



2024:DHC:3621



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 15th April, 2024**
+ **W.P.(C) 10383/2023**
SH ANOJ SHARMA (DECEASED) Petitioner

Through: Mr.Chirayu Jain, Advocate

versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCES..... Respondent

Through: Mr.V.S.R. Krishna and
Mr.V.Shashank Kumar, Advocates
Mr.Sanjay Kumar Pathak and Ms.
Nidhi Thakur, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:-

“a. Issue an appropriate writ, order or direction, thereby setting aside the impugned Award dated 04.09.2015 (Annexure P-1) passed by the Ld. Presiding Officer, Labour Court, Karkardooma in ID No.116/10/01.

b. Issue a writ in the nature of Mandamus or any other appropriate writ, order or directions to the Respondent/Management to consider the period of illegal termination of the Petitioner/Workman as time spent in service and to direct the Respondent/Management to pay the wages,



along with arrears, of the Petitioner/Workman and to grant consequential benefits for the premature death to his Legal Representatives.

c. Allow the present writ petition with costs, in favour of the Petitioner/Workman.

d. Pass any such other or further order as this Hon'ble Court may deem fit and appropriate in the facts and circumstances of the case in favour of the Petitioner.”

2. The relevant facts necessary for the adjudication of the instant petition are as follows:

- a) The petitioner (“petitioner workman” hereinafter) worked at the post of ‘Hospital Attendant, Gr.-III’ with the respondent i.e., AIIMS (“respondent entity” hereinafter), from the periods, 1st March, 1995 to 20th June, 1995, 1st March, 1996 to 10th May, 1996 and 20th August, 1996 to 31st August, 1997.
- b) Thereafter, on 1st September, 1997, the services of the petitioner workman were terminated by the respondent entity subsequent to which the petitioner workman on 29th June, 2000, filed a statement of claim before the Assistant Labour Commissioner and Conciliation Officer, Government of NCT of Delhi, Kalkaji, Delhi.
- c) Subsequent to the above, the respondent entity on 28th August, 2000, filed its reply to the aforementioned statement of claim and thereafter, on 19th September, 2000, the petitioner workman filed a rejoinder before the Conciliation Officer.
- d) Upon failure of the above said conciliation proceedings, the Government of NCT of Delhi *vide* reference dated 2nd August, 2001,



bearing reference no. F.24(1384)/2001-Lab./17307-11, referred the industrial dispute between the petitioner workman and the respondent entity before the learned Labour Court for adjudication in the following terms:

"Whether the services of Sh. Anoj Sharma have been terminated illegally and for unjustifiably by the management, and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/ Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect?"

- e) The learned Labour Court, after completion of pleadings, on 20th February, 2004, framed four issues, and thereafter, passed the Award dated 4th September, 2015, ("impugned Award" hereinafter), holding that the services of the petitioner workman were illegally terminated by the respondent entity, therefore, the petitioner workman was entitled to a lump sum compensation of Rs.50,000/- in lieu of reinstatement.
- f) Aggrieved by the aforementioned Award, the legal heirs of the petitioner workman on 3rd August, 2023, have preferred the instant writ petition under Articles 226 and 227 of the Constitution of India seeking setting aside of the same.
3. Learned counsel appearing on behalf of the petitioner workman submitted that the learned Labour Court erred in passing the impugned Award as the same has been passed without taking into consideration the



entire evidence, facts and circumstances of the present case, and therefore, is liable to be set aside.

4. It is submitted that the impugned Award is unjust, illegal, arbitrary and violative of Articles 14, 16, 21 and 39(d) of the Constitution for denying the petitioner workman the relief of reinstatement along with back wages after observing that his services were terminated illegally.

5. It is submitted that the learned Labour Court erred in granting a lump sum compensation of Rs.50,000/- in lieu of reinstatement to the petitioner workman after holding that his services were terminated illegally as ordinarily, violation of statutory mandate under Section 25-F of the Industrial Disputes Act, 1947 automatically triggers grant of relief in the form of reinstatement with back wages.

