
(1999) 02 RAJ CK 0058
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2263 of 1982

Bhom Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 2 RLW 769 : (1999) 3 WLC 371 : (1999) 1 WLN 276

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Judgement

B.S. Chauhan, J.—In the instant petition, an application has been filed by applicant-petitioner on 29.10.1998 for restoring the said writ petition on its original number and hear it expeditiously as desired by the Hon'ble Supreme Court.

2. The application came for orders on 10.11.1998 and learned Counsels for the respondents also put their appearance. On that date, Mr. Mridul was asked to explain as under what circumstances the application can be entertained at such a belated stage in absence of any explanation of delay and the applicant was directed to file an additional affidavit explaining the delay on his part. The matter was listed again on 14.12.1998 and on that day also, after hearing learned Counsel for the parties only on the ground of delay and laches, the case was adjourned for" 12.2.1999.

3. Heard learned Counsel for the parties.

4. The applicant was employed temporarily by the respondent All India Radio on the post of Assistant Engineer. On 12.2.1982, the applicant sought No Objection Certificate from All India Radio to get employment in the Rajasthan State Electricity Board (hereinafter referred to as "the Board") and the Competent Authority of All India Radio issued such a No Objection Certificate on 16.3.1982. The applicant faced the selection process in the said Board and got selected

there. He tendered his conditional resignation on 5.6.82 that his resignation may be accepted keeping his lien on the post for a period of two years. The respondents did not accept this condition but accepted his resignation. Subsequently, the applicant moved an application to withdraw his resignation but he was informed by the respondent-authority on 26.8.1982 (Annexure.7) that his resignation had been accepted vide order dated 7.6.1982 (Annexure.4), therefore, the question of withdrawing the same by submitting the application subsequent to that day, did not arise.

5. Being aggrieved and dissatisfied, petitioner preferred S.B. Civil Writ Petition No. 2263/1982 praying for quashing the order dated 26.8.82 (Annexure 7) and for issuing a direction to the respondents to appoint him on the post of Assistant Engineer in All India Radio. The writ petition was allowed ex-parte vide judgment and order dated 26.4.84 and this Court quashed the order dated 26.8.82 and directed the respondents to take the petitioner back in service on the post of Assistant Engineer in All India Radio. The appeal against the said judgment and order was dismissed by the Division Bench of this Court, against which the respondents preferred Special Leave to Appeal before the Hon"ble Supreme Court which was allowed vide judgment and order dated 14.8.89, after hearing the present applicant. The Hon"ble Supreme Court set-aside the judgments and orders of the learned Single Judge as well as of the Division Bench on the ground that notice had not been served upon the respondents and petition had been decided without affording the opportunity of hearing. The matter was remitted to this Court for fresh consideration by the Single Judge. This Court was further directed to dispose of the matter "as expeditiously as possible."

6. The applicant preferred this application on 29.10.1998, i.e., after a lapse of nine years two months and 15 days from the date of the judgment of the Hon"ble Supreme Court, asking the Court to restore the matter at its original number and proceed with the hearing of the writ petition. As explained above, the matter has been heard several times on the issue of delay and laches on the part of the applicant and he was directed to file an additional affidavit explaining the delay and laches, though he has chosen not to file any affidavit in this respect.

7. Mr. Mridul, learned Counsel for the applicant has submitted that the applicant cannot be found unsuited on the ground of delay and laches and this Court cannot reject the application on this ground and it should entertain it for the reason that this Court ought to have issued notices to the applicant as well as to the respondents suo motu restoring the petition after the decision of the Supreme Court and the applicant was not under an obligation to bring the matter to the notice of the Court.

8. Admittedly, this Court was not a party before the Hon"ble Supreme Court, nor it was involved by any means in the lis between the parties. There is nothing on record of this file or in the order of the Supreme Court issuing" such directions to this Court. Even otherwise, there is no intimation to this Court from the Hon"ble

Supreme Court regarding the said order dated 14th August, 1989. Under the Rules of this Court, there is no provision regarding the issuance of notices to the parties even if this Court receives the information from the Hon"ble Supreme Court that the matter has been remitted after setting-aside its judgment.

9. The matter relates to the service wherein the dispute is regarding acceptance of the resignation vide order dated 26.8.82. Admittedly, the applicant was a temporary employee and submitted the resignation which had been accepted on 7.6.1982, i.e. fifteen years ago. During this period, situation has completely changed and the facts and circumstances giving rise to this case, particularly in view of the fact that the applicant has not approached the Court within reasonable time and even did not file an additional affidavit explaining the delay, as directed by this Court vide order dated 10.11.98, the question arises regarding entertaining the petition at such a belated stage. Not approaching the Court by the applicant for such a long time, gives rise to the presumption that he voluntarily abandoned the claim and he cannot be permitted to agitate the issue at such a belated stage.

10. This application, in fact, involves the implementation of the order of the Hon"ble Supreme Court deciding the his between the parties and the applicant, after meeting his Water- 100 before the Hon"ble Supreme Court, ought to have approached this Court within reasonable period; as on the issue of delay and laches, restoration of a case cannot be considered differently from institution of a fresh petition.

