
(2015) 04 CAL CK 0024

In the Calcutta High Court

Case No : M.A.T. 428 of 2015 and CAN 3025 of 2015

Chandrakant Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Citation : (2015) 4 CHN 560

Hon'ble Judges : Samapti Chatterjee, J.; Jyotirmay Bhattacharya, J.

Bench : Division Bench

Advocate : Bibek Jyoti Basu and Uttam Kumar De, for the Appellant

Final Decision : Disposed off

Judgement

Jyotirmay Bhattacharya, J.—This appeal is a defective one as the appeal was filed with the deficit court fees of Rs. 20/-. Mr. Basu, learned advocate appearing for the appellant undertakes to file the deficit court fees of Rs. 20/- in course of this day.

2. Let the informal paper books filed by the respondent No. 2 in Court today be kept with the record. Let it be recorded that a copy of the informal paper book has also been served upon the learned advocate appearing for the appellant.

3. In course of hearing of the stay application, we felt that the appeal itself can be decided on merit. Accordingly, we requested the learned counsel appearing for the parties to address us on the merit of the appeal. Learned counsel appearing for the parties also accepted the suggestion given by the Court and participated in the hearing of the appeal.

4. Let us now consider the merit of the appeal in the facts of the instant case.

5. This mandamus appeal is directed against an order passed by a learned Single Judge of this Court on 24th February, 2015 in W.P. 10104(W) of 2014. The writ petition filed by the petitioner was rejected primarily on the ground of delay in approaching the writ court for the reliefs claimed in the writ petition.

6. Let us now consider as to how far the Learned Trial Judge was justified in dismissing the writ petition on the ground of delay.

7. The writ petitioner applied for the post of Junior Engineering Assistant-IV (FandS) pursuant to an advertisement issued on its website by the Indian Oil Corporation Limited. Admittedly the writ petitioner satisfied the eligibility criteria. By a letter dated 24th May, 2013 issued by IOC Ltd., Haldia Refinery, the writ petitioner was informed that he had been provisionally selected for the said post based on written test and interview held on 24th March, 2013 and 25th April, 2013 respectively. He was advised to fill up the enclosed Pre-employment Examination Form Part-I and obtain the signature of the undersigned and report to the Chief Medical Officer, Haldia Refinery Hospital, Haldia Township, Haldia at 9.00 a.m. on 10th June, 2013 for his pre-employment medical examination. The criteria which were fixed by the authority for assessing the physical fitness of the candidates, was sent to the writ petitioner along with the said letter.

8. Pursuant to the said letter written by the Indian Oil Corporation Limited, the writ petitioner appeared before the Chief Medical Officer, Haldia Refinery Hospital. He was examined and ultimately was found unfit., It was revealed on his medical examination conducted by the Chief Medical Officer, Haldia Refinery Hospital that the writ petitioner was suffering from deformity and shortening of right leg due to malunited fracture in lower right leg with anterior angulation deformity. The conclusion which was so drawn by the Chief Medical Officer, Haldia Refinery Hospital was intimated to the writ petitioner by his letter dated 2nd July, 2013.

9. Immediately thereafter, the writ petitioner applied for his re-examination and/or review on 20th July, 2013 as per the guidelines and criteria fixed by Indian Oil Corporation for pre-employment medical examination of the candidates for ascertaining their physical fitness.

10. Pursuant to such request made by the writ petitioner, he was called upon to appear before the Medical Board for his re-examination on 9th August, 2013. He appeared before the Board which again confirmed that he was medically unfit for the concerned post and accordingly his candidature for the said post was cancelled. The obstructions made by the Medical Board and the decision of the concerned authority for cancellation of his candidature were intimated to the writ petitioner by a letter written by the Manager of Indian Oil Corporation Limited on 13th August, 2013.

11. After receiving the said letter, the writ petitioner initially submitted an application under the Right to Information Act on 10th October, 2013 seeking certain information. However, since the said application was not submitted before a competent authority, he instead of waiting for the reply from the said authority, again submitted another application on 2nd November, 2013 before the appropriate authority seeking certain information under the Right to Information Act. The information which was sought for by the writ petitioner vide his

application dated 2nd November, 2013 was given to the petitioner by the Information Officer vide his letter dated 6th December, 2013. The petitioner was informed that he had been found medically unfit for the mentioned post and as such his candidature for employment in the said post remains cancelled.

