
(2019) 02 MP CK 0056

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3430 Of 2019

Lokendra Singh Rajput And Ors.

APPELLANT

Vs

State Of Madhya Pradesh & Others

RESPONDENT

Date of Decision : 19-02-2019

Acts Referred:

Constitution Of India, 1950 — Article 32, 226

Citation : (2019) 02 MP CK 0056

Hon'ble Judges : G.S. Ahluwalia, J

Bench : Single Bench

Advocate : SS Kushwah, SN Seth

Final Decision : Dismissed

Judgement

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

" 7.a. That, the respondents may kindly be directed to consider the Diploma Certificate of D.Ed. Course of the petitioner which is completed from Bhartiya Shiksha Parishad, Uttar Pradesh and it may kindly be held that the Certificate of D.Ed. Course from Bhartiya Shiksha Parishad, Uttar Pradesh is legal and valid.

b. That, the respondent may kindly be further directed to grant the appointment on the post of Samvida Shala Shikshak Verg-III as per eligibility in the matter.

c. That, respondents may kindly be directed to decide the representation of the petitioners (Annexure P/1) as early as possible by speaking order in the interest of Justice.

d. That, any other relief which deemed fit by this Hon'ble Court in the facts and circumstances of the case.

e. Cost may be awarded in the interest of justice. "

It is mentioned in paragraph 2 of the writ petition that earlier the petitioners had

filed WP No.1586/2013 [according to the petitioner, the correct No. is WP 1468/2013(s)], WP No.1693/2013(s) and WP No. 6670/2012(s). It is fairly conceded by the counsel for the petitioners that the writ petitions filed by the petitioners were decided by this Court by order dated 30/11/2013 with the following directions:-

"6. I have heard learned counsel for the parties and perused the record.

7. The interim orders on which reliance is placed are passed by the Courts on different dates. It is really not clear that whether those orders are still in force. The reliance is also placed on the judgment of Jammu & Kashmir High Court. In addition, it is contended that certain similarly situated candidates possessing qualification from same Parishad are already appointed in Govt. service in Madhya Pradesh. All these are disputed questions of facts.

8. Considering the aforesaid, I deem it proper to permit the petitioners to prefer a detailed representation along with copy of this order and submit it before the respondents. The representation must be pregnant with all relevant data. The petitioner shall enclose the copy of Court orders on which they have placed reliance. In addition, they will furnish details of similarly situated persons who were already appointed in Govt. service in M.P. In turn, respondents shall decide the representation by a reasoned order within 90 days. If representation is decided in favour of the petitioner and they are held to be eligible for recruitment, petitioners' result be declared and respondents shall proceed therefrom in accordance with law.

9. Petitions are disposed of. It is made clear that this Court has not expressed any opinion on the merits of the case.

It is fairly conceded that the petitioners, thereafter, did not make any representation in the light of the directions given by this Court. The present petition has been filed on the ground that now the petitioners have made representations on 06/02/2019 and 12/02/2019, therefore, their case may be considered. It is the case of the petitioners that the number of posts of Samvida Shala Shikshak Grade-III were lying vacant, therefore, an advertisement was issued by MP Professional Examination Board. The petitioners had appeared in the said Eligibility Test and were declared successful. The petitioners had completed D.Ed. Course from Bhartiya Shiksha Parishad, UP but the said Diploma Certificate was not taken into consideration. It is further submitted that now the respondents have given appointment to the similarly situated persons by order dated 30/01/2019. It is submitted that the delay in sending the representation in compliance of order dated 30/11/2013 passed by this Court in Writ Petition No.1468/2013 may be condoned. A Coordinate Bench of this Court by order dated 12/09/2017 passed in the case of Vijay Sharma and Another vs. State of MP and Others (Writ Petition No.701/2017) and by order dated 20/07/2018 passed in the case of Vineet Sharma and Others vs. State of MP and Others (Writ Petition No.7372/2018) has permitted the candidates to acquire D.Ed./B.Ed.

qualification from the institution recognized by NCTE.

