

(2001) 12 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : SWP. No. 1680/2001 CMP.No. 2721/2001

Hassan Zaz

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-12-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) KashLJ 606 : (2002) SriLJ 45

Hon'ble Judges : Nisar Ahmad Kakru, J

Bench : Single Bench

Advocate : M.M.Amin, Advocates appearing for the Parties

Judgement

1. The post of Liaison Officer came to be thrown open for competition way back in the year 1986 in terms of the advertisement notice dated

2671986. The selection process culminated in the same year by appointment of the respondents No.7 vide order No.REC/Board/42 dated

7101986. The appointment was challenged by the petitioner for the first time in the year 1992 by medium of SWP 1170/92. During the pendency

of the writ petition the representation of the respondent No,. 7 evoked response of the Board of governorsrespondent No.2 here in. It was

deliberated upon and a decision came to be taken which was approved by the chief Minister on1252000. The decision envisages to the following

effect:

a. Status of EDP cell at REC is made permanent with effect from 471989 and allowed to be a part and parcel of T&P Department. As such, the

posts of EDR cell will have substantive status.

b. An out of court settlement is arrived at with Mr. Ghulam Hassan Zaz as he has

challenged Mr. Thusoo's appointment as Liason Officer, Mr. Zaz

could be such be adjusted against the lien vacancy of Liaison Officer in the lower pay scale of Rs.55009000 in the first instance.

c. Action as at (a) & (b) would pave a way for confirmation of Ms. A. Thusoo as Liaison Officer.

d. Deputation of Ms. Thusoo to GCET is confirmed.

e. Upgradation/promotion of Ms. Thusoo as an Asstt. Professor (which is equivalent to the post of Project Leader of EDP Cell at REC) at GCET

is confirmed She infact, holds the post of Assistant Professor in T & P Department of GCET presently under orders of the Hon'ble Court.

f. By virtue of actions as at (c), (d) & (c) Ms. Thusoo would be entitled to service benefits of both REC AND GCET.

2. The decision of the Board reproduced herein above makes it clear that the process employed in consideration of the representation of the

respondent No. 7 got a relief to the petitioner as well entitling him to his adjustment against the lien vacancy of the liaison officer. Relying upon the

decision of the Board the petitioner sought disposal of the writ petition by a direction to the respondents to implement the above referred decision

and the writ court acceding to his prayer decided the writ petition on 16102000 in the following terms:

Let the respondent implement their own decision within the period mentioned above. They would be at liberty to seek extension of time. These

writ petitions are disposed of accordingly.

3. Being fully contented with the judgment, the petitioner has made a legal effort to force the respondents to accelerate the process of

implementation for the decision of the Board by contempt petition which is subjudice as on date. This fact is averred by the petitioner unequivocally

in Para (9) of the writ petition. How amazing it looks that on the one hand the petitioner aims at compelling obedience of the judgment and on the

other he reiterates the challenge through the present writ petition against the order of appointment of respondent No. 7 notwithstanding the fact that

the said order of appointment stands ratified by this court by having directed the respondents to implement the decision of the Board which entitles

the respondent No,7 to confirmation on the part of Assistant Professor and as a corollary to regularization on the post of Liaison Officer.

Can petitioner maintain this writ petition? To draw a correct conclusion it has to be borne in mind that SWP No. 1172/92 was filed on the same averments and with similar relief's as are urged in this writ petition. When the said writ petition received consideration by the court the writ petitioner instead of seeking the relief's prayed for therein sought a relief quite distinct from those prayed in the writ petition. Consequently a necessity arose for moulding the relief. The relief was moulded by the writ court at the instance of the petitioner enabling him to derive whatever advantage he could. Accordingly SWP 1170/92 was adjudicated upon by the court which decision has to bind the petitioner and the respondents unless it is varied, modified or set aside by appeal or by any other proceedings permissible under law. Suffice it to say that a subsequent writ petition between the same parties on the same facts seeking same relief as urged in the former writ petition is not maintainable on the basis of general rule of resjudicata which has to be adhered to so that finality is attached to the judicial pronouncements handed down by the courts of competent jurisdiction. Viewed thus, the decision dated 16102000 passed in SWP 1170/92 works as a bar against the maintainability of this writ petition, therefore liable to be dismissed.

4. This brings me to the rule of laches. Law is settled that an aggrieved party seeking relief under Article 226 of the Constitution must approach the writ court at the earliest possible opportunity. Admittedly, the petitioner has registered the grouse after years together against the appointment made in the year 1986. If he was wronged by the order why did he wait in the first instance for half a decade and why did he seek indulgence of the court for moulding the relief. No explanation even worth the name has come forward. All this goes to show that he has behaved as a slothful litigant. That apart during the intervening period between 1986 and the current year the respondent No.7 has acquired confirmation of her services accorded by the Board, besides other benefits on the strength of length of service and these valuables rights, cannot be obliterated after a lapse of more than one and a half decades. In taking this view I am fortified by a judgment of the apex court in State of M.P versus Nandial Jaiswal (AIR 1987 SC 251). Relevant excerpts of paras 23 and 24 may be extracted: Para 23 "it is well settled that the power of the High Court to issue an

appropriate writ under Art.226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, The High Court may decline to intervene and grant relief in the exercise of its writ petition. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices.

Para 24 ""In the instant case, there was considerable delay on the part of the petitioner in filing the writ petitions and in the intervening period, respondents acquired land, constructed distillery buildings, purchased plant and machinery and spent considerable time, money and energy towards setting up the distilleries. These circumstances would be sufficient to disentitle the petitioners to relief under Act.226 of the Constitution.

5. Reverting to the facts of the case it is manifest that the impugned order is sought to be set at naught after a lapse of more than one and a half decades, obviously the writ petition is highly belated and barred by the laches. That being so it is squarely covered by the principle of law laid down by the judgment supra. Thus it is neither just nor fair to interfere with the impugned order of appointment in exercise of writ jurisdiction of this writ court under Article 226 of the Constitution of India.

6. For the foregoing reasons this writ petition merits dismissal in limine. I order accordingly. A copy of the judgment be sent by the registry to the respondent No.2 who shall inform all the respondents herein so that further futile litigation between the parties to this writ petition is avoided.

7. No order as to costs.