

(2017) 04 DEL CK 0054

In the Delhi High Court

Case No : 3088 of 2017

JITENDRA KUMAR PANDEY

APPELLANT

Vs

THE CHIEF GENERAL MANAGER, STATE BANK OF INDIA

RESPONDENT

Date of Decision : 11-04-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : (2017) 04 DEL CK 0054

Hon'ble Judges : Valmiki J.Mehta

Bench : SINGLE BENCH

Advocate : Nishant Katariya

Judgement

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the relief of promotion from 2006. Petitioner also seeks compensation and costs incurred by him for his alleged harassment and for filing of the present writ petition.

2. The writ petition is filed by the petitioner in person and it is seen that the writ petition is not happily drafted. In fact, the writ petition does not contain the necessary averments required of cause of actions for grant of promotions.

3. A reading of the writ petition shows that there are basically the following heads urged in the writ petition for questioning the denial of promotion to the petitioner to MM-III:- (i) Petitioner being given forged mark sheet in the written examination conducted. (ii) Only minor punishments were given in disciplinary proceedings but these were given on whims and fancies and bias of the authorities with the fact that principles of natural justice were not followed. Punishments are therefore pleaded to be illegal. (iii) When interviews were held of petitioner for promotion to MM-III either the petitioner was wrongly marked absent or when he was present the Board Members did not take the petitioner seriously and wasted time in the interview. (iv) No annual appraisal reports are being drawn up, no seniority list is maintained or minor punishments when

imposed were not informed to the petitioner.

4. So far as the first aspect of written examination resulting in forged mark sheet against the petitioner, such a ground does not furnish a legal cause of action on the bare bone averments of the writ petition. Such bare bone self serving averments cannot amount to a cause of action in law. In order to appreciate that the ground of alleged forged mark sheet is not a complete cause of action as required by law, the said relevant para of the writ petition is reproduced as under:- "2. That the facts of the present application are set out as under:-

A. Written examinations:- As per extant rule of the bank, written examination was conducted for his promotion to MM-III in 2006 with roll number 18817007 on 20.08.2006. A forged mark sheet was issued to him without giving his roll number for his examination. Again, "written exams were conducted for his promotion with roll number 18797261 on 17.02.2008, with roll number 18797237 on 29.06.2008 and with roll number 18797209 on 28.06.2009. The petitioner appeared in all these exams in these years. This time, they did not deem necessary to advise his mark sheet in one examination and in other two exams advised marks, but genuiness of them are doubtful. As after much wait, when petitioner asked the result in RTI. The designated officials of the bank generated forged mark sheet even without finding his answer sheet. Matter came to light only when petitioner asked for production of his answer sheet in RTI. Then, he submitted grievance letter to higher authorities for production of his answer sheets for all these exams. No action was taken by them. Matter was reminded to the higher authorities by him on many occasions. No action was taken by them. A copy of mark sheet, RTI application and its reply, new mark sheet of the petitioner, grievance letter for showing him answer sheets and their reminders are enclosed herewith and are marked as Annexure No.1."

5. Hence, the petitioner cannot seek promotion on the basis of the facts which are pleaded as per para 2A of the writ petition and petitioner cannot be allowed to challenge his examinations conducted from 2006, that too in the year 2017, and which aspect of delay/limitation is dealt with in detail subsequently in this judgment.

6. The second ground urged by the petitioner is with respect to minor punishments against the petitioner being illegal, however, even this ground cannot be taken as a legal cause of action because with respect to each disciplinary proceedings punishment the petitioner had to challenge such punishments imposed at the relevant time in a court of law, and since petitioner has never challenged punishments imposed upon him by filing appropriate judicial proceedings, by an omnibus para 2B of the writ petition, and which is reproduced below, the petitioner cannot be allowed by this writ petition to question the punishments which have been imposed upon the petitioner. Bland averments of illegalities or bias or violation of natural justice or baseless charges as regards the four minor punishments imposed upon the petitioner cannot amount to a legal cause of action for the petitioner to question the punishments

imposed. Para 2B of the writ petition which fails to lay out any legal cause of action for questioning the punishments imposed by the disciplinary authorities, reads as under:- "2B. Minor Punishments:- Officials of the bank did not stop only harming him in this way. They emboldened and moved one step more. Bank have a rule of waiving of domestic enquiry inflicting minor punishment for speedier disposal of disciplinary cases and to lessen the mental agony of the officials. A copy of extracts is enclosed herewith and is marked as annexure number 2A. Disciplinary authority acted against the spirit of this rule and instead fully utilised this lacuna to harm the petitioner most and inflicted volley of "censure" punishments. All charges were invented in cabin of disciplinary authority and then planted and without any verification of facts punishment was inflicted. In one minor punishment dated 27.01.2010 charge was created for 3 years old event dated 13.03.2007. The charge sheet was issued in 2009 after lapse of one year, punishment was inflicted on 27.01.2010. During 3 years disciplinary authority kept sleeping over the matter. One fine morning, the disciplinary authority without coming out of his cabin inflicted the punishment. During intervening period no effort was made to ascertain the truth and verification of facts despite many reminders from petitioner. A copy of the charge sheet, its reply, request letter of petitioner for enquiry and punishment order was enclosed herewith and are marked as annexure number 2B. In other minor punishment orders namely order Numbers a. DZO/DPC/P&C/12- 13/206 dated 26.10.2012, b. DZO/DPC/P&C/12-13/352 dated 13.3.2013 and c. VIG/ARO/1516 dated 28.10.2016, no clear charges were invented and unclear charge sheets were issued and then inflicted with punishment. A copy of charge sheets, its reply, punishment orders are enclosed herewith and are marked as annexure number 2C&2D & 2E respectively. Petitioner made statutory appeal to appellate authority for enquiry and verification of facts and revocation of charges. Appellate authority did not apply his mind independently and impartially. He just stamped the punishment in one appeal and in other appeal he kept silence and did not reply. A copy of appeal and its reply are enclosed herewith and are marked as annexure number 2F. All speaking orders for minor punishments were given as per whims, fancy and bias. Basic principles of natural justice were not followed. All minor punishments were given in cooked, unclear and baseless charges. Therefore, they are illegal. Thus, disciplinary authority inflicted four minor punishments to permanently block his promotion."

