
(2014) 09 GUJ CK 0081
In the Gujarat High Court

Case No : Letters Patent Appeal No. 906 of 2014 in Special Civil Application No. 7199 of 2014 with Letters Patent Appeal No. 979 of 2014 in Special Civil Application No. 7202 of 2014 to Letters Patent Appeal No. 986 of 2014 in Special Civil Application No. 7209 of

Digvijaysinh Ranjitsinh Parmar	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 09 GUJ CK 0081

Hon'ble Judges : Jayant M. Patel, J;C.L. Soni, J

Bench : Division Bench

Advocate : Shalin N. Mehta, Sr. Advocate, Maulin G. Pandya and N.K. Majmudar, Advocate for the Appellant; P.P. Banaji, A.G.P. and H.S. Munshaw, Advocate for the Respondent

Judgement

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C.L. Soni, J.—This group of appeals under clause 15 of the Letters Patent arises out of the orders passed by the learned Single Judge in different petitions wherein common grievance was raised that the appellants-original petitioners were entitled for appointment on compassionate ground as regular employee on the basis of the policy for such appointment prevailing prior to the change effected in such policy vide Government Resolution dated 15.6.2004.

2. Before the said resolution was issued, the appointments on compassionate ground were being given on regular basis and not on ad-hoc basis or contract basis. However, the change was brought by resolution dated 15.6.2004 as per which, compassionate appointments are to be given initially for a period of five years in fixed salary on ad-hoc basis, subject to the other terms and conditions stated in the policy.

3. It appears that all the appellants have been given compassionate

appointments on the basis of the Government Resolution dated 15.6.2004 as ad-hoc and as per the terms and conditions contained therein.

4. It appears that one Nilesh Muljibhai Patel, in whose case, a decision was taken to offer him compassionate appointment prior to the above said policy dated 15.6.2004 had preferred Special Civil Application No. 30154 of 2007 seeking to treat his appointment as per the policy prior to the policy dated 15.6.2004 and to give him benefits as per the earlier policy. This Court in the said petition, by judgment dated 6.9.2013, declared that since the appointment given to the said petitioner was on the basis of decision contained in communication dated 11.6.2003 at Annexure-B to the said petition, it shall be governed by the policy of the State Government in force prior to resolution dated 15.6.2004 and accordingly directed the respondents to issue modified appointment order to him. Based on such directions issued by this Court in the case of Nilesh Muljibhai Patel in above said petition, the petitioners filed the petitions before the learned Single Judge in the year 2014.

5. Learned Single Judge has rejected the petitions on the ground that the petitioners were not vigilant for seeking relief by filing writ petitions at appropriate time and they cannot be now permitted to invoke the writ jurisdiction after long time of nine years simply because the petition filed by another similarly situated person was allowed. Learned Single Judge has also observed that the relief granted in the case of Nilesh Muljibhai Patel (supra) was on different facts situation and the petitioners are not entitled to claim such similar relief.

6. We have heard the learned advocates for the parties. Learned Senior Advocate Mr. Shalin Mehta appearing with learned Advocate Mr. Maulin G. Pandya as well as the learned Advocate Mr. Majmudar appearing for the appellants in respective appeals submitted that there is no difference in the case of Nilesh Muljibhai Patel and the appellants as all claimed compassionate appointment prior to resolution dated 15.6.2004. However, since the appellants were not aware about filing of the petition by Shri Nilesh M. Patel, the appellants at the relevant time, could not approach this Court for similar relief. Learned advocates for the appellants submitted that like the case of Nilesh Muljibhai Patel, proposals for compassionate appointment in the case of appellants were moved prior to resolution dated 15.6.2004 and, therefore, case of the appellants would be similar to the case of Shri Nilesh Muljibhai Patel. They submitted that inspite of such similarity, if the appointments of the appellants are not treated as regular appointments as per the policy prevailing prior to the resolution dated 15.6.2004, the appellants will suffer great injustice. Learned Advocates submitted that the moment the appellants came to know about the decision delivered in the case of Nilesh M. Patel by this court, the appellants wasted no time in filing the petitions before this Court and, therefore, it cannot be said that the petitions suffered by delay and latches. Learned advocates submitted that when the decision rendered by this court in the case of Nileshbhai M. Patel is on

same facts, such decision should apply in the case of the appellants also, otherwise, the appellants will not be in a position to get the similar benefits received by Shri Nilesh M. Patel pursuant to the decision given by this court. They, thus, urged to allow the appeals.