6. It is submitted that as per the settled position of law, the learned Labour Court after having opined that the services of the petitioner workman were terminated illegally, ought to have granted reinstatement with back wages. To substantiate the same, learned counsel for the petitioner workman placed reliance upon the judgments passed in *Surendra Kumar Verma vs Central Government Industrial Tribunal-cum-Labour Court, New Delhi & Anr.*, AIR 1981 SC 422 and *Tapash Kumar Paul vs BSNL & Anr*, AIR 2015 SC 357 and *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*, (2013) 10 SCC 324.

7. It is submitted that the learned Labour Court failed to consider the fact that none of the exceptions i.e., closure of industry, superannuation of employee, employee being gainfully employed and/or employee losing



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confidence of the management, as stated in the aforementioned judgments provide the grounds for not granting the relief of reinstatement.

8. It is submitted that the impugned Award has been passed wrongfully as the petitioner workman, by way of experience certificate, has duly discharged his burden of proof to establish the continuous employment for 240 days in the preceding year of the date of illegal termination.

9. It is submitted that the learned Labour Court has erroneously adjudicated the issue of reinstatement and back wages by wrongfully placing reliance upon the judgment in *Nehru Yuva Kendra Sangathan v. Union of India*, 2000 SCC OnLine Del 420; *Municipal Council, Sujampur v. Surinder Kumar*, (2006) 5 SCC 173; and *Vinod Kumar & Ors vs Salwan Public School & Ors* WP(C) 5820/2011 dated 17.11.2014 since, the same are distinguishable on facts.

10. It is submitted that the petitioner workman is entitled to full back wages as he had specifically pleaded before the learned Labour Court that he was not gainfully employed and the same could not be proved by the respondent entity due to lack of any evidence whatsoever. To substantiate the same, learned counsel for the petitioner workman placed reliance upon a judgment passed in *Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Ors.*, AIR 1979 SC 75.

11. It is further submitted that the petitioner workman belongs to the financially backward section of the society thus, the inordinate delay in filing the instant petition is on account of the lack of access to legal resources.



12. It is also submitted that in the year 2017, before the petitioner workman could gather the resources to challenge the impugned Award, his mother passed away on 15th January, 2017 due to which he could not keep in touch with his counsel. Furthermore, the petitioner himself expired on 19th July, 2018 leaving behind a single mother/spouse who too passed away on 14th December, 2020 during the Covid-19 pandemic hence it is in such light that the impugned Award could be challenged in time.

13. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner workman prays that the instant petition may be allowed, and the relief as prayed, may be granted.

14. *Per Contra*, learned counsel appearing on behalf of respondent entity vehemently opposed the instant petition submitting to the effect that the instant petition is misconceived, and the same being barred by delay and laches is liable to be dismissed.

15. It is submitted that the instant writ petition has been filed after an inordinate delay of about eight years, therefore, the same is liable to be dismissed solely on the account of the unaccounted delay as it shows lack of vigilance and unpreparedness on behalf of the petitioner workman thus, coming under the ambit of doctrine of delay and laches.

16. It is submitted that by way of the instant petition, the petitioner is merely abusing the process of law and has not approached this Court with *bona fide* intentions.

17. It is submitted that as per the settled position of law, the impugned Award passed by the learned Labour Court cannot be interfered with under



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the writ jurisdiction unless the same suffers from any apparent error of jurisdiction, breach of principles of natural justice and/or is vitiated by a manifest error of law.

18. It is submitted that the impugned Award has been passed by the learned Labour Court after duly considering the entire facts and circumstances available on record, and there is no illegality or infirmity thereto. Furthermore, it is submitted that the learned Labour Court has applied its judicial mind in accordance with the settled position of law with regard to the issues raised in the present matter, hence, the instant petition is an appeal under the garb of a writ jurisdiction.

19. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondent entity prayed that the present petition, being devoid of any merit, may be dismissed.

