
(2017) 09 CAL CK 0023
In the Calcutta High Court
Case No : 307of 2017

Keshaw Prasad

APPELLANT

Vs

State of West Bengal & ORS

RESPONDENT

Date of Decision : 08-09-2017

Acts Referred:

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

Citation : (2017) 09 CAL CK 0023

Hon'ble Judges : Arijit Banerjee

Bench : SINGLE BENCH

Advocate : Anjan Bhattacharya, Sirsanya Bandyopadhyay

Judgement

1. The petitioner claims approval of his appointment in a D.A.getting School being AdaRs.Hindi High School, Bhowanipur, Kolkata. Learned Counsel for the petitioner contended that he was appointed as an unapproved teacher on 3 March, 1979 in a permanent post which was then vacant. Learned Counsel drew my attention to a resolution of the ad hoc Committee of the School taken at a meeting held on 20 May, 2006 whereby, inter alia, the School authorities unanimously resolved to forward the necessary papers in connection with the approval of the services of eight teachers of the School including the petitioner to the District Inspector of Schools (PE) Kolkata, being the respondent No.3, for approval.

He submitted that such papers were duly forwarded to the respondent No.3.

2. Since there was no response from the respondent No.3, the petitioner approached this Court by filing WP912of 2007 which was disposed of by a learned Single Judge of this Court by an order dated 25 July, 2007 directing the respondent No.3 to take a reasoned decision in the matter. Pursuant to such order, the respondent No.3 held a meeting which was attended by the petitioner and the Secretary of the said School.

Subsequently, the respondent No.3 issued a memo dated 14 December, 2007 which is under challenge in the present writ application.

3. Mr.Bhattacharya, Learned Counsel for the petitioner submitted that in the said memo, the respondent No.3 has recorded certain findings but at the end of the memo he has stated as follows:As the District Inspector of Schools (PE) has no authority to approve the appointment of the petitioner, the undersigned cannot take any decision in the matter. The matter is, thus, disposed of. Learned Counsel submitted that the earlier order of this Court was passed in the presence of learned Counsel for the respondent No.3 and if the respondent No.3 had no authority to take a decision in the matter, submission to that effect should have been made to the Court.

The hearing held by the respondent no.3 was an exercise in futility since at the end of the impugned memo he recorded that he has no authority to take any decision in the matter.

Learned Counsel submitted that the matter should be referred to the Commissioner of School Education, Government of West Bengal for decision.

4. Mr.Bandopadhyay, learned Junior Standing Counsel representing the State respondents including the respondent No.3 resisted the petitioners prayer only on the ground of delay in filing the writ petition. He submitted that the impugned memo is of the year 2007.

The petitioner has approached this Court after about 10 years.The Writ Court is a Court of equity and delay defeats equity.

He submitted that this highly belated writ application should be dismissed in limine.

In this connection, Mr.Bandopadhyay relied on a decision of the Honble Apex Court in the case of Municipal Council, Ahmednagar-vs.Shah Hyder Beig, (2000) 2 SCC 48 Learned Counsel relied on paragraph 14 of the reported judgment which reads as follows:14.

The High Court has thus misplaced the factual details and misread the same.

It is now a wellsettled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period, the party is required for filing a civil proceeding ought to be the guiding factor.

While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction, has been conferred on to the law courts under Article 226 of the Constitution on a very sound equitable principle, Hence, the equitable doctrine, namely, "delay defeats equity" has its fullest application in the matter of grant of relief under Article 226 of the Constitution.

The discretionary relief can be had provided one has not by his act or conduct given a go-bye to his rights.

Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise.

The High Court as a matter of fact lost sight of the fact that since the year 1952, the land was specifically reserved for public purposes of school playground and roads in the development plan and by reason thereof, the notification to acquire the land has, therefore, been issued under the provisions of the Act as stated above.

5. Learned Counsel also relied on a decision of the Honble Apex Court in the case of Ashok Kumar-vs.-District Magistrate, Basti (2012) 3 SCC311 and in particular he referred to paragraph 10 thereof which reads as follows:10. The Division Bench of the High Court has also dismissed the appeal filed by the appellant on the ground of delay and laches.

It is, time and again, stated that a party who has slept over his rights is not entitled to the discretionary relief of the High Court.

In the instant case, it is the case of the appellant that his mother was suffering from illness and, therefore, he could not file the appeal within statutory period of limitation against the judgment and order passed by the Writ Court.

But, in support of that contention, the appellant had not produced any documentary evidence, such as the medical certificate issued by a competent doctor.

In the absence of such an evidence, in our opinion, the High Court was justified in rejecting the appeal on the ground of delay and laches also.

6. Learned Counsel submitted that although the petitioner has tried to explain the delay by pleading financial difficulty in approaching the Court, no evidence in support of such pleadings have been disclosed with the writ petition. Hence, the petitioners explanation is not acceptable.

7. In reply, Mr.Bhattacharya, relied on a Division Bench decision of this Court in the case of Anup Kumar Kundu-vs.-Registrar of Cooperative Societies, West Bengal, (2008) 1 CHN140and in particular on paragraph 21 of the reported judgment which reads as follows:21. There is no period of limitation fixed for entertaining a writ application but on the ground of delay or laches, the Court may refuse to entertain a writ application if the delay is of such nature that it would be unfair to entertain the writ application. If the Court finds that because for the inaction of the writ petitioner, somebody has altered his position and if the writ application is allowed, the same would cause prejudice to such person for the laches of the writ petitioner, the Court should summarily dismiss such

application.

In the case before us, although the respondent No.2 selected the private respondent No.7 in spite of having no eligible qualification, it appears that the respondent No.3 had not issued any appointment letter to her nor did she of her own file any writ application for a direction upon the bank to give appointment.

