

(2011) 04 GUJ CK 0193

In the Gujarat High Court

Case No : Special Civil Application No. 2124 of 2005

Dadamben

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:

Citation : (2011) 04 GUJ CK 0193

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : Chinmay Gandhi, for M.B. Gandhi, for the Appellant; Anshin H. Desai, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Sahai, J.—We have heard learned Counsel Mr. Chinmay Gandhi for the Petitioner and Mr. Anshin H. Desai for the Respondents.

2. Manbahadur Dhaniram Nepali was dismissed from service along with 28 persons on 18.12.1985. 28 persons filed a writ petition, being Special Civil Application No. 7516 of 1992, which was allowed on 2.8.2004. 28 Petitioners who filed the writ petition were granted relief and their dismissal order was set aside and they were directed to be reinstated on the posts which they were holding prior to their dismissal. It was further directed that they shall be deemed to be in continuous service throughout and entitled to all consequential benefits, including salary and allowances revised from time to time and promotions and occupation of quarters in which they are residing shall not be treated to be unauthorised. The judgment of the Division Bench of this Court was challenged by the Respondents by filing Special Leave to Appeal (Civil) No. 24650 of 2004, which was summarily dismissed on 10.12.2004. All the 28 employees (Petitioners in Special Civil Application No. 7516 of 1992) were taken back in service and accordingly, the judgment of the Division Bench of this Court was complied.

3. The Petitioner was also dismissed on the same ground as of 28 employees.

Said Manbahadur Dhaniram Nepali filed the present writ petition before this Court, for quashing of the dismissal order at Annexure-"C", dated 30.11.1995. Order at Annexure-"C" dated 30.11.1995 is not the order by which the Petitioner was dismissed from service but it is an order by which one Naik R.R. Pawaskar was dismissed from service. Whether the date of dismissal is correct or not, we are not concerned with that. This petition is filed initially by late Manbahadur Dhaniram Nepali. His dismissal order dated 18.12.1985 has been filed by the Respondents at Annexure-"V" to the affidavit-in-reply.

4. In the writ petition, in para 16, it has been stated that when the writ petition was filed by 28 Petitioners, Petitioner-Manbahadur Dhaniram Nepali also joined them. But by mistake, his name was not mentioned as "Petitioner" and the said writ petition was only on behalf of 28 Petitioners and they were granted relief by the Division Bench, which was affirmed by the Hon"ble Apex Court.

5. The case of the Petitioner is that since the relief has been granted to 28 similarly employees, the Petitioner, being similarly situated, is also entitled for the same. The Petitioner was dismissed from service in 1985. Other Petitioners of Special Civil Application No. 7516 of 1992, have been granted relief in the year 2004. This petition has been filed by the Petitioner in the year 2005 after the SLP was dismissed by the Hon"ble Apex Court. The learned Counsel for the Petitioner has urged that the writ petition filed by the Petitioner would be maintainable and the Petitioner is also entitled for the same relief which has been granted to other similarly situated Petitioners of Special Civil Application No. 7516 of 1992.

6. The learned Counsel for the Petitioner has urged that it is not necessary for every person to approach the Court for relief and it is the duty of the authority to extend the benefit of a concluded decision in all similar cases without driving every affected person to court to seek relief. The argument of the learned Counsel for the Petitioner has been considered by the Hon"ble Apex Court in the case of Bharat Sanchar Nigam Limited v. Ghanshyam Dass and Ors. reported in 2011(2) SCALE 479, wherein it has been in para 13, as under:

13. The principle laid down in K.I. Shephard (supra) that it is not necessary for every person to approach the court for relief and it is the duty of the authority to extend the benefit of a concluded decision in all similar cases without driving every affected person to court to seek relief would apply only in the following circumstances:

- a) where the order is made in a petition filed in a representative capacity on behalf of all similarly situated employees;
- b) where the relief granted by the court is a declaratory relief which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not;
- c) where an order or rule of general application to employees is quashed without any condition or reservation that the relief is restricted to the Petitioners before

the court; and

d) where the court expressly directs that the relief granted should be extended to those who have not approached the court.

From the aforesaid decision, it is clear that the argument of the learned Counsel for the Petitioner could only be accepted if writ petition was filed in a representative capacity or where the relief which was granted by the Court was a declaratory relief, which was extended to all other employees of a particular category or the impugned order was of general application to all employees or the Court had expressly directed to grant relief even to those persons who have not approached the Court. None of the aforesaid conditions are satisfied in the instant case. Writ petition of 28 Petitioners was decided by considering their cases. Neither general direction was issued nor the writ petition was filed in a representative capacity nor the Court intended to apply this in general or to all similarly situated employees in a particular category. Therefore, the argument of the learned Counsel for the Petitioner deserves to be rejected.

7. The learned Counsel for the Respondent has placed reliance on a decision of the Hon''ble Apex Court in the case of Shiba Shankar Mohapatra and Others Vs. State of Orissa and Others, wherein, in para 29, it has been held as under:

29. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the court is guilty of delay and the laches. The court exercising public law jurisdiction does not encourage agitation of state claims where the right of third parties crystallises in the interregnum (Vide Aflatoon v. Lt. Governor of Delhi; State of Mysore v. V.K. Kangan; Municipal Council, Ahmednagar v. Shah Hyder Beig; Inder Jit Gupta v. Union of India; Shiv Dass v. Union of India; A.P.SRTC v. N. Satyanarayana and City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla).

The learned Counsel for the Respondent also placed reliance on another judgment of the Hon''ble Apex Court in the case of State of Orissa and Another Vs. Mamata Mohanty, wherein in para 54, it has been as under:

54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the Petitioner approaches the Court 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. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time. (See Rup Diamonds v. Union of India, State of Karnataka v. S.M. Kotrayya and Jagdish Lal v. State of Haryana.).

8. The order of dismissal was passed in the year 1985. The other Petitioners approached this Court in the year 1992 after exhausting their alternative

remedy. The Petitioner could have also approached this Court in 1992, but he filed the petition in 2005 after seeing that the other Petitioners were successful and the decision in their favour was affirmed by the Hon"ble Apex Court. In our opinion, the writ petition filed by the Petitioner deserves to be dismissed on the ground of delay and laches.

9. From the aforesaid facts, it is clear that the Petitioner was guilty of delay and laches and therefore, he cannot be granted any relief as granted to 28 Petitioners of Special Civil Application No. 7516 of 1992, as he was a fence-sitter. The petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated. No costs.