11. In *Laxman Singh Kavadia v. State of Rajasthan* 1998 RLW 1560 , this Court has categorically held that writ court should not entertain a stale claim. This view stands fortified by the consistent view taken by the Hon."ble Supreme Court from time to time. In *Aflatoon and Others Vs. Lt. Governor of Delhi and Others* , , the Constitution Bench of the Apex Court has observed that a stale claim cannot be entertained in writ jurisdiction. A similar view was taken by the Supreme Court instate of *State of Mysore and Others Vs. V.K. Kangan and Others* , , herein it was held that the party must approach the Court within reasonable time. Another Constitution Bench of the Apex Court considered this aspect in *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*, and held that the petition filed at a belated stage cannot and should not be entertained otherwise it would harm the innocent parties, whose rights have emerged because of delay on the part of the person approaching the Court. In the case of *Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others* , , the Constitution Bench of the Supreme Court observed as under-

It may also be noted that the principle on which the courts proceed in refusing relief to the petitioner on grounds of laches or delay is that the rights 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.

12. Similarly, in *K.R. Mudgal and Others Vs. R.P. Singh and Others*, the Apex

Court followed its earlier judgment in *R.S. Makashi and Others Vs. I.M. Menon and Others*, wherein the Court had held that the petition should be rejected on preliminary ground of delay and laches, inasmuch as it sought to disrupt the vested rights accrued to a large number of persons during the intervening period. The Constitution Bench of the Supreme Court, in *Rabindranath Bose and Others Vs. The Union of India (UOI) and Others*, observed as under-

It could not have been the intention that this Court would go into stale demands after a lapse of years....

13. The aforesaid judgment in the case of *Rabindra Nath Bose* was followed by the Supreme Court in *State of Orissa Vs. Pyarimohan Samantaray and Others*, *G.C. Gupta v. N.K. Pandey and Ors.* AIR 1998 SC 268.

14. The issue of applicability of the provisions of the Indian Limitation Act, 1963 in the writ jurisdiction was considered by a Full Bench of the Kerla High Court in *M.P. Raghavan Nair Vs. State Insurance Officer and Others*, and it observed as under-

The principle underlying statutory provisions like the Limitation Act...are applicable to petitions under Article 226 of the Constitution. These provisions are not to be regarded as embodying technical rules of procedure. They are based upon principles of public policy aiming at justice, the securing of which is the very object of Article 226. The principles are principles of repose and peace. "Long dormant claims have often more of cruelty than of justice in them.", said Best C.J. in *A. Court v. Cross* 1825) 130 ER 540.

15. In *Union of India and Ors. v. Athos LJP Femandes and Ors.* AIR 1977 Goa 14, it was held that the period of limitation prescribed by the Limitation Act, is not strictly applicable in cases of writ jurisdiction. The Full Bench of Punjab & Haryana High Court, in the case of *Teja Singh Vs. Union Territory of Chandigarh and Others*, has taken the view that the provisions of CPC etc. may be made applicable in writ jurisdiction. On the issue of applicability of the provisions of Limitation Act, Privy Council, in AIR 1941 6 (Privy Council) relied upon the writings of Mr. Mitra in *Tagore Law Lectures-1932*, wherein it has been said that "a law of limitation and prescription may appear to operate harshly and unjustly in a particular case, but if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party as the Judge cannot, on applicable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by law." In *Rajender Singh and Others Vs. Santa Singh and Others*, the Supreme Court observed that "the object of the law of limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches." While deciding this case, the Court placed reliance upon the *Halsbury's Law of England* (Vol. 24) 181, which is as under--

The policy of Limitation Acts.--The Courts have expressed at least three different

reasons supporting the existence of statutes of limitation, namely, (1) that long dormant claims have more of cruelty than justice in them; (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons of good causes of actions should pursue them with reasonable diligence.

16. In *Smt. Sudama Devi Vs. Commissioner and Others*, the Supreme Court has observed as under--

There is no period of limitation prescribed by any law for filing a writ petition under Article 226 of the Constitution of India. It is, in fact, doubtful whether any such period of limitation can be prescribed by law. In any event one thing is clear and beyond doubt that no such period of limitation can be laid down either under rules made by the High Court or by practice. In every case it would have to be decided on the facts and circumstances whether the petitioner is guilty of laches and that would have to be done without taking into account any specific period as a period of limitation. There may be cases where even shod delay may be fatal while there may be cases where even a long delay may not be evidence of laches on the part of the petitioner.

17. Thus, it is apparent that the provisions of Limitation Act, 1963 are not applicable in the proceedings in writ petition but unreasonable delay on the part of the petitioner does not warrant the writ Court to exercise its extraordinary discretionary jurisdiction under the provisions of Article 226 of the Constitution of India.

18. In *Jagdish Lal and others Vs. State of Haryana and others*, the Hon'ble Supreme Court has categorically held that if a party sleeps over its rights for a long period, its desperate attempt to obtain the same cannot be amenable to judicial review at a belated stage. Similar view has been reiterated by the Apex Court in *State Bank of Indore Vs. Govindrao*, ; *State of Haryana and Others Vs. Miss Ajay Walia*, ; and *B.S. Bajwa and Another Vs. State of Punjab and Others*, .

19. In *N. Balakrishnan Vs. M. Krishnamurthy*, , the Hon'ble Supreme Court held that a party to litigation must pursue the case diligently and in case of delay, the Court may consider the explanation of the party. It further observed as under--

The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The Law of Limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The Law of Limitation is, thus, founded on public policy. It is enshrined in the maxim "*interest reipublicae ut sit finis litium*" (it is for general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a

legislatively fixed period of time.

20. Thus, the party must approach the Court within the period of limitation provided under the statute and in case the Limitation Act is not applicable, the party must approach within reasonable time. In the instant case, the applicant did not file any affidavit to explain the delay of about a decade in spite of the direction of this Court. In view of the above, I am not inclined to entertain the application at such a belated stage.

21. The application is accordingly rejected.