20. Heard learned counsel appearing on behalf of the parties and perused the material on record.

21. At the threshold, the respondent entity has raised the preliminary objection that the instant writ petition cannot be adjudicated upon since the same is barred by the doctrine of 'delay and laches' as the petitioner workman has approached this Court assailing the impugned Award dated 4th September, 2015 after a lapse of eight years.

22. Therefore, before advertng to the merits of the instant petition, this Court deems it imperative to satisfy itself with regard to the issue of alleged laches and delay that occurred on behalf of the petitioner workman in asserting his rights.



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23. The underlying principle governing doctrine of delay and laches has emerged from the common law principle of estoppel and perhaps, the statutory application of the same can be identified under various statutes wherein a limitation period is prescribed thus, creating instances for non-consideration of condonation in certain circumstances.

24. The word ‘laches’ meaning “negligent and slackness”, has been derived from the French language which basically bars parties to approach the Courts if there is an unreasonable delay in pursuing a claim involving an equitable relief while causing prejudice to the other party.

25. The common law doctrine essentially expects the Courts exercising public law jurisdiction to not encourage agitation of a belated and stale claims and reviving matters where rights of third parties may have accrued in the *interregnum*.

26. It is a settled position of law that in order to do complete justice to the parties under exceptional circumstances this Court has discretionary powers under Article 226 of the Constitution of India to condone the delay under extraordinary circumstances.

27. This Court is of the view that while construing the principle of condonation of delay, an interpretation shall be drawn in a rather peculiar way by associating the same with the rights accrued to a decree holder. It is noted that upon expiry of the period of limitation, condonation of delay is not a matter of right rather, it is a discretion that may be exercised by the Courts, as with the lapse of time the party in whose favor the right is



accrued, treats it to be binding on the parties and may proceed on such assumption thus, creating new rights.

28. This Court observes that it is in this regard that the foundation of the legal maxim *interest reipublicae up sit finis litium* is propounded. The aforesaid maxim connotes that it is for the general welfare of the society that a period be put to litigation as the idea is to keep a remedy alive only for a fixed period of time as conferred by the legislature.

29. Furthermore, inordinate delay in approaching a Court of law must not be condoned as a matter of routine and rather it must be based upon sound reasoning. The intent behind the principle of condonation of delay is to cater to genuine cases and should not be extended to a person who is oblivious to his rights and entitlements. Therefore, a person must state sufficient cause which is founded upon *bona fide* and is well-reasoned.

30. The Constitutional Bench of the Hon'ble Supreme Court in *Tilokchand Motichand v. H.B. Munshi, (1969), 1 SCC 110*, extensively carved out the principle pertaining to the 'doctrine of delay and laches'. The relevant portion of the judgment is reproduced herein:

"14. Article 32(2) of the Constitution confers a judicial power on the Court. Like all judicial powers, unless there is an express provision to the contrary, it must be exercised in accordance with fundamental principles of administration of justice. General principles of res judicata were accordingly applied by this Court in Daryoo v. State of UP and Amalgamated Caulfields Ltd v Janapada Sabha, Chindwara understand that one of the fundamental principles of administration of justice is that, apart from express provisions to the contrary, stale claims should not be given effect to. But



what is a stale claim? It is not denied that the Indian Limitation Act does not directly apply to a petition under Article 32. Both the English Courts and the American Courts were confronted with a similar problem. In the United States the Federal Courts of Equity solved the problem thus:

"Except, perhaps, where the statute by its express terms applies to suits in equity as well as to actions at law, or where the jurisdiction of law and equity is concurrent, the rule appears to be that Federal Courts sitting in equity are not bound by state Statutes of limitation. Nevertheless, except where unusual conditions or extraordinary circumstances render it equitable to do so, the Federal Courts usually act in analogy to the State statutes of limitation applicable to cases of like character." (Vol. 34, American jurisprudence, Limitation of Actions. Section 54)

15. In Courts of Admiralty, where the statutes of limitation do not control proceedings, the analogy of such statutes is ordinarily followed unless there is something exceptional in the case (ibid).