So far as the directions given by the Coordinate Bench of this Court in Writ Petition No.701/2017 and Writ Petition No.7372/2018 are concerned, it is clear from the writ petition that the petitioners are not in service, therefore, the directions given by this Court in Writ Petition No. 2824/2016 by order dated 10/11/2016 cannot be issued in the present case. In the year 2013, the petitioners were already granted liberty by this Court to file representations, however, the petitioners had chosen to sit over the said liberty and did not file the same and accordingly, it is held that the petitioners did not avail their right to make representation as already directed by this Court by order dated 30/11/2013 passed in Writ Petition No.1468/2013. So far as the detailed representations made by the petitioners on 06/02/2019 and 12/02/2019 are concerned, this Court is of the considered opinion that because of delay on the part of the petitioners, the clock cannot be moved in anti-clock direction.

The Supreme Court in the case of Karnataka Power Corpon. Ltd. Vs. K. Thangappan, reported in (2006) 4 SCC 322 has held as under :-

"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad v. Chief Controller of Imports and Exports (1969) 1 SCC 185. Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd (1874) 5 PC 221 (PC at p. 239) was approved by this Court in Moon Mills Ltd. v. M.R. Meher AIR 1967 SC 1450 and Maharashtra SRTC v. Shri Balwant Regular Motor Service AIR 1969 SC 329 Sir Barnes had stated:

"Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which

might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy."

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in *Rabindranath Bose v. Union of India* AIR 1970 SC 470 that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in *State of M.P. v. Nandlal Jaiswal* AIR 1987 SC 251 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."

The Supreme Court in the case of *M.P. Ram Mohan Raja Vs. State of T.N.* reported in (2007) 9 SCC 78 has held as under:-

"11. So far as the question of delay is concerned, no hard-and-fast rule can be laid down and it will depend on the facts of each case. In the present case, the facts stare at the face of it that on 8-10-1996 an order was passed by the Collector in pursuance of the order passed by the High Court, rejecting the application of the writ petitioner for consideration of the grant of mining lease. The writ petitioner sat tight over the matter and did not challenge the same up to 2003. This on the face of it appears to be very serious. A person who can sit tight for such a long time for no justifiable reason, cannot be given any benefit."

The Supreme Court in the case of *Shiv Dass Vs. Union of India* reported in (2007) 9 SCC 274 has held as under :-

"6. Normally, in the case of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the

applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in *Durga Prashad v. Chief Controller of Imports and Exports* AIR 1970 SC 769. Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd*, PC at p. 239 was approved by this Court in *Moon Mills Ltd. v. M.R. Meher* and *Maharashtra SRTC v. Balwant Regular Motor Service*. Sir Barnes had stated:

"Now the doctrine of laches in courts of equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, if founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

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The Supreme Court in the case of *Nadia Distt. Primary School Council Vs. Sristidhar Biswar* reported in (2007) 12 SCC 779 has held as under :-

"11. In the present case, the panel was prepared in 1980 and the petitioners approached the court in 1989 after the decision**in *Dibakar Pal*. Such persons

should not be given any benefit by the court when they allowed more than nine years to elapse. Delay is very significant in matters of granting relief and courts cannot come to the rescue of the persons who are not vigilant of their rights. Therefore, the view taken by the High Court condoning the delay of nine years cannot be countenanced."

The Supreme Court in the case of U.P. Jal Nigam Vs. Jaswant Singh reported in (2006) 11 SCC 464 has held as under:-

"12. The statement of law has also been summarised in Halsbury's Laws of England, para 911, p. 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."

The Supreme Court in the case of Jagdish Lal Vs. State of Haryana reported in (1997) 6 SCC 538 has held as under :-

"18. That apart, as this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or Article 32 of the Constitution."

The Supreme Court in the case of NDMC Vs. Pan Singh reported in (2007) 9 SCC 278 has held as under :-

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. (See Govt. of W.B. v. Tarun K. Roy, U.P. Jal Nigam v.

Jaswant Singh and Karnataka Power Corpn. Ltd. v. K. Thangappan.)

17. Although, there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily, writ petition should be filed within a reasonable time. (See Lipton India Ltd. v. Union of India and M.R. Gupta v. Union of India.)"

Accordingly, this petition fails and is hereby dismissed.