

(2006) 08 DEL CK 0216
In the Delhi High Court
Case No : Writ Petition (C) 403 of 2006

Ajay Bhardwaj

APPELLANT

Vs

The Oriental Insurance Company Limited

RESPONDENT

Date of Decision : 23-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 32

General Insurance (Conduct, Discipline and Appeal) Rules, 1975 — Rule 25

Citation : (2006) 08 DEL CK 0216

Hon'ble Judges : J.M. Malik, J

Bench : Single Bench

Advocate : Ram Gautam, for the Appellant; Vishnu Mehra, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Malik, J.—The instant writ petition was filed after an inordinate delay of five/six years. The case was fixed for maintainability of this writ petition at the notice stage. Adumbrated in brief, the facts of this case are these. On 10.9.1997, petitioner, the then Assistant Supervisor Sweeping, was entrusted the job of taking delivery of 1200 liters diesel from M/s Faridabad Service Station for the use of D.G. Sets of the company at OSTC premises. He was given an account payee cheque drawn on State Bank of Patiala dated 09.9.1997 in the sum of Rs. 12,504/- issued in favor of M/s Faridabad Service Station being cost of 1200 liters diesel. The indictment against the petitioner was that he obtained receipt from M/s Faridabad Service Station for 1200 liters of diesel to run the DG Set at OST, Faridabad whereas the quantity actually obtained was 1110 liters. Major penalty proceedings in terms of Rule 25 of General Insurance (Conduct, Discipline and Appeal) Rules, 1975 were initiated against the petitioner for the misconduct of obtaining the above said receipt and thereby causing a monetary loss of equivalent to the cost of 90 liters diesel to the Company.

2. On 09.11.1998, the Manager & Competent Authority imposed the following penalties on the petitioner,

- a) The reduction of basic pay by six stages in the existing scale of pay;
- b) Censure;
- c) The amount of Rs. 942/- had to be deposited by the PETITIONER before his duties, etc.

Aggrieved by that order the appellant preferred an appeal. Vide order dated 9.4.1999, the said Appellate Authority modified the above said order on the following terms,

1. Reduction in basic pay by three stages in the time scale of pay.

The other penalties imposed by the Disciplinary Authority vide Order dated 9.11.1998 stands.

Aggrieved by this order, the petitioner moved memorial before Chairman-cum-Managing Director and Competent Authority. Vide its order dated 01.3.2000, Chairman-cum-Managing Director and Competent Authority dismissed memorial. It was ordered,

Under these circumstances, the undersigned does not find any reason to interfere with the decision taken by the Appellate Authority and thus the same is upheld. This memorial is disposed of with these observations.

Ultimately, the instant writ petition of Certiorari with the prayer to set aside the orders dated 01.3.2000, 09.4.1999 and 09.11.1998 was filed in this Court on 14.12.2005.

3. I have heard learned Counsel for both the parties. The learned Counsel for the petitioner argued his case for a while but ultimately threw in the towel. He conceded that he has not taken the plea in the petition that the petitioner had approached his father and the delay was caused due to his death. This plea was introduced for the first time during the arguments. At any rate, this plea does not explain away the inordinate delay of five/six years. The learned petitioner's counsel caved in and stated that there is no rule or no authority which may come to his rescue. Anybody can see with half an eye that the present writ is doomed to fail.

4. The following authorities go to support this view. In Jagdish Narain Maltiar Vs. The State of Bihar and Others, , it was held that where the petitioner, a dismissed Government servant, after being informed that his services were terminated for misconduct, spent about three years in sending memorials to the Government, a remedy not provided by law, the High Court was justified in rejecting the petition on the ground of delay. This pronouncement of law applies to this case to a hair.

5. In India Tourism Development Corpn. Ltd. Vs. Poonam Rai, it was held,

Moreover in this case the writ petition suffered from laches as the petitioner's service was terminated in 1995 and she filed a writ petition in 2001. In view of

the averments in the counter affidavit to the writ petition, we are not satisfied that she filed any appeal in the year 1995. At any event the petition is highly belated and is also liable to be dismissed on the ground of laches apart from on merits.

6. Similarly in *C.B.S.E. Vs. B.R. Uppal and Others*, , it was observed,

It may be mentioned that when a final seniority list is published, then certain rights accrue to the persons whose names are contained in that seniority list. If anybody has any grievance against that seniority list, he should challenge it within a reasonable time. In the present case, the writ petition was filed after six years of the publication of the final seniority list. In our opinion, such a stale claim should not have been entertained by this Court at all.

7. In *Rajalakshmiah v. State of Mysore* AIR 1967 SC 993 : (1967) 2 SCJ 464 (vide para 13) the Supreme Court held that the appellants were guilty of laches because after the impugned order was passed in 1950, they should have filed a writ petition within a reasonable time thereafter. Merely because the Chief Engineer had espoused their cause and was writing letters from time to time to the State Government to do something for them did not mean that they could rest upon their oars if they really had a grievance.

8. In *State of Maharashtra Vs. Digambar*, the Supreme Court observed (vide para 12) that it is well settled by the decisions of the Court that no person is entitled to obtain equitable relief under Article 226 of the Constitution of India if his conduct is blame-worthy because of laches, undue delay, acquiescence, waiver and the like.

9. Thus, it is well settled that writ jurisdiction being discretionary jurisdiction cannot be invoked by a party who approaches the High Court after unreasonable delay. See *S.A. Rasheed Vs. Director of Mines and Geology and another*, and *Mohd. Siddiq Ali Vs. High Court of A.P. through Registrar and Others*, . No doubt there is no specific limitation period provided for under Article 226 for filing a writ petition. However, the principle of laches i.e. undue delay certainly applies to writ jurisdiction. The High Court has to exercise its writ jurisdiction on settled legal principles, and one of these legal principles is that a writ petition is liable to be dismissed if the petitioner has come to the High Court after undue delay, as has happened in this case. Similarly in *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, , it was held that when there is inordinate delay in filing a writ petition, the High Court in its discretionary powers under Article 226 of the Constitution of India can dismiss it on this ground without going into the merits.

10. The Supreme Court in *Chandra Singh v. State of Rajasthan and Anr.* 2003 V AD (S.C.) 548 : 2003 (6) SCC 20 held as under:

Issuance of a writ of Certiorari is a discretionary remedy (see *Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others*, The High Court

and consequently this Court while exercising its extraordinary jurisdiction under Articles 226 or 32 of the Constitution of India may not strike down an illegal order although it would be lawful to do so. In a given case, the High Court or this Court may refuse to extend the benefit of a discretionary relief to the applicant.

11. For the foregoing reasons, the writ deserved to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.