
(2012) 04 AHC CK 0111
In the Allahabad High Court
Case No : Writ Petition No. 1509 (SS) of 2012

Kumari Iffat Aara and Others

APPELLANT

Vs

State Of U.P. and Others

RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Constitution of India, 1950 — Article 13(2), 16, 226, 32
Limitation Act, 1963 — Section 21(1), 21(2)

Citation : (2012) 04 AHC CK 0111

Hon'ble Judges : Ritu Raj Awasthi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Ritu Raj Awasthi, J.—Heard Mr. Umesh Chandra Pandey, learned counsel for petitioners as well as learned Standing Counsel and perused the record. A preliminary objection has been raised by learned Standing Counsel regarding maintainability of the writ petition on the ground that the petitioners are aggrieved by order dated 12.10.2000, they had not approached the Court earlier. Now, they want the benefit of judgment and order dated 09.03.2010 passed in Writ Petition No. 10448 of 2001 (Awadhesh Kumar Vs. Status of U.P. and Others), which cannot be granted at this stage. The writ petition is liable to be dismissed on the ground of undue delay and laches.

2. The relevant facts giving rise to the writ petition are that in pursuance of the Government Order dated 11.10.1999 and Government Order dated 13.6.2000, selection for appointment on the post of Subject Specialist was held under the Chairmanship of Additional Director of Education for Lucknow, Agra, Bareilly, Meerut and Morabad Divisions. The last date for submitting applications was 25th April, 2000. The petitioners had applied for the said post and after recommendation of selection committee and interview, etc, final select list was prepared. Total 262 persons including the petitioners were issued appointment letter out of which 65 persons were selected as Lecturer and 197 persons were

selected as LT Grade Teachers. The petitioners in pursuance of the appointment letter had submitted their joining at various divisions in the year 2000. It was by the impugned order dated 12.10.2000 that the Joint Director of Education, 6th Division, Lucknow in pursuance of Government's DO letter dated 12.10.2000 had issued directions that the entire proceedings with respect to appointment of Subject Specialist shall be suspended with immediate effect and in case appointment letters have been issued, candidates shall not be allowed to join and in case they have joined, they shall not be allowed to work and no payment shall be made.

3. Challenging the said decision of the State Government cancelling entire selection for the post of Subject Specialist, certain writ petitions including Writ Petition No. 10448 of 2001 (Awadhesh Kumar Vs. State of U.P. and Others) were filed before this Court at Allahabad as well as at Lucknow. The Writ Petition No. 10448 of 2001 was allowed by judgment and order dated 09.03.2010 directing the State Government to constitute a scrutiny committee to examine the case of each of candidate separately on its merit and thereafter take appropriate action as may be warranted under law.

4. Learned counsel for petitioners submits that although no information about the decision taken by the scrutiny committee constituted in compliance of the judgment dated 09.03.2010 was communicated to the petitioners but it was only in the contempt petition filed by Sri Awadhesh Kumar that the report of scrutiny committee was brought on record in which the case of petitioners was found to be correct. Sri Awadhesh Kumar has been permitted to join on the post of Subject Specialist, however, the petitioners have not been issued appointment letters. They have made representations, which are pending consideration.

5. Contention of learned counsel for petitioners is that the petitioners are similarly situated as Sri Awadhesh Kumar. Their cases have been found to be correct as such they are entitled to be given appointment as Subject Specialist.

6. In order to meet out the preliminary objection raised by learned Standing Counsel, it is submitted by learned counsel for petitioners that the decision of the State Government to cancel the mass selection has been held to be bad in the eyes of law by the Court in its judgment and order dated 09.03.2010 and in compliance of the said judgment, the scrutiny committee has examined the case of each of the candidates separately and has found the cases of the petitioners as correct and as such they are now entitle to be given appointment on the post of Subject Specialist.

7. It is also submitted that the judgment and order dated 09.03.2010 is a judgment in-rem and as such the petitioners are entitled to get the benefit of the said judgment.

8. Mr. Umesh Chandra Pandey, learned counsel for petitioners further submitted that there is no period of limitation prescribed for exercise of powers conferred under Article 226 of the Constitution of India. It is the discretion of the Court to

consider the grievance of the petitioner and grant appropriate relief at any stage. In support of his submission, he has placed reliance upon the decision of the Apex Court in the case of Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, .