16. Story on Equity Jurisprudence states the legal position thus: "It was, too, a most material ground, in all bills for an account, to ascertain whether they were brought to open and correct errors in the account recenti facto, or whether the application was made after a great lapse of time. In cases of this sort, where the demand was strictly of a legal nature, or might be cognizable at law, courts of equity governed themselves by the same limitations as to entertain such suits as were prescribed by the Statute of Limitations in regard to suits in courts of common law in matters of account. It therefore, the ordinary limitation of such suits at law was six years, courts of equity would follow the same period of limitation. In so doing they did not act in cases of this sort (that is, in matter of concurrent jurisdiction) so much upon the ground of analogy to the Statute of Limitations, as positively in obedience to such statute. But



where the demand was not of a legal nature, but was purely equitable or where the bar of the statute was inapplicable courts of equity had another rule, founded sometimes upon the analogies of the law, where such analogy existed, and sometimes upon its own inherent doctrine, not to entertain stale or antiquated demands, and not to encourage laches and negligence. Hence, in matters of account, although not barred by the Statute of Limitations, courts of equity refused to interfere after a considerable lapse of time, from considerations of public policy, from the difficulty of doing entire justice, when the original transactions had become obscure by time, and the evidence might have been lost, and from the consciousness that the repose of titles and the security of property are mainly promoted by a full enforcement of the maxim, vigilantibus, non dormientibus jura subveniunt. Under peculiar circumstances, however, excusing or justifying the delay, courts of equity would not refuse their aid in furtherance of the rights of the party, since in such cases there was no pretence to insist upon laches or negligence, as a ground for dismissal of the suit and in one case carried back the account over a period of fifty years." (Third Edn. p. 224, Section 529)

17. In England, as pointed out by Bachawat, J. the Court of Chancery acted on the analogy of Statute of Limitation (vide Halsbury, Vol. 14, p. 647, Article 1190)

18. It seems to me, however, that the above solution is not quite appropriate for petitions under Article 32. A delay of 12 years or 6 years would make a strange bed-fellow with a direction or order or writ in the nature of mandamus, certiorari and prohibition. Bearing in mind the history of these writs I cannot believe that the Constituent Assembly had the intention that five Judges of this Court should sit together to enforce a fundamental right at the instance of a person, who had without any reasonable explanation slept over his rights for 6 or 12 years. The history of these writs both in England and the USA convinces me that the underlying idea of the Constitution was



to provide an expeditious and authoritative remedy against the inroads of the State. If a claim is barred under the Limitation Act, unless there are exceptional circumstances, prima facie it is a stale claim and should not be entertained by this Court. But even if it is not barred under the Indian Limitation Act, it may not be entertained by this Court if on the facts of the case there is unreasonable delay. For instance, if the State had taken possession of property under a law alleged to be void, and if a petitioner comes to this Court 11 years after the possession was taken by the State, I would dismiss the petition on the ground of delay, unless there is some reasonable explanation. The fact that a suit for possession of land would still be in time would not be relevant at all. It is difficult to lay down a precise period beyond which delay should be explained. I favour one year because this Court should not be approached lightly, and competent legal advice should be taken and pros and cons carefully weighed before coming to this Court. It is common knowledge that appeals and representations to the higher authorities take time, time spent in pursuing these remedies may not be excluded under the Limitation Act but it may ordinarily be taken as a good explanation for the delay.”

31. Upon perusal of the aforementioned judicial dictum, it can be inferred that, the Courts exercising writ jurisdiction shall not encourage agitation of stale claims hence, fence-sitters cannot be allowed to raise a dispute or challenge the legality of an order after considerable amount of time has passed post its conclusion especially in cases where the right of third parties have crystallized in the *interregnum*.

32. The Hon'ble Court further observed that if a claim is barred under the Limitation Act, 1963, and unless there are exceptional circumstances, *prima facie* it is a stale claim and should not be entertained by the Courts. The



Hon'ble Court further opined that even if a claim is not barred under the Limitation Act, it may not be entertained by the Court if on the facts of the case there exists unreasonable delay on account of the party asserting such right.