7. The third ground urged by the petitioner is of interviews of his promotion to MM-III being defective, and all that is stated in this writ petition in this regard is that interviews were conducted in a perfunctory manner and just for the sake of interviews and which interviews therefore suffer from vice of prejudice. Once again these bland averments cannot be the factual and legal averments required to question a selection and interview process of promotion. In order to appreciate that the relevant paragraph of the writ petition questioning the promotion/selection/interview process does not make out any legal cause of action, the said para 2C is reproduced as under:- "2C. Interviews for promotion

to MM-III:- After objections, he was called for interview in 2012 on 12.09.2012. Interview was held just for name sake for the sake of doing it. After interview, they advised that his result is kept in sealed cover. No out come has been advised to the petitioner till today. What procedure and methods were adopted in ascertaining truth and suitability was not advised to the petitioner. Again, he was called for interview on 23.06.2014. This time, they moved one step ahead and marked him absent for this date of interview despite him being present in the interview. Again, he objected. Again, officials of the bank called for interview on 19.09.2014. This time, they were afraid of his mobile and kept themselves busy in keeping his mobile out of board room. They kept talking of mobile, as if, bank have started selling mobiles. They wasted whole time. They did the interview in perfunctory manner and just for the sake of doing it. This all interviews suffer from vice of prejudice not to give promotion at any cost. Letter informing sealed cover, letter for attending interview and marking of absence for this date, subsequent change in it to deputation are marked as annexure no.3."

8. Therefore petitioner again has no cause of action to question denial of his promotion allegedly on the ground of interviews not being validly conducted.

9. General averments in the writ petition of annual appraisal report not being maintained or seniority list not being maintained are wholly vague averments which are neither here nor there and therefore cannot be allowed to be a legal basis for the petitioner for seeking grant of the relief of promotion, and that too from the year 2006.

10. In fact the writ petition on most of the factual averments pleaded is liable to be dismissed on account of doctrine of delay and laches, inasmuch as, petitioner claims promotion from 2006 or those punishments imposed by the disciplinary authorities before three years of filing of the writ petition, and which challenges are time barred/barred by limitation. Though the Limitation Act, 1963 strictly does not apply to writ petitions but the principles of the Limitation Act do apply, and this has been so held by the Supreme Court in the case of *State of Orissa & Another Vs. Mamata Mohanty*, (2011) 3 SCC 436 . I have referred to the judgment of *Mamta Mohanty* (supra) in the bunch of cases with lead case being *W.P. (C) No. 7792/2015* titled as *Ms. Preeti Sharma Vs. Ganga International School & Ors.* decided on 19.1.2017 and the relevant paras of the judgment in *Ms. Preeti Sharma's* case (supra) are paras 6 to 8 and which read as under:- "6. That Limitation Act does not strictly apply to writ petitions, but principles of Limitation Act do apply by application of doctrine of delay and laches in a writ petition is no longer *res integra* and has been so held by the Supreme Court in the case of *State of Orissa and Another Vs. Mamata Mohanty*, (2011) 3 SCC 436 . Paras 52 to 54 of the judgment in the case of *Mamata Mohanty* (supra) are relevant and these paras read as under:-

"52. 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.

53. 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.

54. 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."

7. The reasoning of the case of Mamata Mohanty (supra) is that if a suit to claim the same relief is time barred and has to be dismissed, then at that stage a writ petition cannot be filed and the limitation period provided by the Limitation Act be circumvented. Under Article 226 of the Constitution of India orders are passed for the purposes of applying the laws of this country and not defeating the laws of this country including the Limitation Act. If limitation period is held not at all to apply to writ petitions as such, then a suit which is time barred will be filed as a writ petition for being entertained. Also, doctrine of delay and laches in their application to a writ petition are considered in a liberal manner, however, such doctrine of delay and laches is considered on principles equivalent as contained either in Section 14 of the Limitation Act or similar to acknowledgments of liability under Sections 18 and 19 of the Limitation Act i.e there is a ground for extension of limitation period beyond the period provided under the schedule of the Limitation Act.

8. Also, the issue of extension of limitation will arise provided a cause of action arises i.e if a representation is filed by an employee and pending for favorable consideration before an employer in terms of a letter of the employer, then till an actual refusal a cause of action would not arise for an employee to approach the Court, and in which case, since limitation does not accrue till actual refusal, then in such circumstances, the issue of delay and laches is considered liberally in

favour of the petitioner/employee. With this position of law let us turn to the facts of the present case."

(underlining added)

11. In view of the aforesaid discussion, the writ petition is completely misconceived. The writ petition does not lay out any legal causes of action. Petitioner hence cannot be granted the reliefs of promotion or compensation/costs. In fact the writ petition with respect to most of the reliefs claimed of denial of promotion or challenge to disciplinary punishment is filed after the prescribed periods of limitations and hence the writ petition is liable to be dismissed by applying the doctrine of delay and laches.

12. The writ petition is accordingly dismissed, leaving the parties to bear their own costs.