9. Learned counsel for the petitioners also submitted that the Apex Court in a number of cases has entertained the petitions, even under Article 32 of the Constitution, after considerable delay. While entertaining the petitions, the Court has to see whether the right accrued to others by reasons of delay in filing the petition is not to allow to be disturbed, unless there is reasonable explanation of the delay.

10. Learned counsel for the petitioners in this regard has relied on para 10 of the judgment of the Apex Court in the case of Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, .

11. I have considered the submissions made by the parties' counsel.

12. The first question for consideration before this Court is as to whether the writ petition challenging the order dated 12.10.2000 is to be entertained or whether the writ petition is liable to be dismissed on the ground of undue delay and laches.

13. It is accepted position that the petitioners were aggrieved by the decision of the State Government dated 12.10.2000 cancelling the entire selection held for the post of Subject Specialist in which the petitioners stood selected. The opposite party no. 3-Joint Director of Education, 6th Division, Lucknow by letter dated 12.10.2000 had communicated the said decision to the concerning institutions and the petitioners were restrained from performing their work on the post in question.

14. It is also admitted by learned counsel for petitioners that the petitioners had not approached this Court earlier challenging the aforesaid decision of the State Government or claiming any other relief relating to their appointments on the post of Subject Specialist. It is only after the decision of this Court in the case of Sri Awadhesh Kumar (supra) that the petitioners have approached the Court challenging the order dated 12.10.2000, copy of which is annexed as Annexure No. 8 to the writ petition, and seeking a direction for their appointments on the post of Assistant Teacher/Subject Specialist in the similar way as has been done in the case of Sri Awadhesh Kumar (supra).

15. In the case of M/s. Tilokchand and Motichand (supra), the Apex Court has considered the question of delay and laches in seeking constitutional remedies. It has been observed that it is trite learning to refer to the maxim "delay defeats equity" or the Latin of it that the Courts help those who are vigilant and do not slumber over their rights. In India we have the Limitation Act which prescribes different periods of limitation for suits, petitions or applications. There are also residuary articles which prescribe limitation in those cases where no express

period is provided. If it were a matter of a suit or application, either an appropriate article or the residuary article would have applied. But a petition under Article 32 is not a suit and it is also not a petition or an application to which the Limitation Act applies. The party aggrieved must move the Court at the earliest possible time and explain satisfactorily all semblance of delay. Entertainement of petition with delay is a question of one of discretion of this Court to follow from case to case. There is no lower limit and there is no upper limit.

16. The relevant paragraphs 9, 10 & 11 is reproduced as under:

9. In India we have the Limitation Act which prescribes different periods of limitation for suits, petitions or applications. There are also residuary articles which prescribe limitation in those cases where no express period is provided. If it were a matter of a suit or application, either an appropriate article or the residuary article would have applied. But a petition under Art. 32 is not a suit and it is also not a petition or an application to which the Limitation Act applies. To put curbs in the way of enforcement of Fundamental Rights through legislative action might well be questioned under Art. 13 (2). The reason is also quite clear. If a short period of limitation were prescribed the Fundamental Right might well be frustrated. Prescribing too long a period might enable stale claims to be made to the detriment of other rights which might emerge.

10. If then there is no period prescribed what is the standard for this Court to follow? I should say that utmost expedition is the sine qua non for such claims. The party aggrieved must move the Court at the earliest possible time and explain satisfactorily all semblance of delay. I am not indicating any period which may be regarded as the ultimate limit of action for that would be taking upon myself legislative functions. In England a period of 6 months has been provided statutorily, but that could be because there is no guaranteed remedy and the matter is one entirely of discretion. In India I will only say that each case will have to be considered on its own facts. Where there is appearance of avoidable delay and this delay affects the merits of the claim, this Court will consider it and in a proper case hold the party disentitled to invoke the extraordinary jurisdiction.

11. Therefore, the question is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit. A case may be brought within Limitation Act by reason of some Article but this Court need not necessarily give the total time to the litigant to move this Court under Art. 32. Similarly in a suitable case this Court may entertain such a petition even after a lapse of time. It will all depend on what the breach of the Fundamental Right and the remedy claimed, are and how the delay arose.

17. In the case of Ramchandra Shankar Deodhar (supra) in para 10, which has been relied by learned counsel for petitioners, it has been observed by the Apex Court that "It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is on the principle

that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay.

