
(2015) 09 DEL CK 0458
In the Delhi High Court
Case No : W.P. (C) 9276/2015

Chaman Prakash

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5

Citation : (2015) 09 DEL CK 0458

Hon'ble Judges : G.S. Sistani and Sangita Dhingra Sehgal, JJ.

Bench : Division Bench

Advocate : S.K. Das, Advocate, for the Appellant; Rakesh Kumar, CGSC, for the Respondent

Final Decision : Dismissed

Judgement

Sangita Dhingra Sehgal, J.—Challenge in this writ petition is to the order dated 03.07.2008 passed by the Central Administrative Tribunal (hereinafter referred to as Tribunal) and an order dated 03.11.2008 passed in the review petition. A penalty of compulsory retirement has been awarded to the petitioner herein which has been upheld by the Tribunal.

2. The petitioner was initially appointed as Primary Teacher on 26.10.1995. His services were confirmed on 09.01.2002 and thereafter sent on deputation to Ministry of Water Resources against the post of Technical Assistant on 03.09.2003. While on deputation, the petitioner was chargesheeted on 19.04.2004 for disciplinary action under Rule 14 of CCS (CCA) Rules, 1965 and an Inquiry Officer was appointed in the month of July, 2004. On completion of the proceedings, a report was submitted on 04.05.2005 holding the charges proved against the petitioner. The petitioner thereafter submitted his representation assailing the correctness of the findings of the Inquiry Officer. The Disciplinary Authority by an order dated 18.07.2005 imposed the penalty of Compulsory Retirement against the petitioner. The departmental appeal filed by

the petitioner was also dismissed which led to the filing of the OA No. 1132/2007 on 02.07.2007. The Original Application stands dismissed.

3. A preliminary objection has been raised by learned counsel appearing for respondent on an advance copy on the ground of delay and laches. It is pointed out that Inquiry Officer submitted his report in the year 2005, OA was filed in the year 2007 and dismissed in the year 2008 and not a single averment has been made in the present writ petition explaining the reasons for delay.

4. On the other hand, learned counsel for the petitioner submits that the Tribunal has failed to decide the issue raised by the petitioner with regard to the non compliance of the Rule 14 of CCS (CCA) Rules, 1965. He further submits that the petitioner is very poor person and has no means of livelihood nor he could seek legal advice which resulted in delay in filing the present writ petition.

5. Heard.

6. In the case of Brijesh Kumar and Others Vs. State of Haryana and Others, , Hon"ble Apex Court has dealt with the issue on limitation, delay and laches. It has been held as under:

"6. The High Court had given cogent and valid reasons and relied upon large number of judgments of this Court while rejecting the application for condonation of delay including Mewa Ram (Deceased) by his Lrs. and Others Vs. State of Haryana through The Land Acquisition Collector, Gurgaon, ; State of Nagaland Vs. Lipok AO and Others, ; and D. Gopinathan Pillai Vs. State of Kerala and Another, .

7. The issues of limitation, delay and laches as well as condonation of such delay are being examined and explained every day by the Courts.

The law of limitation is enshrined in the legal maxim "Interest Reipublicae Ut Sit Finis Litium" (it is for the general welfare that a period be put to litigation). Rules of Limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

8. The Privy Council in General Accident Fire and Life Assurance Corporation Ltd.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 recognized by law."

9. In General Accident Fire and Life Assurance Corporation Ltd.AIR 1941 6 (Privy Council) , the Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under:-

"Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds."

10. While considering a similar issue, this court in General Accident Fire and Life Assurance Corporation Ltd.AIR 1941 6 (Privy Council) laid down various principles inter alia:

" x x x

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact

vi) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play

x x x

ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x x x

xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."

(See also: General Accident Fire and Life Assurance Corporation Ltd.AIR 1941 6 (Privy Council)

11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

13. In General Accident Fire and Life Assurance Corporation Ltd.AIR 1941 6 (Privy Council) , this Court rejected the contention that a petition should be

considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.

14. Same view has been reiterated by this Court in General Accident Fire and Life Assurance Corporation Ltd.AIR 1941 6 (Privy Council) , observing as under:-"Suffice it to state that appellants kept sleeping over their rights for long and elected to wake-up when they had the impetus from Vir Pal Chauhan and Ajit Singh"s ratios...Therefore desperate attempts of the appellants to re-do the seniority, held by them in various cadre....are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well."

7. With regard to the plea of limitation, the Hon"ble Supreme Court in General Accident Fire and Life Assurance Corporation Ltd.AIR 1941 6 (Privy Council) discussed the law of limitation and observed as under:

"53. Needless to say that Limitation Act 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the Respondent claimed the relief from 1.1.1986 by filing a petition on 11.11.2005 but the High Court for some unexplained reason granted the relief w.e.f. 1.6.1984, though even the Notification dated 6.10.1989 makes it applicable w.e.f. 1.1.1986."

8. Normally, in the cases of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be borne in mind by the Courts when they exercise their discretionary powers under Article 226 of the Constitution of India, 1950. In an appropriate case the Courts 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.

9. We find that delay in filing the writ petition from 2008 till 2015 has not been explained satisfactorily.

10. We have additionally examined the order passed by the Tribunal. The article of charges framed against the petitioner was rather grave and serious, which reads as under:

"ARTICLE-I

Shri Chaman Prakash, PRT who is at present working as Technical Assistant (On

deputation), in Govt. of India, Ministry of Water Resources, Sharm Shakri Bhawan, Rafi Marg, New Delhi has written a letter dated 10.08.2003 to the Secretary, CTSA, Delhi under the forged signatures of Shri Jampa Tenzin, Principal, Central School for Tibetans, CVP, Bylakuppe and other staff members of the CTSA. Shri Chaman Prakash has in the said letter:

1. Forged the signatures of the Principal and staff of CSR, CVP, Bylakuppe, in the said letter.
2. Allured the Secretary through the said letter to accept the bribe.
3. Defamed and damaged the reputation of the present and past authorities of CTSA in the said letter.
4. Tried to create trouble for the Principal and staff of CTSA, whose name have been written in the said letter by falsely expressing their desire for their transfer through this letter.
5. He tried to create problems in the smooth functioning of the Administration."

11. The charges of forgery stands proved against the petitioner herein. We may also notice that the Tribunal has given a categorical finding that all the principles of natural justice have been complied with at the time of inquiry. We find no ground to interfere with the impugned order and accordingly, present writ petition stands dismissed. No costs.