7. As against above arguments, learned A.G.P. Mr. P.P. Banaji for the State Authority submitted that when the appellants were appointed, they knew that their appointments on compassionate ground were made pursuant to policy dated 15.6.2004. Mr. Banaji submitted that they have accepted ad-hoc appointments as per the terms and conditions of the said policy. The appellants cannot now say at this stage that they were entitled to compassionate appointments as per the policy prevailing prior to resolution dated 15.6.2004. Mr. Banaji submitted that in any case the appellants are not entitled to invoke the writ jurisdiction of this court after a period of more than nine years on the ground that in the case of another person stated to be similarly situated to the appellants, this court had granted some benefits. Mr. Banaji submitted that the learned Single Judge has rightly held that the petitioners having approached this Court at very belated stage are not entitled to any relief.

8. Learned Advocate Mr. Munshaw appearing for the panchayat authorities submitted that in the case of the appellants, the Government took decision sanctioning proposal only after the resolution dated 15.6.2004 and, therefore, the appellants were rightly given appointments on ad-hoc basis as per the policy dated 15.6.2004. Mr. Munshaw submitted that under the policy, on complying with the terms and conditions, the appellants are entitled to certain benefits. However, the appellants at this stage cannot be permitted to contend that they were entitled to compassionate appointments on the basis of the policy prevailing prior to 15.6.2004. Mr. Munshaw submitted that the learned Single Judge has rightly not entertained the petitions on the ground that the petitioners have approached the court at very belated stage and they are not entitled to invoke the jurisdiction of this court simply on the ground that in case of Nilesh M. Patel, the court has now directed to modify his appointment order so as to be in conformity with the policy prevailing prior to 15.6.2004.

9. Having heard the learned advocates for the parties, it appears that in the case of the appellants, the government granted sanction for giving them appointment on compassionate ground after the policy dated 15.6.2004. On the basis of such decision of the Government, the appellants were issued orders of appointment as per the terms and conditions of policy dated 15.6.2004. However, it is the case of the appellants that since one Nilesh M. Patel who got appointment after the policy dated 15.6.2004 was granted benefits as per earlier policy on the basis of order passed in Special Civil Application No. 30154 of 2007, they should be given the same treatment.

10. It appears that the Court, while allowing the petition of Nilesh M. Patel, has considered that in his case, the decision to give him compassionate appointment was taken on 11.6.2003 and in spite of such decision, the appointment order was

not being issued to him and during that time, the policy dated 15.6.2004 came into force. The Court also considered in that case that in earlier petition filed by said Nilesh M. Patel, this court issued direction to take decision within two months which was not complied with. In such facts situation, the court allowed the said petition.

11. However, after the petition of said Shri Nilesh M. Patel was allowed by this court by order dated 6.9.2013, the appellants thought to file their petitions under Article 226 of the Constitution of India before the learned Single Judge. As stated above, in the case of the appellants, the Government accorded sanction to give appointments on compassionate ground to them after policy dated 15.6.2004.

12. It appears that the appellants just kept on watching the progress in that petition filed by Shri Nilesh M. Patel and were never vigilant for their rights to file the petitions immediately after they got compassionate appointments as per the policy dated 15.6.2004 or immediately after the filing of the petition by Shri Nilesh M. Patel in the year 2007. But when the petition in the case of Shri Nilesh M. Patel was allowed by this court in the month of September, 2013, the appellants chose to file the petitions before learned Single Judge under Article 226 of the Constitution of India which would be at least after more than nine years from the date they got their appointments, seeking similar benefits granted to Shri Nilesh M. Patel.

13. We find that at such belated stage, when the appellants were not at all vigilant about their rights, the learned Single Judge rightly rejected the petitions of the appellants. We also find that in the case of the appellants, when the cause of action had arisen for them to invoke jurisdiction under Article 226 of the Constitution of India immediately after they got compassionate appointments, they could have filed the petitions within reasonable time but in no circumstances, they could have waited for result of the petition filed by so called similarly situated person. Filing of the petitions at belated stage claiming benefit given to another person who was vigilant about his rights is no ground to explain the long delay in invoking writ jurisdiction of this Court under Article 226 of the Constitution of India.

