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

\+ W.P.(C) 13559/2022

SURESH KUMAR .....Petitioner

Through: Ms. Aakansha Jha, Advocate.

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI & ANR .....Respondents

Through: Mohd. Irshad, ASC with Ms. Nasreen and Mr. Kunal Raj, Advocates for GNCTD/R-1.
Mr. Gurpreet Singh and Ms. Raushan Kumari, Advocates for R-2.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

O R D E R

% 05.07.2024

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:

> *"A. Issue a Writ of Mandamus to the Respondent No. 2 with a direction for reinstating the Petitioner in service with all consequential benefits including Promotions and all back wages;*
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> *B. Issue an appropriate Writ Directing the Respondents to pay Cost and Compensation for harassment, mental agony, sufferings, loss of reputation, litigation expenses and inconvenience caused to the Petitioner due to the wrongful, illegal and arbitrary act of the Respondents;*
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> *C. Issue an appropriate writ under Article 226 of the Constitution of India for issuance of an appropriate Writ of Mandamus and any other appropriate order or direction to the Respondents to return the amount of INR 61,161/- (Rupees Sixty-One Thousand One Hundred and Sixty-One Only), which the Respondent No. 2 had forced the Petitioner to deposit with them, along with interest @ 18% per annum from the date of depositing the above said amount with the Respondent No. 2, since the Petitioner is now honourably acquitted by the Ld. Trial Court in the interest of justice and;*
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> *Pass any such other order or directions may deem fit and proper in the interest of justice."*

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2. Factual matrix as stated in the writ petition is that Petitioner was appointed by Respondent No.2 on 13.06.1984 and was working in the capacity of a *Majdoor* at a Fair Price Shop No.7543, located in Pushp Vihar, New Delhi. As per the Petitioner, in the year 1997, false allegations were levelled against the Petitioner pertaining to misappropriation and embezzlement of money and without any inquiry into the matter, Petitioner was made to forcibly deposit an amount of Rs.61,000/- with Respondent No.2 and coerced into signing on a confession that he had misappropriated the money. Based on this, Petitioner was suspended on 30.05.1997 with immediate effect followed by a termination order dated 06.11.1997 without any inquiry or even an opportunity of hearing.

3. It is averred that subsequently, an FIR bearing No. 571/1997 was registered at PS: Malviya Nagar, New Delhi against the Petitioner under Sections 420/468/471/409 IPC at the behest of Respondent No.2. Meanwhile, Petitioner filed an appeal before the Appellate Authority of Respondent No.2 on 05.12.1997 against the termination order and sought reinstatement. Appeal was illegally rejected on 30.09.1999 followed by an order dated 06.10.1999 containing the detailed reasons for rejection of the appeal. Since the criminal proceedings were pending, Petitioner did not challenge the termination order and awaited the outcome of the criminal trial. On 31.03.2022, the learned Trial Court passed a judgment acquitting the Petitioner and armed with this judgment, Petitioner approached Respondent No.2 on 04.04.2022, requesting for reinstatement. On 03.08.2022, legal notice was also sent but getting no response, Petitioner has approached this Court.

4. Learned counsel for the Petitioner submits that the termination order is illegal and based on a confessional statement recorded under pressure and

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coercion. No opportunity of hearing was given to the Petitioner before terminating his 13 years' long service tenure and no departmental inquiry was held. The stand of the Petitioner that he was not guilty of misappropriation etc., stands vindicated by the judgment of the Trial Court, honourably acquitting him from all the charges. It is argued that the Supreme Court has from time to time held that a delinquent employee can be reinstated when his acquittal is an honourable acquittal. After the Trial Court judgment, Respondent No.2 cannot deny reinstatement with back-wages to the Petitioner.