18. The relevant para 10 of the judgment is reproduced as under:

10. The first preliminary objection raised on behalf of the respondents was that the petitioners were guilty of gross laches and delay in filing the petition. The divisional cadre of Mamlatdars/Tehsildars were created as far back as November 1, 1956 by the Government Resolution of that date, and the procedure for making promotion to the posts of Deputy Collector on the basis of divisional select list, which was a necessary consequence of the creation of the divisional cadre of Mamlatdars/Tehsildars, had been in operation for a long number of years, at any rate from April 7, 1961, and the Rules of July 30, 1959 were also given effect to since the date of their enactment and yet the petitioner did not file the petition until July 14, 1969. There was a delay of more than ten or twelve years in filing the petition since the accrual of the cause of complaint, and this delay, contended the respondents, was sufficient to disentitle the petitioners to any relief in a petition under Art. 32 of the Constitution. We do not think this contention should prevail with us. In the first place, it must be remembered that the rule which says that the Court may not inquire 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 inviolable rule that whenever there is delay, the court must necessarily refuse to entertain the petition. Each case must depend on its own facts. The question, as pointed out by Hidayatullah, C.J., in *Tillockchand Motichand v. H.B. Munishi*, "is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit..... It will all depend on what the breach of the Fundamental Right and the remedy claimed are and how the delay arose." Here the petitioners were informed by the Commissioner, Aurangabad Division, by his letter dated October 18, 1960 and also by the Secretary of the Revenue Department in January 1961 that the rules of recruitment to the posts of Deputy Collector in the reorganised State of Bombay had not yet been unified, and that the petitioners continued to be governed by the rules of Ex-Hyderabad State and the Rules of July 30, 1959 had no application to them. The petitioners were, therefore, justified in proceeding on the assumption that there were no unified rules of recruitment to the posts of Deputy Collector and the promotions that were being made by the State Government were only provisional, to be regularised when unified rules of recruitment were made. It was only when the petition in Kapoor's case was decided by the Bombay High Court that the petitioners came to know that it was the case of the State Government in that petition -and that case was accepted by the Bombay High Court -that the Rules of July 30, 1959 were the unified rules of recruitment to the posts of Deputy Collector applicable throughout the reorganised State of Bombay. The petitioners thereafter did not lose any time in

filing the present petition. Moreover, what is challenged in the petition is the validity of the procedure for making promotions to the posts of Deputy Collector - whether it is violative of the equal opportunity clause -and since this procedure is not a thing of the past, but is still being followed by the State Government, it is but desirable that its constitutionality should be adjudged when the question has come before the court at the instance of parties properly aggrieved by it. It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. This principle was stated in the following terms by Hidayatullah,

C.J. in *Tilokchand v. H. B. Munshi* (supra):

The party claiming Fundamental Rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court.

Sikri, J., (as he then was), also re-stated the same principle in equally felicitous language when he said in *R.N. Bose v. Union of India*: "It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years." Here, as admitted by the State Government in paragraph 55 of the affidavit in reply, all promotions that have been made by the State Government are provisional and the position has not been crystallized to the prejudice of the petitioners. No rights have, therefore, accrued in favour of others by reason of the delay in filing the petition. The promotions being provisional, they have not conferred any rights on those promoted and they are by their very nature liable to be set at naught, if the correct legal position, as finally determined, so requires. We were also told by the learned counsel for the petitioners, and that was not controverted by the learned counsel appearing on behalf of the State Government, that even if the petition were allowed and the reliefs claimed by the petitioners granted to them, that would not result in the reversion of any Deputy Collector or officiating Deputy Collector to the post of Mamlatdar/Tehsildar; the only effect would be merely to disturb their inter se seniority as officiating Deputy Collectors or as Deputy Collectors. Moreover, it may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Art. 16 is itself a fundamental right guaranteed under Art. 32 and this Court which has been assigned the role of a sentinel on the qui vive for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like.

19. The Apex Court in the case of *Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another*, , in the matter of retirement of employees of U.P. Jal Nigam had the occasion to consider the question of delay and laches and the question that arose before the Apex Court was whether the employees who did

not wake up to challenge their retirement and accepted the same, and had collected their post-retirement benefits, could be given relief in the light of the subsequent decision delivered by the Supreme Court in the case of Harwindra Kumar.

