

13.07.2023
Item No.07
Court No.11
Avijit Mitra

WPCT 154 of 2017
with
IA No. 2 of 2019 (Old No. CAN 2529 OF 2019)

In re: An application under Article 226 of the
Constitution of India;
And

Samar Chandra Dutta & ors.
- Versus -
Union of India & ors.

Mr. P. C. Das
....for the petitioners
Mr. Indrajeet Dasgupta
....for the Union of India

The present writ application has been preferred challenging an order dated 27th July, 2017 passed in the original application being, O.A. 350/00872/2017 by which the application was dismissed on the ground of limitation.

As we have invited Mr. Das, learned advocate appearing for the petitioners to advance his argument on merits, the earlier order of dismissal of the restoration application dated 31st January, 2019 is recalled and the application being CAN No. 10471 of 2017 is restored to its original file and number. The application filed for recalling the order dated 31st January, 2019 being CAN No. 2529 of 2019 is disposed of. The initial order of dismissal of the writ petition dated 24th October, 2017 is also recalled and

the writ petition is restored to its original file and number and the application filed for recalling the order dated 24th October, 2017 being CAN 10471 of 2017 is also allowed.

Mr. Das submits that the learned Tribunal erred in law in rejecting the petitioners' claim on the ground of limitation without appreciating that there was no intentional delay on the part of the petitioners to approach the learned Tribunal. The argument that participants in the same selection process and similarly situated with the petitioners have been granted the benefit, as prayed for by the writ petitioners herein, by an order dated 29th January, 2014 passed by a coordinate Bench of this Court in WPCT No.53 of 2008 was also not considered and the application was mechanically dismissed. It was iniquitous to deny identical reliefs to the petitioners.

According to Mr. Das, the learned Tribunal erred in law in refusing to extend similar benefits to the applicants on the ground of limitation and such refusal of discretion is derogatory to the proposition of law laid down in the judgment delivered by the Hon'ble Supreme Court in the case of *K.C. Sharma Vs. Union of India* reported in (1997) 6 SCC 721.

Per contra, Mr. Dasgupta, learned advocate appearing for the Union of India submits that the petitioners herein did not even ventilate their

grievances to the appropriate authority since the year 1997 till the year 2015. It is only after the order dated 29th January, 2014 was passed in WPCT 53 of 2008 the petitioners woke up from their slumber and approached the learned Tribunal and that too after a period of about four years. There is no explanation of such delay in the application and from such sequence of facts it is explicit that the petitioners are merely fence-sitters and for such conduct they are not entitled to the relief and there is no infirmity in the order impugned in the present writ petition.

He submits that after disposal of the application being WPCT 53 of 2008 several other original applications were filed by persons similarly situated with the petitioners. However, such applications were not entertained and as such they preferred several writ petitions being WPCT nos. 119-122 of 2019 and a coordinate Bench of this Court considering the factual matrix dismissed the applications by an order dated 8th November, 2019 observing *inter alia* that the learned Tribunal had rightly rejected the applicants' prayers since being fence-sitters they cannot choose their own time to seek enforcement of their rights. Let the unreported judgment, as produced, be kept on record.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Records reveal that persons similarly situated with the petitioners filed an original application challenging *inter alia* a notification issued by the Railway Recruitment Board indicating cancellation of the written tests conducted earlier pertaining to the employment notice of the year 1997. Aggrieved thereby, they approached the learned Tribunal. The said original application was, however, dismissed. Challenging the same, the petitioners therein preferred a writ petition being WPCT 53 of 2008 which was disposed of by an order dated 29th January, 2014 directing the Railway Recruitment Board to consider the marks obtained by the petitioners therein and to grant appointment to those who had obtained the minimum qualifying marks. Thereafter seeking similar benefits, the petitioners submitted a representation on 6th July, 2015 and as the same was not considered the original application was filed in the year 2017.

We have perused the averments made in the original application. There is no explanation as to why the petitioners waited since the year 1997 till the year 2015 to ventilate their grievances. The first representation was submitted by the petitioners on 6th July, 2015. In the application there is also no

explanation as to why the petitioners waited for a further period of two years to file the original application in the year 2017. In view thereof, the learned Tribunal, in our view, rightly dismissed the writ petition on the ground of limitation.

The judgment delivered in the case of *K.C. Sharma (supra)* is distinguishable on facts. The petitioners did not approach the Court expeditiously for relief. They allowed things to happen and thereafter approached the Court to put forward stale claims. The petitioners had been indolent in approaching the Court and as such the learned Tribunal rightly refused to exercise any discretion in their favour.

In view thereof, we are not inclined to interfere with the order impugned in the present writ petition.

The writ petition being WPCT 154 of 2017 is, accordingly, dismissed.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty, J.)