



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

% **Date of order: 4th September, 2023**

+ **W.P.(C) 11682/2023**

MR. SUBHASH CHANDRA BAMBI Petitioner
Through: **Mr.Ishan Sanghi, Ms.Sagrika Wadhwa and Ms.Poorvashi Kalra,**
Advocates

versus

UNION BANK OF INDIA Respondent
Through: **Nemo**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH
ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL No. 45609/2023

Exemption allowed, subject to just exceptions.

The application stands disposed of

W.P.(C) 11682/2023

1. The present petition under Article 226 of the Constitution of India has been filed by the petitioner seeking the following reliefs:

“a. Issue a Writ in the nature of MANDAMUS and/ or any other appropriate Writ/ Order/ Direction of like nature thereby directing the Respondent to grant pension in accordance with the Employee Pension Scheme,1995 and IBA circular dated 10.08.2010;



b. Pass any other or further order as this Hon'ble Tribunal may deem fit and proper in the interest of justice''

2. It is submitted that the petitioner joined the respondent bank on 4th September 1968 and in 2001, opted for Voluntary Retirement Scheme and retired on 20th April 2001.
3. It is submitted that the Indian Banks' Association issued a circular on 10th August 2010 to all the banks directing them to extend another option to all their employees who had not opted for the pension scheme earlier and were in bank services of Nationalized Banks before 29th September 1995 to be eligible for the said scheme and the deadline for the same 30th October, 2010. The petitioner despite falling in the said category failed to apply within the deadline stipulated for the said pension scheme.
4. It is submitted that the petitioner sent a representation on 2nd November 2010 to the Chairman and Managing Director of the respondent bank seeking that the petitioner be allowed to file the application for the said pension scheme as there is a delay of merely one day in filing the said application. The respondent did not reply to the petitioner's said representation.
5. It is submitted after receiving no response regarding the said representation, on 3rd March 2023, the petitioner's son sent a representation to the respondent bank. The respondent bank replied on 10th March 2023 to the representation dated 3rd March 2023 which is annexed with the petition as Annexure P-4 to the instant petition.
6. It is further submitted that the respondent bank *vide* its reply dated 10th March 2023 erred in not allowing the petitioner for the pension scheme.



7. It is contended that the petitioner being eligible for the pension scheme has been wrongly denied the benefits of pension. It is further contended that the petitioner's legal right is violated by denial of such pension scheme to the petitioner.

8. It is submitted that there is gross violation of right of the pension and hence, the petitioner has filed the instant petition seeking a writ of mandamus by way of directing the respondent bank to grant pension in accordance with the Employees' Pension Scheme, 1995 and Indian Bank Association Circular dated 10th August 2010.

9. In view of the foregoing submissions, the counsel for the petitioner prayed that the petition may be allowed, and the reliefs as claimed by the petitioner may be granted by this Court.

10. Heard and perused the pleadings on record.

11. Based on the arguments on behalf of the counsel for the petitioner, pleadings on record, the issues for adjudication before this Court are-

"1. Whether this Court can entertain a writ petition filed after a delay of 12 years challenging representation given in 2010?

2. Whether this Court for the purpose of deciding the present petition can take into account the reply of the respondent bank dated 10th March 2023 to the representation dated 3rd March 2023 filed by petitioner's son, which has not been challenged by way of instant writ petition?"

12. Now this Court will adjudicate upon the first issue pertaining to delay in filing the writ petition.

13. The case of the petitioner is that he had given his representation to the respondent bank on 2nd November 2010 and the respondent bank did not



respond to the same. The petitioner has filed the present petition aggrieved by the lack of action on behalf of the respondent Bank

14. It is a well-settled law that there is no limitation period for filing of the writ petition; however the petitioner is expected to file the same in a reasonable amount of time. Under Article 226 of the Constitution of India, Court may refrain from exercising the discretionary power in the event that the party has approached the Court after unreasonable delay. The ground of delay and laches is an important aspect for adjudication of the writ petition.

