
(2002) 05 GAU CK 0031
In the Gauhati High Court
Case No : WP (C) No. 45 of 1998

C. Lianthanga

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 28-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 05 GAU CK 0031

Hon'ble Judges : Aftab H. Saikia, J

Bench : Single Bench

Advocate : R. Thangkanglova, for the Appellant; N. Sailo, GA, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Saikia, J.—Heard Mr. R. Thangkanglova, learned counsel for the petitioner and also heard Mr. N. Sailo, learned Govt. Advocate, Mizoram appearing on behalf of the State-respondents.

2. The only grievance of the writ petitioner in this writ petition is that he was given compulsory retirement with effect from 1.8.1988 vide office order dated 27.7.1988 (Annexure VI to the writ petition) before his superannuation without affording him any opportunity of hearing. He approached the authorities to reinstate him by reviewing the impugned order by submitting several representations but no action was taken. It is contended that as the petitioner was not given any opportunity of hearing before passing the impugned order of compulsory retirement, the impugned order is liable to be quashed.

3. Admittedly, this writ petition has been preferred by the writ petitioner challenging the legality and validity of the impugned order only in the year of 1998, i.e., on 8.9.1998 after a lapse of about ten years. No explanation whatsoever has been set out in this petition for such delay in seeking redress before this writ Court. On this count of inordinate delay itself, this writ petition is,

in my considered opinion liable to be dismissed.

4. Mr. Thangkanglova, learned counsel for the petitioner has contended that this delay in preferring the writ petition may be condoned as there is no time limit prescribed for preferring an application under Article 226 of the Constitution of India invoking writ jurisdiction. In support of his submission, he has referred to a decision of the Division Bench of this Court reported in 1997 (2) GLT 213 (Appolo Machinery Mart and Ors. v. State of Assam and Ors.). Reliance has also been placed in paragraph - 5 of the said decision which runs as under :-

"5. ..So far as the question of delay is concerned, there is no statutory time limits prescribed for filing of a writ petition, although ordinarily the provisions of the Limitation Act provide guideline, but no hard and fast rule can be laid down in this behalf. It is significant to note that Civil Rule 1453/90 filed on 10.8.1990 was dismissed more than 5 years thereafter on 4.9.1995 on the ground of inordinate delay. Delay and laches is a matter of procedure and it does not provide with a weapon in the hand of the adversary or the opposite party to seek dismissal of a petition on this ground. If at all it is put, it must be raised at the earliest stage of motion or admission. In this view of the matter, so far as it relates to dismissal of the petition, on the ground of inordinate delay cannot be sustained"

5. I have gone through the said authority under reference and on overall consideration of the factual position of this case, I find that the ratio laid down in Appolo Machinery Mart (supra) has no applicability in this case.

6. Undoubtedly Article 226 of the Constitution of India prescribes no period of limitation. But ordinarily under this provision of power of exercising writ jurisdiction no application will be entertained unless it is made immediately after the right sought to be protected infringed. Accordingly, no relief is ordinarily granted to a person who does not seek his remedy under the provisions of Article 226 with due diligence. This writ Court being a Court of equity, has also to see whether one has approached this Court within a reasonable time. In order to exercise the extraordinary power under Article 226, the aggrieved party must be very vigilant and seek relief at the earliest date. If he fails to do so, and has no satisfactory explanation for the delay then his writ petition is liable to be thrown out in limine. It is also settled that whether there is a delay or not the question being one of discretion that must be decided with respect to the facts of each particular case. In the instant case, as already seen, there is a delay of more than 10 (ten) years in seeking relief by invoking Article 226 of the Constitution, that too, without any explanation for such delay. Therefore, applying the maxim "delay defeats equity" in the case in hand, it may be safely said that there was laches and negligence on the part of the petitioner in approaching this Court within a reasonable time and no relief can be given to the petitioner for approaching this Court after inordinate delay.

7. Consequently, this writ petition is dismissed. However, I pass no order as to

costs.