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

+ W.P.(C) 12479/2024

M. BRAHMAIAH

.....Petitioner

Through: Mr. Ashok Kumar, Advocate

versus

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT
CORPORATION & ANR.

.....Respondents

Through: Mr. Vaibhav Kalra, Advocate

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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06.09.2024

CM APPL. 51909/2024

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 12479/2024

3. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India laying a challenge to the impugned order dated 17.10.2007 passed by Respondent No.1/Delhi Tourism & Transportation Development Corporation ('DTTDC'), whereby penalty of withholding of two increments for a period of two years without cumulative effect was imposed on the Petitioner. Challenge is also laid to the appellate order dated 22.04.2008 passed by the Board of Directors of DTTDC, dismissing the appeal as also order dated 28.10.2021 passed by Respondent No.2, whereby the review petition was rejected.



4. As per the narrative in the writ petition, Petitioner joined DTTDC on 23.03.1992 as Assistant Manager (Shop). A Memorandum of Charge dated 08.11.2002 alleging that he was negligent in discharging his duties and failed to maintain proper supervision at the concerned vend, which resulted in misappropriation of about Rs.2,51,564.90. As averred, Petitioner was exonerated in the said inquiry by the Inquiry Officer for the charge of misappropriation but was held guilty for failing to maintain proper records and sending reconciliation statements. On 09.08.2007, Respondent No. 1 issued another memorandum and served a copy of the inquiry report dated 30.07.2007 calling upon the Petitioner to make a representation. Petitioner was unable to respond to the memorandum owing to domestic circumstances. Thereafter, a penalty of withholding of two increments for a period of two years without cumulative effect was imposed on the Petitioner vide order dated 17.10.2007. Appeal filed by the Petitioner against the said penalty was rejected. Petitioner avers that thereafter he had approached the National Commission for Scheduled Castes in 2012 and since the matter was pending there, he did not take recourse to a remedy before this Court assailing the impugned orders. On 09.12.2020, Petitioner filed a review petition challenging the penalty/appellate order, however, the same was disallowed by the Competent Authority vide order dated 28.10.2021.

5. Issue notice.

6. Mr. Vaibhav Kalra, learned counsel accepts notice on behalf of the DTTDC and takes a preliminary objection to the maintainability of the writ petition on ground of delay and laches. It is argued that the cause of action, if any, had arisen in favour of the Petitioner on 17.10.2007 when the penalty of withholding of two increments without cumulative effect was imposed on



him or at the highest on 22.04.2008 when the appeal filed by him was dismissed by the Appellate Authority, whereas the present petition has been filed by the Petitioner in 2024 i.e. after a period of nearly two decades.

7. Mr. Ashok Kumar, learned counsel for the Petitioner, *per contra*, submits that there is no delay in filing the present writ petition inasmuch as after the penalty order, Petitioner had filed an appeal which was rejected on 22.04.2008. Thereafter, Petitioner approached the National Commission for Scheduled Castes where the matter was pending from 2012 till 23.09.2015, when the case was closed by the Commission. Petitioner then lodged a grievance with Public Grievances Monitoring System, GNCTD on 07.10.2015 and this was followed by a representation on 17.05.2016 again to the National Commission for Scheduled Castes as well as to the Respondents. Petitioner also sent a review petition to Respondent No.2 on 09.12.2020 which was disallowed only on 28.10.2021 and after filing a mercy petition with DTTDC on 14.12.2022, Petitioner has immediately approached this Court.

8. Heard learned counsels for the parties and examined their submissions.

9. From the pleadings in the writ petition, it is evident that penalty was imposed on the Petitioner on 17.10.2007 and his appeal was rejected on 22.04.2008. Thereafter, Petitioner took no steps to assail both the orders and approached the National Commission for Scheduled Castes in 2012. When the case was closed by the Commission on 23.09.2015, Petitioner only resorted to making representations with the Grievance Monitoring Cell, DTTDC etc. It is thus palpably clear that there is a delay in challenging the penalty order from 17.10.2007 to August, 2024 when this petition was filed.



The delay is unexplained, save and except, taking a ground that Petitioner had approached the National Commission for Scheduled Castes in 2012 where the matter was pending till 2015. It needs no reiteration that even assuming that the matter was pending before the Commission, that was not the appropriate forum to assail a penalty order and other than this the only explanation is that Petitioner made representations and filed a review petition on 09.12.2020. As far as representations are concerned, it is settled that merely making representations does not stop limitation and cannot be taken as a plea to explain delay and laches. In *State of Uttaranchal and Another v. Shiv Charan Singh Bhandari and Others*, (2013) 12 SCC 179, the Supreme Court observed that the issue of limitation or delay and laches has to be considered with reference to original cause of action and even where the Court directs consideration of a representation relating to a stale or dead claim, it does not give rise to a fresh cause of action. Making repeated representations is not a satisfactory explanation of delay and if one chooses to sleep like Rip Van Winkle and gets up from the slumber at his own leisure for some reason which is fathomable to him, the reasoning cannot be countenanced in law.

10. Petitioner cannot take aid of the review petition for the simple reason that he chose to exhaust this remedy only on 09.12.2020 and the same was rightly not entertained by the Competent Authority and rejected on 28.10.2021. Petitioner is unable to explain the delay from the date of imposition of penalty i.e. 17.10.2007 or at least from the date when the appeal was dismissed i.e. 22.04.2008. It is a settled law that those who sleep over their claims and wake up from slumber after a long and unexplained delay are not entitled to relief even if there is a good case on merit. Delay



defeats equity and law helps those who are vigilant and not those who are indolent, are well-recognised principles of law.

11. In the context, I may allude to the judgment of the Supreme Court in ***Karnataka Power Corpn. Ltd. through its Chairman & Managing Director and Another v. K. Thangappan and Another***, (2006) 4 SCC 322, the relevant paragraphs of which are 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.

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:

“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 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.”*

12. In ***Shiv Dass v. Union of India and Others*, (2007) 9 SCC 274**, the Supreme 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 Prasad 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.”



13. In ***Chennai Metropolitan Water Supply and Sewerage Board and Others v. T.T. Murali Babu, (2014) 4 SCC 108***, the Supreme Court held as under:

“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.”

14. In view of aforesaid, this Court agrees with the contention of learned counsel for DTTDC that the writ petition is barred by delay and laches and there is no plausible explanation for the gross delay in approaching this Court.

15. Writ petition is accordingly dismissed being devoid of merit.

JYOTI SINGH, J

SEPTEMBER 06, 2024/kks/shivam