15. The Supreme Court has enunciated the above stated principle in the judgment of *Union of India v. N. Murugesan*, (2022) 2 SCC 25 as follows:

“Article 226 of the Constitution of India

28. We would not dwell deep into the extraordinary and discretionary nature of relief under Article 226 of the Constitution of India. This principle is to be extended much more when an element of undue delay, laches and acquiescence is involved. The following decisions of this Court would suffice:

28.1.U.P. Jal Nigam v. Jaswant Singh [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] : (SCC pp. 469-70, paras 8-11)

“8. Our attention was also invited to a decision of this Court in State of Karnataka v. S.M. Kotrayya [State of Karnataka v. S.M. Kotrayya, (1996) 6 SCC 267 : 1996 SCC (L&S) 1488] . In that case the respondents woke up to claim the relief which was granted to their colleagues by the Tribunal with an application to condone the delay. The Tribunal condoned the delay. Therefore, the State approached this Court and this Court after considering the matter observed as under : (SCC p. 268)



‘Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-section (1) or (2) of Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay.’

9. Similarly in Jagdish Lal v. State of Haryana [Jagdish Lal v. State of Haryana, (1997) 6 SCC 538 : 1997 SCC (L&S) 1550] this Court reaffirmed the rule that if a person chose to sit over the matter and then woke up after the decision of the court, then such person cannot stand to benefit. In that case it was observed as follows : (SCC p. 542)

‘The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Virpal Singh Chauhan case [Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1] . The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage.’

10. In Union of India v. C.K. Dharagupta [Union of India v. C.K. Dharagupta, (1997) 3 SCC 395 : 1997 SCC (L&S) 821] it was observed as follows : (SCC p. 398, para 9)

‘9. We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P. Joshi [R.P. Joshi v. Union of India, OA No. 497 of 1986, decided on 17-3-1987 (CAT)] gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is



seeking benefit of Joshi case [R.P. Joshi v. Union of India, OA No. 497 of 1986, decided on 17-3-1987 (CAT)] . In view of our finding that the benefit of the judgment of the Tribunal dated 17-3-1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief.'

11. In State of W.B. v. Tarun K. Roy [State of W.B. v. Tarun K. Roy, (2004) 1 SCC 347 : 2004 SCC (L&S) 225] their Lordships considered delay as serious factor and have not granted relief. Therein it was observed as follows : (SCC pp. 359-60, para 34)

'34. The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in Debdas Kumar [State of W.B. v. Debdas Kumar, 1991 Supp (1) SCC 138 : 1991 SCC (L&S) 841] . The plea of delay, which Mr Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a court of law.' "

X

X

X



28.3.State of J&K v. R.K. Zalpuri [State of J&K v. R.K. Zalpuri, (2015) 15 SCC 602 : (2016) 2 SCC (L&S) 228] : (SCC pp. 608-11, paras 20-24)

“20. Having stated thus, it is useful to refer to a passage from City & Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla [City & Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla, (2009) 1 SCC 168] , wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus : (SCC p. 175, para 30)

‘30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a)adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b)the petition reveals all material facts;

(c)the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.’

21. In this regard reference to a passage from Karnataka Power Corpn. Ltd. v. K. Thangappan [Karnataka Power Corpn. Ltd. v. K. Thangappan, (2006) 4 SCC 322 : 2006 SCC (L&S) 791] would be apposite : (SCC p. 325, para 6)

‘6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party.’



After so stating the Court after referring to the authority in State of M.P. v. Nandlal Jaiswal [State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566] restated the principle articulated in earlier pronouncements, which is to the following effect : (Karnataka Power Corpn. case [Karnataka Power Corpn. Ltd. v. K. Thangappan, (2006) 4 SCC 322 : 2006 SCC (L&S) 791] , SCC p. 326, para 9)

'9. ... the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. 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 was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.'

22. In State of Maharashtra v. Digambar [State of Maharashtra v. Digambar, (1995) 4 SCC 683] a three-Judge Bench laid down that : (SCC p. 692, para 19)

'19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person



seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.'

23. Recently in *Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu* [*Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu*, (2014) 4 SCC 108 : (2014) 1 SCC (L&S) 38] , it has been ruled thus : (SCC p. 117, para 16)

'16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant—a litigant who has forgotten the basic norms, namely, 'procrastination is the greatest thief of time' and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.'