12. The writ petitioner made a definite assertion in paragraph 16 of the writ petition that he received the said letter sometime in February, 2014 and immediately thereafter on or about 27th March, 2014, the instant writ petition was filed, seeking issuance of a writ of mandamus commanding the respondent, their men, servants and agents to immediately allow the petitioner to join in service in the concerned post in Indian Oil Corporation Limited.

13. The writ petitioner complained that the selection process was vitiated due to certain changes having been introduced by the authority pertaining to criteria for physical fitness of the candidates after issuance of employment notification. The height and weight of the candidates which were prescribed as a criteria relating to physical fitness of the candidates in the employment notification had been changed in the guidelines which was subsequently issued in the midst of the selection process.

14. The Indian Oil Corporation (respondent herein) contested the writ petition by contending, inter alia, that since the writ petitioner offered his candidature after accepting the guidelines issued by the Indian Oil Corporation pertaining to physical fitness criteria of the candidate, he cannot complain of the changes which were introduced in the midst of the selection process. Serious exception was taken by the respondent as the writ petitioner did not approach the Writ Court to ventilate his grievances immediately after the authority's decision regarding cancellation of his selection was informed to him vide the authority's letter dated 13th August, 2013. It was also contended by the respondent that even before the writ petition was filed, another candidate, namely, Shri Yagyaveer Singh who was found suitable for the said post was given appointment to the post of Junior Engineering Assistant -IV (Fire and Safety) on 7th October, 2013. It was thus contended by the respondent that since the appointment has already been given to the selected candidate before the writ petition was moved, relief which the writ petitioner has sought for in the writ petition cannot be granted as grant of such relief to the writ petitioner will not only upset the appointment given to the said Yagyaveer Singh but also will upset the entire selection process.

15. The respondent thus, prayed for dismissal of the writ petition.

16. While considering the said writ petition the learned Trial Judge laid much stress upon the delay factor as according to the learned Trial Judge the writ petitioner did not come to Court or effectively protest the cancellation of the writ petitioner's candidature within a reasonable time after receipt of the authority's letter dated 13.08.2013 communicating him about the authority's decision for cancellation of his candidature as he was found physically unfit for the concerned

post. While considering the said writ petition, the learned Trial Judge observed that the company did not act mala fide in rejecting the petitioner's candidature with pre-determined mind of disqualifying his candidature for non-fulfillment of the physical fitness criteria as per the general guidelines. The learned Trial Judge also did not find anything wrong in changing the guidelines pertaining to physical fitness criteria in the midst of the selection process as according to the learned Trial Judge, fixation of such criteria is entirely within the domain of the company which the company can fix in its own discretion as per the suitability of the job which is to be discharged by the appointee in the post concerned.

17. With the above finding the writ petition was disposed of.

18. Let us now consider as to how far the delay in filing this writ petition stands in the way in giving the relief which the writ petitioner has claimed in this writ petition. We have already indicated above that the authority's decision for cancellation of the petitioner's provisional selection due to he being found unfit by the Medical Board in re-examination was communicated to him by the authority's letter dated 13th August, 2013. Writ petitioner in paragraph 16 of the writ petition categorically stated that the said letter was received by the writ petitioner sometime in February, 2014. This positive assertion of the writ petitioner about the receipt of the authority's said letter in February, 2014 was evasively denied by the respondent in its affidavit. No material could be produced by the respondent to effectively controvert the writ petitioner's such contention that the said letter was received by the writ petitioner sometime in February, 2014. The respondents could have produced material evidence before the Court to show the exact date when the said letter was received by the addressee. In the absence of any material evidence being brought before this Court by the respondent, we are of the view that the writ petitioner's claim that he received the said communication in February, 2014 remains unchallenged and uncontroverted. We find that the writ petition was filed in March, 2014. If that be so, then where is such inordinate delay for which the writ petitioner can be blamed and the writ petition can be nipped in the bud without examining the effect of the changes regarding fixation of physical fitness criteria of the candidates introduced in the midst of the selection process, in great details. Though it is true that the writ petitioner offered himself for his medical re-examination before the authority concerned in terms of the guidelines introducing changes regarding the candidate's physical fitness criteria but by offering himself for his medical re-examination as per the changed guidelines, the selection process cannot be saved if it is ultimately found to have been vitiated by mala fides on the part of the authority concerned in introducing such changes for accommodating a favoured candidate of the authority concerned. However we cannot foresee the reasons for which such changes were introduced at this stage. Were such changes introduced for accommodating any favoured candidate or not; cannot be ascertained at this stage without further materials before us. If it is ultimately found that the respondent authority was pre-determined to appoint any particular candidate and changes were introduced in

