

(2014) 01 AHC CK 0050
In the Allahabad High Court
Case No : Special Appeal No. 1094 of 2004

Indra Pal Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Citation : (2014) 01 AHC CK 0050

Hon'ble Judges : Vinod Prasad, J;Sheo Kumar Singh, J

Bench : Division Bench

Advocate : Shiv Nath Singh, for the Appellant;

Final Decision : Dismissed

Judgement

1. Heard Sri Shiv Nath Singh, learned advocate for the appellant and learned standing counsel for other side. The petitioner was discharged from service as he was found unfit. He applied for disability pension on 25.8.1981. Petitioner was sent a communication on 5.9.1981 that his claim for disability pension is being considered, thereafter by order dated 12.9.1981, claim of petitioner has been rejected and he was intimated accordingly. Then a petition was filed upon which he was again informed about negation by letter dated 14.6.1982.

2. It appears that in 1999, a fresh letter/request was sent by the petitioner for the same purpose upon which vide letter dated 27.7.1999, he was informed that his case has already been rejected in 1982 and thus the claim was declined. There is clear mention of this fact in the letter dated 27.7.1999.

3. Learned Single Judge has dismissed the writ petition on the ground that petitioner did not pursue his cause and kept silence for about 18 years and, therefore, the appeal filed against the decision dated 14.6.1982 after 18 years has been rightly rejected. It has also been observed that there is no clear averment supported by any material in the writ petition by the petitioner that he has been pursuing the matter with the authority concerned.

4. In the writ the issue about lack of communication to the order dated 14.6.1982 could not have been accepted and otherwise, there is no proof in this respect. If he has no communication then for this long what he did.

5. Counsel for the appellant placed reliance on the judgment of this Court in which the delayed appeal was permitted to be considered but it goes without saying that it is satisfaction of the Court in the given set of facts and no hard and fast rule and criteria can be applied.

6. It has been repeatedly said by this Court and by the Apex Court that if a person sits over his rights and do not pursue the cause diligently then after a long lapse, stale claim is not to be revived. If the claim of the petitioner was rejected in 1982 then filing of fresh application in 1999 and the communication given to the petitioner about the earlier decision in no case can give him fresh cause of action to get the proceedings started.

7. A person to get his rights enforced or to get an indulgence in equity side has to be vigilant for putting the system in motion if required but if he keeps mum and maintains silence then things are to be permitted to take rest. Complaints/ grievance for redressal has to be lodged well within time and if no time is provided then also within a reasonable time. Neither undue haste nor undue delay serves the purpose. Normally the Courts are to take lenient view to rule out the technical hurdles but it is not to be at the whims of the litigant. All the forums are already over burdened and over flooded by the claims of the persons who are prompt and are in time of which everybody is to take lesson.

8. The consideration and the ground for rejection of the writ petition of the petitioner cannot be said to be arbitrary and not warranted in the facts of the present case so as to get it interfered in the appeal.

9. Reference in this respect can be given to the judgment of the Apex Court in the case of C. Jacob Vs. Director of Geology and Mining Indus. Est. and Another, .

10. In the aforesaid judgment it has been held by the Apex Court that a dead or stale claim is not be permitted to be revived.

11. The person who sleeps over his right is not entitled for any indulgence.

12. The Apex Court has dealt about modus of representation and the start of proceedings after long lapse.

13. The observation as has been made in the aforesaid judgment in para 8 to 11 and 14 are hereby quoted:

8. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of

challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation.

9. The Courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any "decision" on rights and obligations of parties. Little do they realize the consequences of such a direction to "consider". If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to "consider". If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

10. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a Court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the Court or tribunal, such an order does not revive the stale claim, nor amount to some kind of "acknowledgement of a jurat relationship" to give rise to a fresh cause of action.

14. We are constrained to refer to the several facets of the issue only to emphasize the need for circumspection and care in issuing directions for "consideration". If the representation is on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, Courts should desist

from directing "consideration" of such claims.

14. In view of the aforesaid discussion, we find no error in the judgment of the learned Single Judge. Appeal fails and is dismissed.