It is, therefore, not even a case where the private respondent had joined the service of bank by altering her position.

The direction given by the learned Single Judge in this writ application upon the respondent No.3 to give her appointment has already been set aside in the appeal filed by the bank against the self-same order.

Therefore, there is no ground of dismissing the writ application filed by the appellant on the ground of his delay or laches. Courts View:

8. I have considered the rival contentions of the parties. questions arise. Two Firstly, whether or not on merits the petitioner deserves an order. Secondly, whether or not the writ petition should be dismissed in limine because of the delay on the part of the petitioner in approaching this Court.

9. I have no doubt in my mind that on merits the order impugned is liable to be set aside. By the earlier order this Court had directed the respondent no.3 to take a reasoned decision regarding the petitioners claim.

The respondent No.3 in the impugned order discussed the petitioners claim but at the end of the order held that he had no authority to approve the appointment of the petitioner and hence, he cannot take any decision in the matter.

Thus, the petitioners claim was not decided one way or the other which was what the respondent No.3 had been directed to do.

Hence, surely the petitioner deserves an opportunity of having his claim decided by a competent authority.

10. As regards the question of delay, there is no doubt that ordinarily the Writ Court, which is a Court of equity, will not entertain a belated writ petition unless the delay has been explained to the satisfaction of the Court. This is, however, not an inflexible Rule of Law.

There are primarily three reasons for not entertaining a writ petition which has been filed after inordinate delay.

Firstly, delay defeats equity.

The Courts help those who are vigilant and diligent and do not sleep over their rights. The provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226 of the Constitution (See State of Madhya Pradesh & Anr.-vs.-Bhailal Bhai & ORS.AIR1964SC1006.

Ordinarily, the maximum period fixed by the legislature as the time within which a civil suit must be filed, may be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured.

However, this is not an invariable rule. Strictly speaking, there is no time limit for filing a writ petition. All that the Court has to see is whether the laches on the part of the petitioner are such as to disentitle him to the relief that he claims (See *State of U.P. & Ors. vs. Raj Bahadur Singh & Anr.* (1998) 8 SCC 685).

The rule which says that the Court may not enquire into belated and stale claims is not a Rule of Law but a Rule of practice based on sound and proper exercise of discretion and there is no rigid Rule that whenever there is delay the Court must necessarily refuse to entertain a writ petition.

Each case must depend on its facts.

(See *Ramchandra Shankar Deodhar & Ors. vs. The State of Maharashtra & Ors.*, AIR 1974 SC 259).

By way of an example one may refer to the case of *G.P. Doval vs. Chief Secy. Government of U.P.*, AIR 1984 SC 1527 where the Honble Apex Court refused to reject a petition on the ground of delay where the petition was filed challenging the seniority list 12 years after it was published and when the Department neither finalized the list nor gave reply to the representations made against it.

11. The second reason why the Court may not entertain a belated writ petition is emergence of third party rights. If the petitioner does not approach the Court within a reasonable period from the date when his cause of action arose and if third party rights arise by the time he approaches Court belatedly, the Court would normally refuse to grant relief to the petitioner if the same would interfere with third party rights.

12. The third reason why the Court may reject a belated writ petition is that because of the passage of time the respondents might have lost the evidence to disprove a stale claim. In such a case, entertaining the writ petition would cause injustice to the respondents and would amount to putting a premium on dilatory tactics.

13. In the present case, the second and third reasons do not apply. The respondents or anybody else shall not be prejudiced in any manner if I direct a competent authority to consider the petitioners case and decide the same one way or the other.

Such an order will not confer any substantive benefit on the petitioner except giving him an opportunity of obtaining relief if he is entitled to such relief in law and in the facts of the case.

In paragraph 10 of the writ petition the petitioner has stated that as an unapproved teacher his salary was Rs.5,000/-.

With such paltry amount the petitioner had to maintain a family of six members and due to financial stringency he could not approach this Court before.

This statement in is uncontroverted as no affidavit in opposition has been filed by the respondents.

If I take this statement to be true as I should, then, financial difficulty may well have been the reason why the petitioner could not approach this Court earlier.

I am inclined to give the petitioner the benefit of doubt as the same will not prejudice the respondents in any manner.

14. I am not unmindful of the practice that the discretionary power under Art. 226 of the Constitution is ordinarily not exercised to assist the tardy and indolent or the lethargic. However, there are cases where despite delay the High Court has exercised its discretion to grant relief to the petitioner.

There are cases where the demand of justice was so compelling that the High Court was inclined to interfere in spite of delay or even creation of third party rights.

I am of the opinion that the facts of this case warrant that an order should be passed as prayed for by the petitioner.

After all, he is entitled to have his claim decided one way or the other.

15. In view of the aforesaid, this writ petition succeeds to the extent that the order impugned is set aside and the petitioners case is referred to the respondent No.2 for fresh adjudication in accordance with law and the applicable rules/regulations/circulars/notifications. The petitioner shall make a fresh representation supported by relevant documents to the respondent No.2 within a period of a fortnight from date.

The respondent No.2 shall take a reasoned decision on such representation within a period of 8 weeks from the date of receipt of the representation in accordance with the applicable rules/regulations/circulars/notifications after giving an opportunity of hearing to the petitioner or his authorised representative.

The decision so taken by the respondent No.2 shall be communicated to the petitioner within 2 weeks from the date of the decision.

The respondent No.2 shall decide the matter uninfluenced by any observation made in this judgment and order since I have not considered the merits of the petitioners claim.

16. WP No.307 of 2017 is accordingly disposed of, without, however, any order as to costs.

17. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance with necessary formalities.