5. Learned counsel for Respondent No.2 defends the termination order and submits that Petitioner was rightly terminated being found guilty of misconduct under Rule 3.2 (f) and (h) of 'General Terms and Conditions of Service'. The writ petition is barred by delay and laches and deserves to be dismissed on this ground alone. Termination order was passed on 06.11.1997 and appeal filed before the Appellate Authority was rejected on 30.09.1999 followed by a detailed and reasoned order dated 06.10.1999 and writ petition has been filed after an inordinate and unexplained delay of 23 years from the date of the Appellate Order and even today, the termination order is unassailed.

6. Without prejudice to the preliminary objection, it is submitted that Petitioner was at the relevant time posted at a Fair Price Shop, where he worked as a Helper/*Majdoor*. It was learnt that Petitioner was indulging in embezzlement of the money belonging to Respondent No.2. The mischief surfaced when it was noticed that a sum of Rs.19,909.36/- was not credited by the Bank, though as per records maintained with the shop, the money was deposited. Internal inquiry was ordered and carried out wherein all stocks/sales registers, books of accounts were inspected. Stocks and sales

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registers for the years 1993 to 1998 were reconciled and checked and it was found that there was a shortfall of Rs.1,51,378.73/-. Significantly, Petitioner on his own volition admitted his guilt and deposited a sum of Rs.61,161.70/- in the bank account of Respondent No.2 on 14.05.1997, followed by a written note under his signatures admitting that he had fraudulently taken away the sale proceeds instead of depositing in the bank account.

7. It is urged that Petitioner was thereafter suspended followed by a termination order as he was guilty of grave misconduct involving moral turpitude and since he was earlier also involved in another act of theft, for which he was terminated but reinstated taking a lenient view, Corporation lost faith and confidence in him and terminated his services, having the power to do so under Rule 3.2 (f) and (h) of General Terms and Conditions of Service. Petitioner filed an appeal but the Appellate Authority was of the view that the termination was justified and rejected the Appeal.

8. It is submitted that acquittal in criminal case cannot be a ground for setting aside the termination order and/or reinstating the Petitioner since standards of proof applicable in criminal and departmental proceedings are completely different. While criminal proceedings are based upon proof beyond reasonable doubt, departmental proceedings follow the principle of preponderance of probabilities. Petitioner himself admitted his guilt and there was enough material in the internal inquiry to substantiate the embezzlement and therefore, the acquittal in the criminal proceedings cannot aid the Petitioner.

9. Heard learned counsels for the respective parties.

10. In light of the preliminary objection raised by Respondent No.2, it is imperative to first examine if the writ petition is barred by delay and laches. Indisputably, services of the Petitioner were terminated on 06.11.1997 and

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the appeal was rejected on 30.09.1999 *albeit* reasons for dismissal were indicated in a separate order dated 06.10.1999. Petitioner has approached this Court in the year 2022 i.e. after 25 years from the date of termination order and 23 years from the date of dismissal of the appeal. It is settled principle of law that delay defeats equity. In ***Karnataka Power Corpn. Ltd. through its Chairman & Managing Director and Another v. K. Thangappan and Another, (2006) 4 SCC 322,*** the Supreme Court held as under:-

> ***"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. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad v. Chief Controller of Imports and Exports [(1969) 1 SCC 185 : AIR 1970 SC 769] . Of course, the discretion has to be exercised judicially and reasonably.*
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> ***7.*** *What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd [(1874) 5 PC 221 : 22 WR 492] (PC at p. 239) was approved by this Court in Moon Mills Ltd. v. M.R. Meher [AIR 1967 SC 1450] and Maharashtra SRTC v. Shri Balwant Regular Motor Service [(1969) 1 SCR 808 : AIR 1969 SC 329] . Sir Barnes had stated:*
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>> *"Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or*

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injustice in taking the one course or the other, so far as it relates to the remedy."

