

(2018) 11 DEL CK 0075

In the Delhi High Court

Case No : Letter Petent Appeal No. 619 Of 2017

Jitendra Kumar Pandey

APPELLANT

Vs

Chief General Manager, State Bank Of India

RESPONDENT

Date of Decision : 02-11-2018

Acts Referred:

Limitation Act, 1963 — Section 22

Citation : (2018) 11 DEL CK 0075

Hon'ble Judges : G.S.Sistani, J; Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : Rajiv Kapur

Final Decision : Dismissed

Judgement

Sangita Dhingra Sehgal, J

1. Challenge in this appeal filed under Clause X of the Letters Patent Act is to the order dated 11.04.2017 passed by the learned Single Judge

whereby the writ petition filed by the appellant against the stay of promotion from the year 2006 in the State Bank of India and for grant of

compensation towards cost incurred in the filing of the petition was dismissed.

2. The brief facts as per the appellant which have led to the filing of the present petition are that the appellant was appointed as a probationary officer

of the State Bank of India in the year 1995. He was promoted to the post of Deputy Manager(MM-II) in the year 2001. It is claimed that the bank

conducted written examination(s) for promotion to the post of MM-III, for which forged marksheet(s) were issued to him. He has stated that minor

punishments were imposed on him under disciplinary proceedings by the bank, which was illegal and against the principle of natural justice, in respect

of an event occurred in the year 2007, for which the charge sheet was issued in 2009 and the punishment was inflicted on 27.10.2010. Thereafter, the interview was held for the promotion to the post of MM-III on 12.09.2012, which was not conducted properly. Furthermore, on 23.06.2014 when the interview was held again, the appellant was wrongly marked absent even when he was present for the interview. He even alleged that the bank did not maintain annual appraisal report(s) from the year 2006 onwards, no seniority list was maintained and that minor punishments imposed were not conveyed to the appellant. Aggrieved by the illegal action of the respondent, a writ petition was filed by the appellant, which was rejected by the learned Single Judge vide its order dated 11.04.2017.

3. The appellant in person contended that the court below committed an error in dismissing the writ petition filed by the appellant vide its order dated 11.04.2017 and that such findings were based on mere surmises and on hypothetical assumption of vital and necessary facts. He further submits that the learned Single Judge has failed to appreciate the continuous act of abuse of power on the part of the respondent bank in generating forged marksheet(s) and inflicting of minor punishment on the appellant on flimsy grounds; that the fact of forged marksheet came to his notice in the year 2012 when he filed an RTI to obtain his answer sheet; that the respondent is not maintaining annual appraisal report(s) and seniority list as per the bank rules and that the petition was wrongly dismissed by the court below, as there is continuous act of abuse of law. He further contended that he is working at the same position since 2001 and from the past 16 years, he has been denied all the promotional benefits. Hence, the impugned order dated 11.04.2017 is liable to be set aside on these grounds.

4. Refuting the contentions of the appellant, the learned counsel for the respondent submitted that there is no infirmity in the order passed by the learned Single Judge. It is contended that the learned single judge has passed a well reasoned order by dismissing the same on the ground of delay and laches in filing the writ petition; that the findings of the court below concurrently recorded are in accordance with law and do not call for interference in this appeal; that the appeal herein have no merits and is liable to be rejected.

5. We have heard the appellant as well as the counsel for the respondent and considered their rival submissions.

6. The perusal of the entire facts and circumstances of the present case shows that the abovementioned grounds do not furnish a legal cause of action. The appellant cannot seek relief on the stated grounds merely on the basis of the general facts pleaded in the writ petition as well as in the appeal. The record shows that the averments made by the appellant do not disclose any cause of action as the averments made in the petition are vague and vexatious as they have not been filed at the relevant time in a court of law.

7. Even if the contentions raised by the appellant are accepted, it is seen in the present case that the appellant has submitted that the written

examination for promotion to the post of MM-III was conducted by the bank on 20.08.2006, 17.02.2008, 29.06.2008 and 28.06.2009 and forged

marksheets were issued to him by the official of the bank. He further submits that the fact of the forged marksheet surfaced in the year 2012 when

the appellant had filed RTI for obtaining the answer sheets. He submits that the minor punishment was imposed upon him by the bank officials under

disciplinary proceedings for which a charge was created on 27.01.2010, for an old event which took place on 13.03.2007. He submits that the

interview for promotion to the post of MM-III was held on 12.09.2012, 23.06.2014 and 19.09.2014, which was conducted in a perfunctory manner and

he was also marked absent by the officials of the bank even when he was present for the interview. Therefore, he is entitled to the benefit of Section

22 of the Limitation Act, 1963.

8. As far as the contention of the appellant that the case is governed by Section 22 of the Limitation Act is concerned, we are of the view that every

alleged act, if any, of fabrication of mark sheet, non-maintenance of annual appraisal reports and seniority list; and irregularities in holding interview

give rise to a separate cause of action. Section 22, Limitation Act is not attracted to the facts of the present case. Section 22 of the Limitation

Act, 1963 states that—“In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at

every moment of the time during which the breach or the tort, as the case may be, continues.” In the factual matrix of the present case as well as

the explanation rendered by the appellant shows a situation of successive or multiple breaches, rather than of a continuous breach as each alleged act

of the respondent constituted an act that was distinct and complete in itself and gave rise to a separate cause of action occurring at different occasions. The acts alleged by the appellant do not constitute continuous cause of action rather it was based on a series of alleged successive breaches. The petition was required to be instituted within three years of the happening of each breach, which would constitute a distinct cause of action.

9. In the case in hand, it is observed that the appellant is claiming promotion from 2006 and the writ petition was filed in the year 2017 i.e. after a gap of 11 years. Delay or laches in filing the petition is one of the factors, which is to be borne in mind by the Courts when it exercise their discretionary powers. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or an omission on the part of the appellant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. In the case of *State of M.P. v. Nandlal* reported at [1987]1SCR1, it was held that:-

“The High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.”

In the case of *State of Orissa & Anr v. Mamata Mohanty* reported at (2011) 3 SCC 436, it was held as under:-

“32. 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 appellate stage because in some of the cases it may go to the root of the matter.

33. Needless to say that 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.

34. 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.â??

10. In view of the above settled law, it is observed that there is no infirmity in the order passed by the learned Single Judge and the question of the writ petition being time barred has been discussed in detail in the impugned order. Even otherwise, mere vague allegations of corrupt practice without disclosing the material facts and particulars in respect thereof do not constitute a cause of action. The appellant has made a bald allegations, as rightly observed by the court below, unsupported by any evidence.

11. Keeping in mind the aforesaid facts, this court finds that there is no merit in the appeal. The appeal, therefore, stands dismissed.

12. Ordered accordingly.