
(2011) 04 GUJ CK 0103

In the Gujarat High Court

Case No : Letters Patent Appeal No. 611 of 2011 in Special Civil Application No. 6995 of 2010

Dushyant Babubhai Rajput

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 3

Citation : (2011) 04 GUJ CK 0103

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

Bench : Division Bench

Advocate : D.G. Chauhan, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Sahai, J.—We have heard Mr D G Chauhan, learned Counsel for the Appellant. The Appellant filed writ petition challenging the dismissal order dated 25.10.2006 passed by the Respondents in Special Civil Application No. 6995 of 210. The learned Single Judge has dismissed the writ petition on the ground of delay.

2. The facts in brief are that the Appellant was working as Assistant Engineer (Civil) in the Roads & Buildings Department of the State Government and had worked for about 23 years. Thereafter he made application on 26.2.2001 to sanction leave from 19.4.2001 to 1.7.2001 as he wanted to go abroad. Leave was granted by the authority. Thereafter instead of joining, the Appellant moved another application for extension of leave from 2.7.2001 to 16.2.2002 on some personal grounds. The application was forwarded by the Respondent to the higher authority for sanctioning leave for 231 days. On 12.2.2002 another application was made by the Appellant to grant leave on half pay on the ground of ailment of his wife from 12.2.2002 to 12.5.2002. The Petitioner did not report for duty and all throughout he was in America. Since the Appellant was absent

without any sanctioned leave, on 23.9.2004, a charge sheet was issued to him. The Appellant on 24.12.2004 sought time for filing reply. But the Respondent did not grant time. Thereafter departmental proceedings were initiated and the charges were found to be proved against the Appellant and on the basis of inquiry report, the Appellant was dismissed from service by the Respondent on 25.10.2006.

3. The Appellant, from 19.4.2001 till date, is continuously in America. He had not joined the duty and he had filed writ petition before the learned Single Judge of this Court challenging the dismissal order after three years.

3.1. The Apex Court in State of Uttar Pradesh and Others Vs. J.P. Saraswat, has held that where an employee goes on leave to USA and did not join his service after his leave was over and kept sending of applications for extending the leave and came back to India and join the duties after 20 months. Thereafter, he again left for USA and from there he was sending applications for leave and came back to India after more than 4 years. His termination from service on the charge of going abroad without any authorised leave was held to be legal and the termination order was held to be justified. In the instant case, the Appellant had not returned to join his duty for a period of about 10 years. Therefore, we are of the considered opinion that the dismissal of the Appellant from service by the Respondents is perfectly just and legal and does not call for any interference by this Court under Article 226 of the Constitution of India.

4. The Appellant has challenged the order of dismissal dated 25.10.2006 by filing writ petition in March 2010 after delay of more than three years. The Apex Court in Shiba Shankar Mohapatra and Others Vs. State of Orissa and Others, in para 29 has held that if the person approaching the court is guilty of delay and laches, the relief has to be denied to him.

5. Similar view has been taken by the Apex Court in State of Orissa and Another Vs. Mamata Mohanty, in paras 52 to 54 as under:

In the very first appeal, the Respondent filed writ petition on 11.11.2005 claiming relief under the Notification dated 6.10.1989 w.e.f. 1.1.1986 without furnishing any explanation for such inordinate delay and on laches on her part. Section 3 of the Limitation Act, 1963, makes it obligatory on the part of the court to dismiss the suit or appeal if made after the prescribed period even though the limitation is not set up as a defence and there is no plea to raise the issue of limitation even at the appellate stage because in some of the cases it may go to the root of the matter.

Needless to say that the 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.

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.

5.1. From the aforesaid decisions it is clear that if the Petitioner approaches the court after unreasonable delay and is guilty of laches, then he is not entitled to any relief.

6. In view of the aforesaid reasons, we do not find any illegality in the order of the learned Single Judge. The appeal lacks merits and is accordingly dismissed.