for a long time. Our efforts have gone in vain to find any explanation for such delay pleaded in the instant writ-petition. The point was taken before the Tribunal as well as in the instant writ-petition that the subsequent application taken by the applicant for implementation of the earlier order passed by the Tribunal is hit by the provision of Section 27 of the Administrative Tribunal Act, 1985. In order to give clarity to the observations made by the Tribunal, it would be apposite to adumbrate the salient facts emerged from the case record.

The private respondent herein moved the West Bengal Administrative Tribunal by filing OA 1297 of 2012 seeking relief of regularization of his service together with all the benefits attributable to it. By an order dated 21.02.2014, the Tribunal disposed of the application as all the parameters enshrined in the Constitution Bench decision rendered in case of *State of Karnataka Vs. Uma Devi* reported in *AIR 2006 (3) SC 1806* has been satisfied

and, therefore, the prayer for regularization was illegally turned down by the authorities. A direction was passed upon the District Magistrate, Howrah, the appointing authority to issue appropriate order within four weeks from the date of communication of the order and to accord all benefits to the petitioner from the date of his joining, within next three months without any failure on their part. Despite the order passed by the Tribunal on 21.02.2014 in OA 1297 of 2012, there was reluctance on the part of the said authority in due implementation thereof which constrained the private-respondent to file another tribunal application being OA 842 of 2016 for due implementation of the said order which has been disposed of by the impugned order.

On the backdrop of the aforesaid facts, the Tribunal by order dated 25.04.2022 directed the said authority to implement the said order dated 21.02.2014 passed in OA 1297 of 2012 within a period of eight weeks from the date of receipt of the order.

Astonishingly, the Petitioner/State filed the instant writ-petition not only challenging the order dated 25.04.2022 passed in OA 842 of 2016 but also the order dated 21.02.2014 passed in OA 1297 of 2012.

The motive of assailing the order passed on 21.02.2014 is patent on the face of the pleading made in the instant writ-petition and the findings returned in the impugned order. The moment the said order attained finality, the authority cannot show disrespect to the said order nor can show apathetic attitude in due implementation thereof but must show alacrity in obeying and/or respecting the order passed by the Tribunal. There is no explanation offered in the instant writ-petition occasioning the delay in challenging an order dated

21.02.2014 passed in OA 1297 of 2012. Even on filing of the subsequent tribunal application, there is no attempt on the part of the State-respondent to immediately approach the higher forum assailing such order.

It is not open to the litigant to reopen an issue which has been concluded and attained finality and challenge the same after such a considerable period of time. The right and/or remedy available in law if not pursued with promptitude, does not receive any blessings of the Court as the conduct of the parties may be one of the relevant factors in this regard. Normally the writ-petitions are entertained if filed within the normal period of limitation provided for institution of the suits based upon the cause of action and the relief claimed therein but there is no period of limitation provided for filing the writ-petition and, therefore, the concept of delay and laches is evolved through a judicial pronouncement in order to curb such belated applications to explode the docket of the Court.

It is not a rigid rule to dismiss the writ-petition filed after a period of considerable period of time. The Court must be satisfied with the explanation offered for such delay and if it appears that there is no laches on the part of the petitioner in ventilating the grievances, the Court may entertain the writ-petition though filed belatedly. The Court should not entertain the writ-petition mechanically, more particularly, in absence of any explanation so offered and pleaded in the writ-petition on the delay and laches attributable to the conduct of the petitioner. The majesty and the sanctity of the Tribunal or Court would be undermined if the order passed on consideration of all the facts are allowed to remain on paper and not susceptible to its due implementation.

We thus do not find that it is a fit case where this Court should interfere with the order dated 21.02.2012 which had attained finality as the petitioner/State is found to have committed gross delay and laches which is manifest from the conduct and the manner in which the authority has proceeded in the matter.

So far as the order dated 25.04.2022 passed in OA 842 of 2016 is concerned, a technical plea is taken by the petitioner/State that an exhaustive provision is provided for execution of an order passed by a Tribunal under Section 27 of the Administrative Tribunal Act. What is intended that the second application filed under Section 19 of the said Act is incompetent as the party has to approach for execution of an order passed by the Tribunal.

The aforesaid contention is fallacious for the simple reason that Section 27 of the Act does not put a fetter on the part of the litigant to approach the Tribunal by taking out a substantive application. It cannot take away the right to file a subsequent application alleging inaction on the part of the authority to implement the order passed in an earlier round of litigation.

The provisions contained under Section 19 of the said Act does not create any bar in entertaining the application seeking implementation of the order of the Tribunal alleging inaction on the part of the authority and, therefore, we do not find that such technical pleas would defeat the very right accrued to the private respondent on inaction of the authorities in implementing its order. The moment the technical plea is pitted against the substantial justice, the latter must prevail. The authority cannot take a shelter on technical grounds which had an impact on rendering the earlier order passed by it redundant and/or otiose. It is a

paramount duty of the Tribunal to see that its orders are implemented and it is the corresponding duty of the authorities upon whom the order is passed to implement the same.

We thus do not find any merit in the instant writ-petition. The same being **WPST 42 of 2023** is hereby **dismissed with costs** assessed at **Rs.50,000/-** to be deposited with the State Legal Services Authority within **two months** from date.

If deposited, such amount shall be kept by the SLSA in an account earmarked for the juvenile.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)