24. At this juncture, we are obliged to state that the question of delay and laches in all kinds of cases would not curb or curtail the power of the writ court to exercise the discretion. In *Tukaram Kana Joshi v. MIDC* [*Tukaram Kana Joshi v. MIDC*, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] it has been ruled that : (SCC pp. 359-60, para 12)



'12. ... Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause of action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.'

And again: (Tukaram Kana Joshi case [Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] , SCC p. 360, para 14)

'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. Controller of Imports & Exports [Durga Prashad v. Controller of Imports & Exports, (1969) 1 SCC 185] , LAO v. Katiji [LAO v. Katiji, (1987) 2 SCC 107 : 1989 SCC



(Tax) 172] , Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur [Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur, (1992) 2 SCC 598] , Dayal Singh v. Union of India [Dayal Singh v. Union of India, (2003) 2 SCC 593] and Shankara Coop. Housing Society Ltd. v. M. Prabhakar [Shankara Coop. Housing Society Ltd. v. M. Prabhakar, (2011) 5 SCC 607 : (2011) 3 SCC (Civ) 56] .)’ ”

16. In the present facts, the writ is filed at a very belated stage. There has been a delay of almost 12 years in filing the present petition. The petitioner is aggrieved of the representation which was given way back in 2010 i.e. 2nd November 2010. Moreover, no reasonable explanation has been provided for the said delay.

17. It is a settled position of law that this Court may dismiss the petition, in case the petition is filed after an unreasonable delay. The Court under Article 226 has the discretion refuse to exercise its jurisdiction in favour of a party who files writ petition after considerable delay and is otherwise guilty of laches. In such cases, the Court should exercise such discretion with utmost caution and care.

18. This Court is of the view that the present petition cannot be entertained on the ground of delay and laches in filing the petition since, the petition has been filed by the petitioner regarding a representation given in 2010. Moreover, there is no reasonable cause pleaded by the petitioner for the purpose of filing the writ petition after such a long time.

19. Accordingly, the first issue is decided.

20. Now adverting to the second issue whether this Court can adjudicate upon the reply of the respondent bank dated 10th March 2023 to the representation by the petitioner dated 3rd March 2023, which has not been



challenged by the petitioner by way of instant writ petition.

21. The petitioner has not challenged the reply dated 10th March 2023 in the instant petition. Therefore, this Court transgress by way of adjudicating upon the reply of the respondent bank dated 10th March 2023 filed in response to representation of petitioner's son dated 3rd March 2023.

22. Therefore, this Court under Article 226 can only adjudicate upon the actions of the public authority which have been challenged before it.

23. Accordingly, second issue is decided.

24. This Court is of the view that the present petition shows that the petitioner has been lethargic and tardy in filing the writ petition after a period of 12 years. Moreover, the petitioner's son after a considerable delay filed representation in March 2023 to the respondent bank which was not challenged before this Court in the instant writ petition and therefore, it is evident that the petitioner was not prompt in filing the writ petition.

25. The Court has to be very hypervigilant while issuing a writ of mandamus since the writ of mandamus is an extraordinary remedy that is to be invoked only upon special occasions and in exceptional circumstances. It is invoked to supplement the cases wherein there is a deficiency in law, and cannot be invoked as an appellate mechanism against the decision of any Court, Tribunal, or Authority which is exercising statutory power. The writ of mandamus is an invincible weapon in cases, where there is a failure of justice or exercise of power in an illegal way or arbitrary manner.

26. Under Article 226 of the Constitution of India, this Court cannot intervene and direct the respondent bank to grant pension in accordance with the Employee Pension Scheme, 1995 and Indian Bank Association circular dated 10th August 2010.



27. This Court is of the view that the petitioner is unable to establish that there is a violation of any legal right of the petition.
28. In view of the discussion in the foregoing paragraphs, I do not find any merit in the instant petition and is liable to be dismissed.
29. Accordingly, the writ petition is dismissed.
30. The order to be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 4, 2023
SV/DB

Click here to check corrigendum, if any