the guidelines relaxing the originally fixed physical fitness criteria, in the midst of the selection process only to accommodate him then the selection of such candidate should be set at naught and the authority should be directed to complete the selection process by maintaining the physical fitness criteria as originally fixed in the employment notification. However, such a decision cannot be taken by this Court in the absence of the selected candidate who has already been appointed in the said post provisionally as the Court cannot affect the legal right of the said appointee without giving him an opportunity of hearing

19. In this regard we have also considered the decision of the Hon^{ble} Supreme Court in the case of Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T. Murali Babu, which was relied upon by Mr. Chaudhury, Learned Senior Counsel appearing for the respondent authority. That was a case where the writ petitioner therein wanted to invoke the jurisdiction of the Writ Court for redressal of his grievance by challenging his dismissal from service four years after his removal. In the aforesaid context the Hon^{ble} Supreme Court said as follows:

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A Writ Court is required to weigh the explanation offered and the acceptability of the same. The Court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional Court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the Court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant - a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years" delay in approaching the Court, yet the writ Court chose not to address the same. It is the duty of the Court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others" ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons-who compete with "Kumbhakarna" or for that matter "Rip Van Winkle".

In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the Writ Court should have thrown the petition overboard at the very threshold." 20. We have considered the said decision of the Hon''ble Supreme Court meticulously. That was a case where the writ petitioner took four years time for approaching the Writ Court for challenging the order of his dismissal from service.

21. The Hon''ble Supreme Court has observed in this background that in certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court at a late stage.

22. The Hon''ble Supreme Court further held that such delay may have impact on others'' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. In such circumstances, the Court is not expected to give indulgence to such indolent persons - who compete with "Kumbhakarna" or for that matter "Rip Van Winkle". The Hon''ble Supreme Court thus, held that such delay does not deserve any indulgence and on the said ground alone the Writ Court should have thrown the petition overboard at the very threshold. The principle laid down by the Hon''ble Supreme Court in the said decision in our considered view, has no application in the facts of the instant case, firstly, for the reason that we do not find any inordinate delay on the part of the writ petitioner in approaching the Writ Court for the reliefs he claimed in the writ petition and secondly for the reason that the fact regarding giving provisional appointment to another candidate in hot haste having not been intimated to the writ petitioner by the concerned respondent, before filing the writ petition, the writ petitioner cannot be blamed for not moving the writ petition before the other candidate was provisionally appointed in the said post.

23. Having regard to the fact that the provisional appointment which was given to Yagyaveer Singh was disclosed for the first time by the respondents in their affidavit, we feel that the writ petition is required to be re-considered on merit in the presence of the said selected candidate who has been provisionally appointed in the said post so that he does not feel that he has been punished unheard.

24. Accordingly, we dispose of this appeal by setting aside the impugned order and by requesting the learned Trial Judge to dispose of the writ petition on its own merit after impleading the said provisional appointee Sri Yagyaveer Singh, S/o Late Uttam Singh, 6/40, Gujarat Refinery Township, P.O: Jawaharnagar, Vadodra, Gujarat-391320 as respondent in the writ petition and by offering him a reasonable opportunity of hearing after allowing him reasonable time for filing affidavit, if he so desires.

25. Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

Samapti Chatterjee, J.

I agree.