

(2022) 11 GUJ CK 0101

In the Gujarat High Court

Case No : R/Special Civil Application No. 23708 Of 2022

Gauriben Narrotambhai Pithva

APPELLANT

Vs

District Primary Education Officer (Rajkot)

RESPONDENT

Date of Decision : 30-11-2022

Acts Referred:

Citation : (2022) 11 GUJ CK 0101

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Vivek V Bhamare

Final Decision : Dismissed

Judgement

A.S. Supehia, J

1. The present writ petition has been filed seeking the following prayers:

"8 (A) xxx xxx xxx

(B) Your Lordship may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or order or direction quashing the impugned termination order being PTC/GENERAL/163/1261 dated 23.11.2004 and further be pleased to direct respondent to grant posting to the petitioner along with consequential benefits

(C) Pending hearing and final disposal of present petition, Your Lordships may be pleased to stay execution, operation and implementation of termination order being PTC/GENERAL/163/1261 dated 23.11.2004 and further be pleased to issue directions directing respondent to grant posting to the petitioner at the post of Vidhya Sahayak.

(D) An ex-parte ad interim relief in terms of para (C) above may kindly be granted."

2. The prayers indicate that the termination order dated 23.11.2004 is sought to

be challenged after a period of 18 years by filing the writ petition.

3. It is the case of the petitioner that he was illegally terminated.

4. On a specific query raised by this Court with regard to delay in filing the writ petition, neither any satisfactory reply has been given by the learned advocate Mr.Bhamre nor it is explained in the writ petition. In the case of Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T. Murali Babu, 2014 (4) S.C.C. 108, the Apex Court, while examining the issue of delay and laches in filing the writ petition, has observed thus :

"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.

17. Having dealt with the doctrine of delay and laches, we shall presently proceed to deal with the doctrine of proportionality which has been taken recourse to by the High Court regard being had to the obtaining factual matrix. We think it appropriate to refer to some of the authorities which have been

placed reliance upon by the High Court.”

5. It is held that the Court should bear in mind while exercising an extraordinary and equitable jurisdiction in entertaining the writ petition which suffers from the delay and laches. It is held that delay comes in the way of equity and it reflects inactivity and inaction on the part of the litigant and it is very aptly said that 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 and delay does bring in hazard and causes injury to the lis.

6. Similarly, in the case of State of Jammu and Kashmir Vs. R.K. Zalpuri and Ors., 2015 (15) S.C.C. 602, the Supreme Court has observed thus : -

“26. In the case at hand, the employee was dismissed from service in the year 1999, but he chose not to avail any departmental remedy. He woke up from his slumber to knock at the doors of the High Court after a lapse of five years. The staleness of the claim remained stale and it could not have been allowed to rise like a phoenix by the writ court.

27. The grievance agitated by the respondent did not deserve to be addressed on merits, for doctrine of delay and laches had already visited his claim like the chill of death which does not spare anyone even the one who fosters the idea and nurtures the attitude that he can sleep to avoid death and eventually proclaim “Deo gratias” – ‘thanks to God’.

28. Another aspect needs to be stated. A writ court while deciding a writ petition is required to remain alive to the nature of the claim and the unexplained delay on the part of the writ petitioner. Stale claims are not to be adjudicated unless non-interference would cause grave injustice. The present case, need less to emphasise, did not justify adjudication. It deserved to be thrown overboard at the very threshold, for the writ petitioner had accepted the order of dismissal for half a decade and cultivated the feeling that he could freeze time and forever remain in the realm of constant present.”

7. Recently, the Apex Court in the case of Surjeet Singh Sahni Versus State Of Uttar Pradesh, 2022 (4) Scale 280, has observed thus:

“5 As observed by this Court in catena of decisions, mere representation does not extend the period of limitation and the aggrieved person has to approach the Court expeditiously and within reasonable time. If it is found that the writ petitioner is guilty of delay and laches, the High Court should dismiss it at the threshold and ought not to dispose of the writ petition by relegating the writ petitioner to file a representation and/or directing the authority to decide the representation, once it is found that the original writ petitioner is guilty of delay and laches. Such order shall not give an opportunity to the petitioner to thereafter contend that rejection of the representation subsequently has given a fresh cause of action”

8. The Apex Court has held that if the writ petitioner is guilty of delay and

latches, the High Court should discuss the writ petitioner at the threshold and should not dispose of the writ petition by relegating the writ petitioner to file a representation. Thus, in light of the settled proposition of law as enunciated by the Apex Court, the writ petition is barred by doctrine of delay and latches. The request made by learned Advocate Mr.Bhamre for deciding the representation is also rejected since this Court, by issuing such direction will be indirectly condoning the delay by resurrecting the demand of the petitioner resulting into to a new cause of action, which has been already laid to rest by the voluntary action of the petitioner in going to slumber and failing to challenge the termination order within a reasonable time.

9. Accordingly, the present writ petition is rejected in limine. There shall be no order as to costs.