
(2011) 02 CHH CK 0057
In the Chhattisgarh High Court
Case No : Writ Petition (S) 3395 of 2009

Dr. Smt. Achala Rani Tiwari	Vs	APPELLANT
State of C.G. and Others		RESPONDENT

Date of Decision : 18-02-2011

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227, 32

Citation : (2011) 1 CGBCLJ 174

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Ashish Shrivastava, for the Appellant; N.N. Roy, Panel Lawyer for the State and Shri Ajay Singh, Advocate for the respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioner seeks to challenge the legality and validity of the order dated 18-3-2009 (Annexure-P/1) by which the representation submitted by the petitioner has been rejected and further seeks a direction to the respondent authorities to grant the petitioner senior and selection grade pay scale w.e.f. 25-10-1992 on the basis of her completion of 13 years of service with all consequential benefits. Case of the petitioner is that initially the petitioner was appointed as Lecturer (Hindi) on 25-10-1979. Thereafter, the nomenclature of the said post was changed as Assistant Professor. As per the order dated 10-3-1989, the revised pay scale was made applicable w.e.f. 1-1-1986. As per clause 2 of the said order, the senior grade pay scale is to be given to all the teachers who have completed 16 years of service within relaxation of 3 years for Ph.D. candidates and 2 years for M. Phil. Candidates. The petitioner became entitled for the senior grade pay scale, as she had completed 13 years of service and was holding the Ph.D. degree. The said benefit has been granted to the similarly situated teachers, but the same has not been Granted to the petitioner. However after completion of refresher courses, the candidature of the petitioner was considered by the Selection Committee for

grant of senior grade pay scale w.e.f. 25-10-1992, however, without considering the said recommendation the respondent authorities by order dated 22-7-2004 granted senior grade pay scale to the petitioner w.e.f. 27-7-1998 instead of 25-10-1992. Being aggrieved by the said inaction on the part of the authorities, the petitioner submitted a representation before the respondent authorities on 28-5-2008 (Annexure-P/12), which has been rejected by order dated 18-3-2009 (Annexure-P/1). Thus, this petition.

2. On the other hand, learned counsel appearing for the respondents submit that though the cause of action arose in the year 1999, the petitioner has filed the present petition on 10-7-2009 without explaining inordinate delay by giving sufficient and cogent reasons, Therefore, the petition may be dismissed on the ground of delay and laches.

3. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

4. On perusal, it was found that the petitioner was granted senior grade pay scale by order dated 28-10-1999 w.e.f. 27-7-1998. Thereafter, on representation to amend the order dated 28-10-1999, the same was considered and rejected by order dated 18-3-2009. Thus, cause of action arose on 28-10-1999. Subsequent filing of representation for reconsideration and rejection on 18-3-2009 does not create anew cause of action. It appears that the same was done by the petitioner to create a new cause of action, which arose way back in the year 1999. Thus, the petitioner ought to have raised the dispute immediately, which the petitioner has failed to do.

5. The delay of more than 10 years cannot be ignored, as the order dated 28-10-1999 granting her senior grade pay scale was passed by the undivided State of Madhya Pradesh. Now the new State of Chhattisgarh has been created on 1-11-2000. Thus, the prejudice may be caused to the State of Chhattisgarh. The State of Madhya Pradesh has also not been impleaded as party respondent. The petitioner made a representation on 28-5-2008 i.e. after the retirement from service, infect, the cause of action arose in the year 1999 and the petitioner has slept over her right when allegedly the petitioner has been making representations. Except one representation, which was filed on 28-5-2008 after a period of about ten years, no other representations have been produced and there is also no reference of other representations in the representation dated 28-5-2008.

6. The contention of the petitioner that the petitioner was granted senior grade pay scale w.e.f. 27-7-1998 by order dated 22-7-2004 Is contrary to the facts. It appears that the persons, who were not considered earlier, were granted senior grade pay scale by order dated 22-7-2004. On the basis of the said relief granted to the other similarly situated employees, the petitioner filed the representation dated 28-5-2008 (Annexure-P/12), which was rejected by order dated 18-3-2009 (Annexure-P/1).

7. It is well settled that more than one representation cannot arrest the limitation as even if representation is not considered and order is passed within a reasonable period of six months, the petitioner may approach the High Court. The petitioner has not done the needful and waited for a long period to come to this court at this belated stage. Thus, this petition cannot be entertained and the same deserves to be dismissed on the ground of delay and laches.

8. The law on the principle of waiver and acquiescence is well settled that, if the person sleeps over his rights and is not vigilant of his rights and acquiesces with the situation, he may not be entitled to the same relief as was granted to other vigilant persons.

9. The Supreme Court in *S.S. Balu and Another Vs. State of Kerala and Others*, observed as under:

17. It is also well-settled principle of law that "delay defeats equity". The Government Order was issued on 15.1.2002, The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and State of Kerala preferred an appeal there against, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment....

10. The decision rendered in *S.S. Balu (supra)* was referred with approval in *Ghulam Rasool Lone Vs. State of Jammu & Kashmir and Another*, and it was further, observed as under:

19. It is beyond any cavil of doubt that the remedy under Article 226 of the Constitution of India is a discretionary one. For sufficient or cogent reasons a court may in a given case refuse to exercise its jurisdiction; delay and laches being one of them. While considering the question of delay and laches on the part of the petitioner, the court must also consider the effect thereof.

11. On laches and delay in agitating the grievances before the Court, the Supreme Court in *State of Punjab and Another Vs. Balkaran Singh*, observed as under

22. According to us, the suit is also barred by acquiescence and estoppel. No one in a service can sleep over the question of seniority for more than 12 years and then come to court seeking a relief which will upset the seniority of a number of persons who had been shown as seniors in the respective seniority lists. Therefore, on the face of it, a declaratory relief that will have the effect of altering a twelve-year-old and a nine-year-old seniority list could not have been granted by the courts below.

12. The Supreme Court in *Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another*, , observed as under:

The question of delay and laches has been examined by this Court in a series of decisions and laches has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution.

13. The Supreme Court in *Tridip Kumar Dingal and Others Vs. State of West Bengal and Others*, where the appellants took 559 days in approaching the Court, causing unexplained and inordinate delay, observed as under:

We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

14. In *Tridip Kumar Dingal and others (supra)*, the Supreme Court also observed as under:

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhumed matters which have been disposed of or settled or where the rights of third parties have accrued in the meantime (vide *State of M.P. v. Bhailal Bhai*, *Moon Mills Ltd. v. Industrial Court* and *Bhoop Singh v. Union of India*). This principle applies even in case of an infringement of fundamental right (vide *Tilokchand Motichand v. H.B. Munshi*, *Durga Prasad v. Chief Controller of Imports & Exports* and *Rabindranath Bose v. Union of India*).

15. In *Tridip Kumar Dingal and others (supra)* it was further observed as under:

There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose.

16. In *Yunus (Baboobhai) A Hamid Padvekar Vs. State of Maharashtra through its Secretary and Others*, the Supreme Court observed as under:

Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers-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 right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party.

17. In *Rabindranath Bose and Others Vs. The Union of India (UOI) and Others*, relied on in *Yunus (supra)* it was observed that no relief can be given to the petitioner who without any reasonable explanation approaches the Court after inordinate delay.

18. In *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, relied on in *Yunus (supra)*, it was observed that that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactory explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was also observed that if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

19. Applying well settled principle of law to the facts of the case, the petition deserves to be and is accordingly dismissed on the ground of delay and laches. No order as to costs.