
(1994) 08 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No. 4786 of 1994

A.K.Bhattacharjee (Dr.)

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 29-08-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1995) 2 GLJ 429 : (1995) 3 GLT 511

Hon'ble Judges : J.N.Sarma, J

Bench : Single Bench

Judgement

1. This application has been filed under Article 226 of the Constitution of India.
2. The petitioner served as Lecturer in History in B. Barooah College, Guwahati from 1.8.66 to 5.4.75. From 12.4.73 to 5.4.75 the petitioner was placed under suspension and ultimately he was removed from service. From 1975 to 1978 the petitioner challenged unsuccessfully the removal order in the Gauhati High Court and Supreme Court of India. On 1.3.78, the Supreme Court passed an order permitting the petitioner to approach the respondent No. 1, the State of Assam for realisation of his pay wrongfully deducted during the period of suspension and also for the benefit of revision of pay scale. In between 1980 to 1994 the petitioner filed various writ petitions for relief under the Industrial Disputes Act and later on withdrawn them for want of final orders. In 1994 petitioner filed a writ petition under Article 32 of the Constitution before the Supreme Court and the Hon'ble Supreme Court asked the petitioner to file afresh a writ petition in the Gauhati High Court. On 3.12.94 the petitioner filed the present writ petition for realisation of the arrear amount and the Provident Fund amount. The admitted position is that this amount was due in the 1975 when the removal order of the petitioner took final shape. The question in this writ application is that whether this writ application is maintainable because of the delay in filing the application as it has been filed after 16 years from the date when the amount was due to the petitioner. The details of the prayer made in this writ application

are given in para 15. That is quoted below :

?That the petitioner begs to state that the amount payable to the petitioner on account of unauthorised deduction from the salary of the petitioner from 29.3.1973 to 5.4.1975 which was Rs.10 thousand on 5.4.1973 has accumulated into Rs.50 thousand at the time of presentation of the instant petition; the amount payable to the petitioner on reasons of increase in salary and/or revision of pay scale which was Rs.5 thousand on 5.4.1975 has accumulated into Rs.25 thousand at the time of presentation of the instant petition; and the amount payable to the petitioner by way of Provident Fund which was Rs.5 thousand on 5.4.1975 has accumulated to Rs.25 thousand at the time of presentation of the instant petition and as such the total amount payable to the petitioner at the time of presentation of the instant petition accumulated into Rs. one lakh which is the total amount claimed by the petitioner at the time of presentation of the instant petition.?

3. If this suit would have been filed in 1994 this suit would have been barred by time, as it would be the suit for realisation of the amount due and the limitation for such a suit is three years from the date on which the amount becomes due. So, the question is that whether the petitioner can get the remedy by way of writ application. In this application the petitioner appeared in person has relied on the following cases:

(i) AIR 1974 SC 259 (Ramchandra Shankar Deodhar & others vs. The State of Maharashtra & others).

4. That was a case of validity of the case of the procedure for making promotions to the posts of Deputy Collector Whether it is violative of the equal opportunity clause and since this procedure is not a thing of the past, but is still being followed by the State Government it was held it is but desirable that its constitutionality should be adjudged when the question has come before the Court. The law regarding delay has been laid down by the Supreme Court as follows:

?The rule which says that a Court may not inquire into belated or stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. The question is one of discretion to be followed on the facts of each case.?

5. Next case is 1981 (Supp) SCC 50 (Hari Singh & others vs. State of Punjab & others). There the Supreme Court found that the dismissal order passed by the High Court was at a delated stage and accordingly this was set aside. Thus it has not laid down any law regarding the controversy in the present matter.

6. Next case relied is AIR 1984 SC 1527 (GP Doval & others vs. Chief Secretary, Govt. of UP & others). That case also was regarding the determination of seniority and the seniority was not finalised and that was challenged, the Supreme Court

pointed out that delay in such a matter is not relevant. This case also does not help the petitioner.

7. The next case relied is (1992) 2 SCC 598 (M/s Dehri Rohtas Light Railway Company Ltd vs. District Board, Shahabad & others). There in paragraph 13 the Supreme Court laid the law as follows :

?The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the right which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches.?

8. This case also does not help the petitioner inasmuch as there is no reasonable explanation in this particular case for the delay of the petition. The petitioner is bound to pursue to proper remedy at proper time. Accordingly, the claim becomes barred by limitation, and if a claim is barred by limitation, a writ application cannot be filed to give new life to a barred claim.

9. The next case relied on is AIR 1993 SC 1873 (Dr. Kashinath G. Jalmi & another vs. The Speaker & others). That was a case regarding laches. That case also does not help the petitioner.

10. In that view of the matter, I find that the present claim of the petitioner is absolutely a stale claim and I am not inclined to entertain this application and the same is dismissed.

11. Before I part with the record, I make it clear that though the right to enforce the remedy may have lapsed but it does not take away the liability of the State of Assam to make the payment and the State of Assam is liable which I prima facie find to be the duty and obligation of the State of Assam to meet the demand of the petitioner. I hope and trust that the State of Assam shall be magnanimous enough to meet the claim of the petitioner. This shall be processed and considered by the Secretary, Department of Education, Government of Assam, Dispur Guwahati 781 005, Assam within a period 4 (four) months from the date of receipt of this order, if it is found that the claim of the petitioner is genuine one, the State would come forward to meet this liability without resorting or raising any technical ground.

12. Send a copy of this order to the Secretary, Education Department,

Government of Assam, Dispur, Guwahati 781 005 and the petitioner may also produce the certified copy of this order before the Secretary, Education Department, Government of Assam, Dispur to do the needful in terms of this order.

13. This disposes of the writ application.