14. In the case of Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar and Others, , Hon'ble Supreme Court held and observed in para 46, 54 and 67 as under:

"Re: Delay and Laches:

46. Delay and laches is one of the factors that requires to be borne in mind by the High Courts when they exercise their discretionary power under Article 226 of the Constitution of India. In an appropriate case, the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his rights taken in conjunction with the lapse of time and other circumstances.

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54. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are:

(1) there is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.

(2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.

(3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy.

(4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

(5) That representations would not be adequate explanation to take care of the delay.

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67. It is now well settled that the power of the High Court under Article 226 of the Constitution to issue an appropriate writ, order or direction is discretionary. One of the grounds to refuse relief by a writ court is that the petitioner is guilty of delay and laches. Inordinate and unexplained delay in approaching the court in a writ is indeed an adequate ground for refusing to exercise discretion in favour of the petitioners therein. The unexplained delay on the part of the petitioner in approaching the High Court for redressal of their grievances under Article 226 of the Constitution was sufficient to justify rejection of the petition.

15. In the case of Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T. Murali Babu, , Hon"ble Supreme Court held and observed in para 16 and 17 as under:-

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.

17. 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.

16. In the case of Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another, , Hon"ble Supreme held and observed in para 6, 12 and 13 as under:-

6.6. The question of delay and laches has been examined by this Court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that about 9 writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 30.6.2005 and 31.7.2005. Two writ petitions were filed wherein no relief of interim order was passed. They were granted interim order. Thereafter a spate of writ petitions followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 & 2006 much after their retirement. Whether such persons should be granted the same relief

or not?

12. The statement of law has also been summarized in Halsbury's Laws of England, Para 911, pg. 395 as follows:

" In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

(i) acquiescence on the claimant's part; and

(ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches. "

13. In view of the statement of law as summarized above, the respondents are guilty since the respondents has acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussion on the financial management of the Nigam. Why the Court should come to the rescue of such persons when they themselves are guilty of waiver and acquiescence.

17. In the case of Punjab Small-Scale Industries and Export Corporation Limited and Another Vs. Jhujhar Singh and Another reported in (2008)17 SCC 668, Hon"ble Supreme Court held and observed in para 7 as under:-

7. From the dates and events mentioned above, it appears to us that Respondent 1 was not vigilant and did not approach the High Court seeking remedy within the reasonable time. It appears, he was watching the proceedings in the writ petitions filed by 37 other petitioners. When they got the relief, he became active

and as claimed, made a representation. Even thereafter, he did not file the writ petition immediately, in other words, the Division Bench pronounced the judgment on 13.1.1994 but he filed the writ petition on 10.3.1996, that is, after more than two years. Probably, Respondent 1 wanted to take advantage of the relief granted to other writ petitioners who had approached the High Court early. It is unfortunate that the High Court did not focus its attention on this aspect even when the appellants had specifically pointed out this aspect of delay and laches on the part of Respondent 1. Respondent did not think it necessary or appropriate to approach the High Court early on more than 4 occasions: (i) when the learned Single Judge cancelled the allotment; (ii) when the refund was made; (iii) when the second advertisement was published; and (iv) even immediately after the Division Bench pronounced the judgment. Under the circumstances, the writ petition should have been dismissed on the ground of delay and laches.

18. In light of the above, and the learned Single Judge having found that there is no explanation for long delay of more than nine years to invoke the jurisdiction of this court under Article 226 of the Constitution of India, when such jurisdiction could have been invoked had the appellants been vigilant when cause of action had arisen for them immediately after they were appointed on ad-hoc basis, we find that learned Single Judge has rightly observed that no ground to explain the delay could be said to have been made out by the appellants to claim relief on the basis of the judgment rendered in the case of another so called similarly situated person. It is not the case of the appellants that they were in any way prevented from invoking the jurisdiction of this court under Article 226 of the Constitution of India when they got compassionate appointment on ad-hoc basis in the year as per the policy dated 15.6.2004 or at least when another person namely Nilesh Muljibhai Patel filed the petition in the year 2007.

19. For all the above reasons, the appeal fails and are thus dismissed.

20. In view of the orders passed in the appeals, the civil applications filed in the appeals shall not survive and are thus disposed of as not surviving.