

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 10353 of 2021

Manoranjan Chakraborty

Vs.

Balageria Central Cooperative Bank Limited & Ors.

For the Petitioner : Mr. Ashim Kumar Routh,
Ms. Ananya Mondal,
Ms. Manishka Dhar
.....advocates

For the Respondent
/Bank : Mr. Milan Chandra Bhattacharjee,
Ms. Sulagna Bhattacharya
... advocates

Reserved on : 02.03.2023

Judgment on : 19.05.2023

Hiranmay Bhattacharyya, J.:-

- 1.The writ petitioner has prayed for issuance of a writ of mandamus to command the respondent authorities to issue the letter of superannuation and to release his entire service benefits.
- 2.Shorn of unnecessary details, facts relevant for deciding this writ petition is as follows-

The writ petitioner claims to have been initially appointed on temporary basis vide appointment letter dated 10.02.1990 issued by Balageria Central Co-operative Bank Ltd. (for short “the Bank”) and was subsequently made permanent. The writ petitioner was transferred from one branch of the Bank to the other and claims to have ultimately joined Deulihat branch on 19.12.2003 and worked there till his superannuation on 28.02.2021. The petitioner alleged that on and from 12.02.2004 he was not allowed to sign the attendance register by the Bank officials.

3. The present grievance of the petitioner is that the respondent Bank has neither issued the letter of superannuation nor released his service benefits.
4. Mr. Routh, learned advocate for the petitioner contended that the petitioner worked at the concerned branch till his superannuation but he was not allowed to sign the attendance register. Mr. Routh contended that the petitioner submitted representation to various authorities from time to time but no steps were taken by such authorities. Mr. Routh, however, drew the attention of this Court to a certificate dated 27.05.2013, issued by the Vice Chairman of the Bank, to prove that the writ petitioner was all along working at the said Branch.
5. Mr. Bhattacharya, learned Senior Counsel, for the Bank seriously disputed the submissions of Mr. Routh. He contended that the Vice Chairman did not have the authority to issue such certificate. He contended that the petitioner abandoned his service and therefore he is not entitled to any arrear salary. He further submitted that the writ petition is liable to be dismissed on the ground of delay and laches. In support of his aforesaid contentions, Mr. Bhattacharya relied upon the following decisions.

(i) Vijay S. Sathaye vs. Indian Airlines Limited and Ors. reported at (2013) 10 SCC 253

(ii) Manju Saxena vs. Union of India and another vs. (2019) 2 SCC 628

(iii) Shiv Charan Singh Bhandari and ors. reported (2013) 12 SCC 179

(iv) State of Kerala and ors. vs. A.K. Gopakumar reported at (2013) 11 SCC 606

(v) Shiv Dass vs. Union of India and ors. reported at (2007) 9 SCC 274

6. Heard the learned advocates for the parties and perused the materials placed.

7. After going through the materials placed, this Court finds that the dispute is whether the petitioner worked at the concerned Branch of the Bank after 11.02.2004. The petitioner claims to have submitted representation before various authorities but most of them are not before the appropriate authorities.

8. The sheet anchor of the case of the writ petitioner is the certificate dated 27.05.2013 purported to have been issued by the Vice Chairman. After going through the said certificate, this Court finds that the said certificate was issued on the basis of facts reported to him. Therefore, the Vice Chairman, did not have any personal knowledge of the facts stated in the certificate dated 27.05.2013. Furthermore, the said certificate is silent as to who has reported to him such fact. This Court also fails to understand as to why the Vice Chairman, instead of issuing a direction upon the Branch Manager, Deulihat branch directly, made a request through the said certificate to ensure that the petitioner can continue his service at Deulihat

branch. The reason why the petitioner, in spite of having possession of such certificate from the month of May 2013, did not approach this Court immediately thereafter is not clear to this Court. That apart, it is difficult for this Court to accept the argument of Mr. Routh that the petitioner rendered his service for such a long period i.e., from 12.02.2004 till 28.02.2021 without being paid his salaries and other benefits. For all the aforesaid reasons, the certificate dated 27.05.2013 purported to have been issued by the Vice Chairman do not inspire confidence of this Court. Therefore, this Court is not inclined to accept the said certificate as an evidence to support the case of the petitioner.

9. The Writ Petitioner failed to satisfy this court by production of acceptable documents that he rendered his service with effect from February 12, 2004 till 28.02.2021. The onus lies upon the writ petitioner to prove that he rendered his service during the aforesaid period. He, however, failed to discharge such onus. The Writ Petitioner having not joined the duty and remaining absent for a long period of time, shall be deemed to have voluntarily abandoned his service. In other words it shall be deemed that the writ petitioner had resigned and ceased to be in service.
10. The Hon'ble Supreme Court in the case of **Vijay S. Sathaye (*supra*)** held that in a case of abandonment of service there is no need to hold any enquiry or to give any notice as it would amount to useless formalities. The Hon'ble Supreme Court in the said reports held thus:-

“12. It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long.

Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.

13. In *M/s. Jeewanlal (1929) Ltd., Calcutta v. Its Workmen*, AIR 1961 SC 1567, this Court held as under:

“.....there would be the class of cases where long unauthorised absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee.” (See also: *Shahoodul Haque v. The Registrar, Co-operative Societies, Bihar & Anr.*, AIR 1974 SC 1896).

14. For the purpose of termination, there has to be positive action on the part of the employer while abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. Such an act cannot be termed as ‘retrenchment’ from service.

(See: *State of Haryana v. Om Prakash & Anr.*, (1998) 8 SCC 733).

15. In *Buckingham and Carnatic Co. Ltd. v. Venkatiah & Anr.*, AIR 1964 SC 1272 while dealing with a similar case, this Court observed :

“Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf.” A similar view has been reiterated in *G.T. Lad & Ors. v.*

Chemicals and Fibres India Ltd., AIR 1979 SC 582.

16. In Syndicate Bank v. General Secretary, Syndicate Bank Staff Association & Anr., AIR 2000 SC 2198; and Aligarh Muslim University & Ors. v. Mansoor Ali Khan, AIR 2000 SC 2783, this Court ruled that if a person is absent beyond the prescribed period for which leave of any kind can be granted, he should be treated to have resigned and ceases to be in service. In such a case, there is no need to hold an enquiry or to give any notice as it would amount to useless formalities.

A similar view has been reiterated in V.C. Banaras Hindu University & Ors. v. Shrikant, AIR 2006 SC 2304; Chief Engineer (Construction) v. Keshava Rao (dead) by Lrs., (2005) 11 SCC 229; and Regional Manager, Bank of Baroda v. Anita Nandrajog, (2009) 9 SCC 462.”

11. In **Manju Saxena (supra)** the Hon’ble Supreme Court reiterated the aforesaid principles laid down in **Vijay S. Sathaye (supra)**.
12. This Court accordingly holds that the petitioner is not entitled to any benefits as he has voluntarily abandoned his service. Therefore, the question of issuing the letter of superannuation does not arise.
13. It is the case of the writ petitioner that he was not allowed to sign the attendance register on and from 12.02.2004. It is the further case of the writ petitioner that he has not received any salaries and other benefits on and from February 2004. The writ petition was filed only on April 28, 2021 claiming release of entire service benefits with effect from February 2004. Such inordinate delay in filing this writ petition, however, remains unexplained.

14. The learned advocate for the writ petitioner would contend that the petitioner made several representations to various authorities but such authorities did not respond to the same for which there was a delay in filing the writ petition.
15. It is well settled that mere making of representations cannot justify a belated approach to the Writ Court. It is equally well settled that though there is no limitation provided for filing of writ petition under Article 226 of the Constitution of India yet a writ petition should be filed within a reasonable time. The Hon'ble Supreme Court in **Shiv Charan Singh Bhandari (supra)** held thus:-

“20. In Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another[3], the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

21. In State of Orissa v. Pyarimohan Samantaray[4] it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in State of Orissa v. Arun Kumar Patnaik[5].

22. In Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others[6], a three-Judge Bench of this Court reiterated the principle stated in Jagdish Lal v. State of Haryana[7] and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

23. In State of T.N. v. Seshachalam[8], this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: -

“....filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

16. The Hon'ble Supreme Court in **A.K. Gopakumar (supra)** held that a highly belated case claim cannot be entertained by a Writ Court. In **Shiv Dass (supra)**, the Hon'ble Supreme Court held that 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 has been further held therein that making of repeated representations cannot be regarded as satisfactory explanation for the delay and the writ petition can be dismissed only on the ground of delay.
17. Therefore, applying the aforesaid well settled proposition of law laid down by the Hon'ble Supreme Court, this court is of the considered view that this writ petition is liable to be dismissed on the ground of delay and laches.
18. Mr. Bhattacharya, learned senior counsel for the bank would contend that the instant writ petition is not maintainable as the respondent-bank is a co-operative credit structure entity. Such issue was not raised by the respondent-bank in its affidavit-in-opposition. Therefore, the writ petitioner did not get any opportunity to deal with such objection. That apart in view of the aforesaid findings this Court is not inclined to deal with such objection raised by Mr. Bhattacharya in this writ petition. However, such issue is left open to be decided in a future litigation.

19. For all the reasons as aforesaid the instant writ petition stands dismissed without, however, any orders as to costs.
20. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)