8. *It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in Rabindranath Bose v. Union of India [(1970) 1 SCC 84 : AIR 1970 SC 470] that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.*

9. *It was stated in State of M.P. v. Nandlal Jaiswal [(1986) 4 SCC 566 : AIR 1987 SC 251] that 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."*

11. In ***Shiv Dass v. Union of India and Others, (2007) 9 SCC 274,*** the Supre me Court held as under:-

*"**6**. Normally, in the case of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India. 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. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad v. Chief Controller of Imports and Exports [(1969) 1 SCC 185 : AIR 1970 SC 769] . Of course, the discretion has to be exercised judicially and reasonably."*

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12. It is settled that delay and laches in espousing a cause, can come in the way of a litigant who is not vigilant, even if he has a good case on merits and Courts should be reluctant in entertaining stale claims of persons, who without any reasonable explanation approach the Court with an inordinate and gross delay. Courts in their discretionary power do not ordinarily assist the indolent or lethargic persons who sleepover their rights. If a litigant fails to satisfy the Court on the inordinate delay in approaching the Court, the Court will be well justified in rejecting the claim on delay and laches.

13. From a plain reading of the writ petition as well as from the arguments addressed in Court, it is apparent that the only explanation that the Petitioner seeks to offer for the inordinate delay of over two decades is that he was awaiting the outcome of the pending criminal proceedings initiated on the basis of FIR No. 571/1997 and only when he was 'honourably acquitted' by the Trial Court, he represented to Respondent No.2 to reinstate him and failing to succeed, he has approached the Court and there is no delay. In fact, the Petitioner blames Respondent No.2 for not acting on his representations/legal notice despite honourable acquittal in the criminal proceedings. I am afraid the explanation given by the Petitioner cannot be accepted. No doubt, the criminal proceedings were pending before the Trial Court but this was not be an embargo for the Petitioner to challenge the termination order passed on 06.11.1997. The termination order has been passed under Rule 3.2 (f) and (h) of the General Terms and Conditions of Service of Respondent No.2/Corporation. Rule 3.2 (f) permits the Corporation to terminate the services of an employee when there is loss of confidence while Rule 3.2 (h) comes into picture where wilfull loss or damage is caused to the business/property of the Corporation. Termination

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order, according to Respondent No.2, was passed after a detailed internal inquiry, which reflected embezzlement of monies by the Petitioner, established by a mismatch in the entries maintained at the Fair Price Shop and the deposit slips of the Bank. The plea that no departmental inquiry was held and/or opportunity of hearing was not given to the Petitioner, sought to be raised before this Court was available to the Petitioner soon after the termination order was passed, 25 years ago. Admittedly, Petitioner took no steps to take recourse to legal remedies assailing the termination order in all these years. It is a settled law that departmental inquiry and criminal proceedings even on the same set of allegations can proceed simultaneously and the standards of proof in both are completely different. Therefore, it is not open to the Petitioner to contend that he was awaiting the outcome of the criminal proceedings and this should be a justification for not challenging the termination order for a long period of over two decades. Delay and laches cannot be overlooked in the present case and as rightly argued by the counsel for Respondent No.2, writ petition deserves to be dismissed on this ground alone. This Court is fortified in its view by orders of this Court in ***Sh. Ramesh Kumar v. Bank of India, 2015 SCC OnLine Del 7120*** and ***Balwan Singh v. Delhi Agricultural Marketing Board and Ors., W.P.(C) No.10112/2021***, decided on 05.10.2021.

14. There is yet another significant aspect of the matter. A perusal of the prayer clause of the writ petition, which is extracted in the earlier part of the order, shows that even after approaching this Court belatedly, Petitioner has not challenged either the termination order or the order of the Appellate Authority and seeks a direction for reinstatement purely on the basis of acquittal in the criminal case. In the absence of a challenge to a termination order, it is not understood how the Petitioner can claim reinstatement.

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15. Accordingly, the writ petition is dismissed on grounds of delay and laches, with no order as to costs.

JYOTI SINGH, J

JULY 05, 2024/_DU/JG/shivam_

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