
(2015) 05 DEL CK 0165

In the Delhi High Court

Case No : Writ Petition (C) No. 5147 of 2015

Kishan Mal Mohnot (Since Deceased)

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 3

Citation : (2015) 05 DEL CK 0165

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : R. Sathish and Mohand Das K.K., for the Appellant; Dev P. Bhardwaj, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J.—This writ petition is filed under Article 226 of the Constitution of India by one Dr. J.K. Mohnot, son of the deceased Sh. Kishan Mal Mohnot. Deceased Sh. Kishan Mal Mohnot was an employee of the Bank of Rajasthan Limited. The deceased employee Sh. Kishan Mal Mohonot retired from the services of the Bank of Rajasthan Limited way back on 31.7.1990. The issue in this writ petition filed in the year 2015 is the claim with respect to denial of pension option to the deceased employee Sh. Kishan Mal Mohnot.

2. Petitioner by this writ petition impugns the decision of the respondent No. 3/ICICI Bank Ltd. dated 13.6.2013 by which the respondent No. 3/Bank has rejected the request of the petitioner which contended that late Sh. Kishan Mal Mohnot was entitled to a pension option and that he should not have been paid the provident fund. It be noted that the respondent No. 3/ICICI Bank Ltd. is the successor entity of the Bank of Rajasthan Limited, as the Bank of Rajasthan Limited has been amalgamated with the respondent No. 3/Bank.

3. In my opinion, the writ petition is clearly barred by the doctrine of delay and laches and the principle of limitation and which principle has been enunciated by

the Supreme Court recently in the judgment in the case of State of Orissa and Another Vs. Mamata Mohanty, (2011) 112 CLT 46 : (2011) 2 SCALE 377 : (2011) 3 SCC 436 : (2011) 2 SCC(L&S) 83 : (2011) 2 SCR 704 : (2011) AIRSCW 1992 : (2011) AIRSCW 1332 , the relevant paragraphs of this judgment are para Nos. 52 to 54 and which read as under:--

"Delay/Laches

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. (See Lachhmi Sewak Sahu v. Ram Rup Sahu: AIR 1994 PC 24 and Kamlesh Babu and Others Vs. Lajpat Rai Sharma and Others, (2008) 4 JT 652 : (2008) 151 PLR 455 : (2008) 6 SCALE 403 : (2008) 12 SCC 577 .)

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. (See Rup Diamonds and Others Vs. Union of India and Others, AIR 1989 SC 674 : (1989) 20 ECC 15 : (1989) 40 ELT 226 : (1989) 1 JT 7 : (1989) 2 SCALE 356 : (1989) 1 SCALE 1 : (1989) 2 SCC 356 : (1989) 1 SCR 13 : (1989) 1 UJ 306 , State of Karnataka and Others Vs. S.M. Kotrayya and Others, (1996) 8 AD 5 : (1997) 1 LLJ 640 : (1996) 7 SCALE 179 : (1996) 6 SCC 267 : (1996) 5 SCR 426 Supp and Jagdish Lal and others Vs. State of Haryana and others, AIR 1997 SC 2366 : (1997) 5 JT 387 : (1997) 4 SCALE 202 : (1997) 6 SCC 538 : (1997) SCC(L&S) 1550 : (1997) AIRSCW 2257 : (1997) 5 Supreme 1 .)"

(underlining added)

4. This writ petition is filed in the year 2015 when the deceased employee Sh. Kishan Mal Mohnot retired 25 years back on 31.7.1990. If late Sh. Kishan Mal Mohnot was wrongly not given the pension, then, late Sh. Kishan Mal Mohnot had to challenge that decision of denial of pension on the ground that he had exercised option but was not given the option. I note that the petitioner in the writ petition itself states that representation was made with respect to what as per the petitioner was illegal denial of pension way back in the year 1998 and a specific order was passed on 17.7.1998 rejecting the claim of late Sh. Kishan Mal Mohnot for grant of pension.

5. Not only the order was passed on 17.7.1998, another representation filed by the petitioner's father on 31.7.1998 was again specifically rejected way back on 9.6.1999. Clearly, therefore, once a specific prayer is made, a specific contention raised, and that specific contention rejected by two specific orders of the years 1998 and 1999 those orders have to be very much challenged within the period of limitation in view of the observations of the Supreme Court in the case of Mamata Mohanty (*supra*). The claim for alleged medical expense incurred in the year 1995 of Rs. 40,000/- is also to be rejected for the same reason of limitation.

6. Merely because the petitioner chooses again in the year 2010 to make a fresh representation does not mean that by making a fresh representation fresh period of limitation would arise. Also, the petitioner claims through his late father Sh. Krishan Lal Mohnot, and once the claim of the late father Sh. Krishan Lal Mohnot stood rejected, no legal heir of Sh. Krishan Lal Mohnot; including the petitioner; would get a fresh independent right.

7. The argument urged on behalf of the petitioner that late Sh. Kishan Mal Mohnot suffered medical disability of paralytic attack and brain hemorrhage on 12.5.1993, and therefore, petitioner was entitled to question the decision of the years 1998 and 1999 by the representation in the year 2010 is misconceived because if petitioner's father suffered from medical disability stated above on 12.5.1993, the representation then made thereafter, and which was rejected by the orders of the years 1998 and 1999, would have been by the legal heirs of late Sh. Kishan Mal Mohnot, petitioner being one such legal heir, and therefore it is not permissible for the petitioner today in the year 2015 to question the rejection of pension option done by means of orders of the bank way back in the years 1998 and 1999.

8. I may note that counsel for the petitioner did seek to passionately argue that even the provident fund was given about five years after retirement of late Sh. Kishan Mal Mohnot in the year 1990, and that the provident fund amount was paid in the year 1995, but even if that be so that there is a delayed payment of provident fund, the same would not mean that only on that account there would be an automatic entitlement of pension, inasmuch as, at best the entitlement would only have been, that too within three years of limitation of the year 1995, to claim interest on the delayed payment of provident fund.

9. Reliance placed by the counsel for the petitioner on the judgment of the Bombay High Court in the case of Kayoji Sorabji Mirza v. The Union Bank of India and Ors. dated 12.6.2013 in W.P.(C) No. 1020/2012 will not help the petitioner as the judgment is distinguishable on facts and also because of the categorical observations of the Supreme Court in the judgment in the case of Mamata Mohanty (supra) and the different facts of the present case stated above with respect to retirement of late Sh. Kishan Mal Mohnot in the year 1990, earlier representations being rejected way back in the years 1998 and 1999 and also payment of provident fund to the account of late Sh. Kishan Mal Mohnot in the year 1995.

10. Dismissed.