20. It was held by the Apex Court that delay and laches is an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person is not vigilant of his rights and acquiesces with the situation, the writ petition cannot be heard after a couple of years on the ground that the same relief should be granted to him as was granted to a person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years.

21. In determining whether there has been such delay as to amount to laches, the Apex Court laid down that the chief points to be considered are:

- (i) acquiescence on the petitioner's part; and
- (ii) any change of position that has occurred on the respondent's part.

22. Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the petitioner has become aware of it. It is unjust to give the petitioner a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted.

23. The relevant paragraphs 12, 13 & 14 on reproduction would read as under:

12. The statement of law has also been summarized in Halsbury's Laws of England, Para 911, pg. 395 as follows :

"In determining whether there has been such delay as to amount to laches, the chief points to be considered are :

- (i) acquiescence on the claimant's part; and
- (ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.

13. In view of the statement of law as summarized above, the respondents are

guilty since the respondents has acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussion on the financial management of the Nigam. Why the Court should come to the rescue of such persons when they themselves are guilty of waiver and acquiescence.

14. As against this, our attention was invited to a decision of this Court in the case of Dayal Singh and Others Vs. Union of India (UOI) and Others, . In that case their Lordships observed that when the High Court exercised discretion and condoned the delay, it is not proper for the Supreme Court at the SLP stage to set aside the High Court's order on that ground alone and more so, where the impugned judgment is legally sustainable. This case does not provide any assistance to the respondents.

24. In the case of State of Karnataka and Others Vs. S.M. Kotrayya and Others, , the Apex Court has observed that it is not enough to explain the delay by saying that they have come to know about the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. What was required of them was to explain as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed.

25. The relevant para of the said judgment on reproduction would read as under:

Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-sections (1) or (2) of Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay

26. In the present case, no explanation whatsoever has been submitted by the petitioners in approaching this Court with undue delay and laches. It is only mentioned that the Writ Petition No. 10448 of 2001 (Awadhesh Kumar Vs. State of U.P. and Others) was allowed on 09.03.2010. In compliance of the said judgment, scrutiny committee was constituted and it was by order dated 18.5.2011 that the petitioners were asked to submit their applications with attested documents by 31.5.2011. The petitioners had submitted their applications in time, however, no information about the progress of decision of scrutiny committee was provided to the petitioners and it was only on filing of Contempt Petition No. 4006 of 2011 by Sri Awadhesh Kumar at Allahabad, the decision taken by the scrutiny committee was brought on record in which the name of the petitioners finds place at SL No. 1, 2, 41, 31, 21 and 42 respectively with the observation that the cases of the petitioners were found correct. It is also mentioned that although the cases of petitioners were found correct, neither any information was provided nor any decision was taken for appointment of the petitioners. The petitioners have made representations, which are pending consideration. Sri Awadhesh Kumar has, however, been permitted to join on the post of Subject Specialist.

27. It is to be noted that as per the averments made in the writ petition, the posts of subject specialist were created in view of the ban for regular selection and in view of the Government Order dated 06.04.2000 and 11.10.1999 and the appointments were to be made session-wise on consolidated pay of Rs. 5,000/- per month.

28. It appears, as informed by the learned Standing Counsel, that with the passage of time the said situation has changed and regular selection on the post of Assistant Teachers and Lecturers has resumed. At present, there is no policy of the State Government to make fresh appointments on the post of Subject Specialist.

29. In this view of the matter, I am of the considered opinion that there is considerable change of position that has occurred with the passage of time since 2010 and the petitioners were not vigilant of their rights and they acquiesces themselves with the situation, the writ petition cannot be heard after a lapse of a period of 12 years on the ground that the same relief should be granted to them as was granted to a person similarly situated who was vigilant about his rights and had challenged the impugned decision immediately after coming to know about it. I, therefore, refuse to exercise my discretion to entertain the writ petition. The preliminary objection raised by learned Standing Counsel is upheld. The writ petition is liable to be dismissed on the ground of undue delay and laches.

30. Accordingly, the writ petition is dismissed as such. However, it is made clear that the dismissal of this writ petition would not in any manner debar the petitioners from appointment on the post in question, in case the opposite parties decide to grant the same to the petitioners on the basis of decision taken

in compliance of judgment dated 09.03.2010 passed in Writ Petition No. 10448 of 2001 (Awadhesh Kumar Vs. State of U.P. and Others), or even otherwise.