

(2021) 10 DEL CK 0140

In the Delhi High Court

Case No : Civil Writ Petition No. 11491 Of 2021

Gulab Chand Yadav

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 07-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 32, 226

Citation : (2021) 10 DEL CK 0140

Hon'ble Judges : Manmohan, J;Navin Chawla, J

Bench : Division Bench

Advocate : Yatish Mohan, Achintya Tiwari, Jagjit Singh, Preet Singh, Vipin Chaudhary

Final Decision : Dismissed

Judgement

Navin Chawla, J

CM APPL. 35429/2021 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 11491/2021

1. This petition has been filed by the petitioner challenging the order dated 14.03.2002 passed by the respondent no.4, ordering removal of the petitioner from service on account of his unauthorized absence from duty, as also praying for a direction to the respondents to allow the petitioner to re-join duty.

2. The petitioner was working as a Constable with the Railway Protection Special Force and was posted at New Delhi. He was allowed to avail 21 days special leave, one day rest and two days commuted leave (CL) with effect from 08.06.2000 to 01.07.2000 and was to resume his duty on 02.07.2000. As he did not do so inspite of several call notices issued to him, upon an ex-parte inquiry, the petitioner was ordered to be removed from service vide impugned Order dated 14.03.2002. The petitioner made representations against the said order

only in the years 2013 and 2014. The said representations were rejected on the ground of delay by an order dated 17/19.10.2015.

3. The learned counsel for the petitioner submits that while on leave, the petitioner suffered a stroke leading to mental disorder for which he remained under constant medical supervision of one Dr.Mahendra Pratap Yadav at his Nursing Home Matwarganj, Azamgarh till 2013. Even the father of the petitioner was not aware of the whereabouts of the petitioner and this fact was to the knowledge of the respondents during the course of inquiry against the petitioner.

4. He further states that the petitioner was not personally served with any notice of inquiry and therefore, the inquiry has been conducted and concluded ex-parte.

5. The learned counsel for the petitioner submits that the petitioner could not earlier approach this Court as he was arranging for funds for filing the writ petition. He further submits that this Court should take a lenient and sympathetic view and grant the relief claimed in the petition.

6. We have considered the submissions made by the learned counsel for the petitioner, however, find no force in the same.

7. As noted hereinabove, the order of removal from service against the petitioner was passed in March, 2002. The petitioner represented against the same only in 2013/2014. The said representations of the petitioner were also rejected in October, 2015. Prior thereto, as disclosed in the petition, the petitioner had approached the High Court of Allahabad by way of a writ petition, which also was dismissed on 29.07.2013 on the ground of lack of territorial jurisdiction. Even according to the petitioner, the petitioner recovered from his mental illness in 2013. Barring stating that the petitioner was arranging for funds for filing of the writ petition, there is no justifiable explanation for the delay in filing of the present petition.

8. In *Chairman/ Managing Director, U.P. Power Corporation Ltd. & Ors. v. Ram Gopal*, 2020 SCC OnLine SC 101, Supreme Court has held that while the Limitation Act, 1963 does not apply to proceedings under Article 226 of the Constitution of India, nevertheless, such rights cannot be enforced after reasonable lapse of time; the writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over their rights. The relevant quotation from the judgment is as under:

"15. Seen from a different perspective also, it is clear that the Respondent has shown little concern to the settled legal tenets. Even a civil suit challenging termination of services, if filed by the Respondent, would have undoubtedly been barred by limitation in 1990. In a similar situation where the appellant belatedly challenged the promotion of his junior(s), this Court in *P.S. Sadasivaswamy v. State of Tamil Nadu* (1975) 1 SCC 152, held as follows:

"2. ... if the appellant was aggrieved by it he should have approached the Court even in the year 1957, after the two representations made by him had failed to

produce any result. One cannot sleep over the matter and come to the Court questioning that relaxation in the year 1971. ... In effect he wants to unscramble a scrambled egg. It is very difficult for the Government to consider whether any relaxation of the rules should have been made in favour of the appellant in the year 1957. The conditions that were prevalent in 1957, cannot be reproduced now. ...It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters....."

16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In *SS Balu v. State of Kerala* (2009) 2 SCC 479 this Court observed thus:

"17. It is also well-settled principle of law that "delay defeats equity". ...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." (emphasis supplied)

17. Similarly, in *Vijay Kumar Kaul v. Union of India*, (2012) 7 SCC 610 this Court while considering the claim of candidates who, despite being higher in merit, exercised their right to parity much after those who were though lower in merit but were diligently agitating their rights, this Court observed that:

"27. ...It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time."

9. In view of the inordinate delay in filing the present petition, the same is dismissed on the ground of delay and latches alone. There shall be no order as to costs.