33. Applying the principles enunciated in the aforesaid paragraphs to the facts of the instant petition, this Court is of the considered view that the petitioner has approached this Court with *mala fide* intentions as it has failed to establish reasonable grounds which led to the delay in filing the instant petition, and *prima facie* the grounds taken to explain the delay seem to be merely an afterthought. Further, the petitioner has utterly failed to explain the delay as per the settled position of law and pleads sympathy on account of financial and medical exigencies which this Court does not find sufficient in order to condone the considerable amount of delay. The relevant extracts of the grounds taken by the petitioner workman to explain the delay are reproduced herein below:

“.....(xiii) That the Petitioner/Workman belongs to the lowest strata of the society and did not have access to legal resources or financial means as he had exhausted all his savings in the prolonged litigation and hence could not approach this Hon'ble Court immediately for challenging the untenable award within time. That when the workman was gathering resources for challenging the award, his mother passed away on 15.01.2017 and had caused a significant impact on the Workman and he could not follow up with his counsel. Unfortunately, the Workman also passed away on 19.07.2018 leaving behind his wife and two minor sons. That the wife of the Workman namely Smt. Ravita Sharma was suffering from Tuberculosis and was unable to pursue the filing of the present writ petition and they



were also in financial distress as she was undergoing treatment. The wife of the Workman also passed away on 14.12.2020 during the first wave of Covid-19. That thereafter even the father of the Workman also expired on 01.05.2021 due to Covid-19. That now the two minor son of the Workman are being taken care of by their legal guardian Sh. Vined Sharma, who is the brother of Workman. That the tragic events in the family of the workman had a significant impact on his family members and the immediate relatives of the Workman were not in a position to immediately take additional expenses and therefore the petition could not be filed earlier. That due to the said unfortunate events in the family of the Workman which were beyond the control of the legal heirs and on account of poverty and penury the legal heirs of the Workman also could not file the present writ petition earlier. Therefore, it is humbly submitted that delay, if any, in challenging the award be considered sympathetically and the delay condoned in the interest of justice.....”

34. In this backdrop, this Court is of the considered view that the public law doctrine of delay and laches is founded on public policy, with an aim to suppress fraud, perjury and to prevent oppression. The foundation of the doctrine is to bury all the concluded acts of the past which have, from lapse of time, become stale and rather aims at ensuring that the litigants are diligent. The general law of limitation prescribes a time span against such legal remedies during which the aggrieved party may seek redressal and challenge the same. The limitation provisions enunciated under various statutes are not prescribed to destroy the rights of the parties rather they aim to restrict dilatory tactics adopted by the parties.



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35. This Court is also of the view that the learned Labour Court had passed the impugned Award on 4th September, 2015, and since then more than eight years have passed. The petitioner workman as well as his legal heirs had ample opportunities to assert their rights and challenge the impugned Award, however, the instant petition has been filed after an extraordinary and inordinate delay of eight years. It is further observed that the petitioner has failed to produce before this Court any documentary evidence and/or substantive oral submissions to make out a case for sufficient cause.

36. This Court is also of the view that the conduct of the petitioner in challenging the impugned Award by way of the instant petition is a blatant disregard to the settled position of law behind the principle of delay and laches. The petitioner like any other vigilant citizen, was expected to assert his rights within a reasonable time and he failed to do the same thus, the instant petition is nothing but assertion of a stale claim as this Court cannot condone a delay of eight years merely on sympathetic grounds.

37. In light of the above discussions, this Court is of the view that the grounds raised by the petitioner seeking condonation of delay do not meet principle laid down *qua* the doctrine of delay and laches as laid down by the Hon'ble Supreme Court as well as this Court in a catena of judgments, therefore, the present writ petition being barred by the inordinate delay of eight years is nothing but a gross misuse of process of law and this Court is not inclined to exercise its discretion purely on sympathetic grounds.



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38. Based on the aforementioned observations, this writ petition is accordingly dismissed along with pending applications, if any.

39. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 15, 2024

dy/da/ryp

Click here to check corrigendum, if any