

(2019) 01 MP CK 0012

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4079 Of 2012

Maresh Chandra Sharma

APPELLANT

Vs

State of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 08-01-2019

Acts Referred:

Constitution of India, 1950 — Article 32, 226

Citation : (2019) 3 MPLJ 427

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

Bench : Single Bench

Advocate : Jitendra Sharma, Ankur Modi, Nakul Khedkar

Final Decision : Dismissed

Judgement

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

"(i) That, the impugned action of the Respondent No. 5 declining to send petitioner's name for screening under the garb of the so-called resignation dated 8.9.2000 and further treating the petitioner to be removed employee and his so called removal and further not considering his name for absorption may kindly be declared to be illegal, null and void.

(ii) That, consequently the respondent no. 1 to 4 may kindly be directed to consider the name of the petitioner for absorption as Assistant Teacher w.e.f. the date of taking-over Jyoti Higher Secondary School, Ganesh Pura, Morena alongwith other employees who have already absorbed treating the petitioner to be continued in service w.e.f. 01.07.1984 and grant all consequential benefits like seniority, arrear of pay etc.

(iii) That, the respondents no. 1 to 4 be also directed to conduct an enquiry with regard to suppression of material facts from the screening committee and preparation of forged and fabricated resignation of the petitioner and take suitable penal action against the Respondent No. 5 who prepared forged

resignation of the petitioner just to deny the benefits of absorption.

(iv) Cost of the petition be awarded or any other suitable order or direction deemed fit in the circumstances of the case be issued in favour of the petitioner."

It is the case of the petitioner that earlier he was working as an Assistant Teacher in Jyoti Higher Secondary School, Ganesh Pura, Morena. The school was taken over by the State Government, however, the name of the petitioner was not recommended, as an illegal demand was made by the Education Society and it was shown that the petitioner had resigned in the year 2000 and thus, he has been denied absorption.

Per contra, it is submitted by the counsel for the State that the moot question for consideration was that whether the petitioner, who was earlier working as an Assistant Teacher in Jyoti Higher Secondary School, had already submitted his resignation prior to taking over of school or not and since the petitioner had raised a dispute with regard to correctness of the resignation, therefore, an enquiry was got conducted and it was found that the resignation in question bears the signature of the petitioner.

The respondent no.5 has also submitted his reply. Apart from taking other pleas, a preliminary objection has been raised by the respondent no.5 with regard to delay and laches, as the petitioner has submitted his resignation in the year 2000, whereas the present petition has been filed in the year 2012. The entire administration of the school was already handed over to the State Government in the year 2002 itself and there is nothing on record to show that the petitioner had ever worked in the school after tendering his resignation.

In reply to the submissions made by the counsel for respondents, it is submitted by the counsel for the petitioner that in fact the respondent no.5 used to keep the blank documents after obtaining signatures of the employees and the said blank document has been utilized for preparing forged resignation.

Heard learned counsel for the parties.

Before considering the merits of the case, this Court feels appropriate to consider the preliminary objection with regard to delay and laches.

According to the allegations, the petitioner had submitted his resignation on 8/9/2000. It appears that later on in the year 2002 the State Government directed for taking over the grant- in-aid schools alongwith employees. The said order was withdrawn by the State Government at a subsequent stage, which was challenged by the aggrieved persons by filing a writ petition before this Court. The said writ petition was allowed and the orders passed by the State Government withdrawing earlier notification, by which the private aided schools were taken over by the State Government, was set aside and it was directed that the teachers should be absorbed. Against the said order, the matter went upto the Supreme Court and the SLP was also dismissed in the year 2012.

The direction given by this Court by order dated 13.3.2007 in Writ Petition No.5306/2005 (S) reads as under:-

"11. Consequently, the petition of the petitioner is disposed of with the following directions:-

(i) That, the orders impugned, Annexure P-1 dated 14.11.2005, Annexure P-1/A dated 24.11.2004, Annexure P/8 dated 29.7.2002 and Annexure R/17 dated 7.6.2002 with regard to cancellation of taking over of the school by the respondents are hereby quashed;

(ii) The respondent -State is at liberty to pass appropriate orders with regard to absorption of the staff members and teachers of the school in pursuance to the directions issued by the Government as per the circular of the State Government dated 11.11.2000 and 21st March 2002 and other circulars issued by the State Government in this regard, as per law;

(iii) Necessary committee be constituted by the Government to this effect and the orders of absorption of the staff members and teachers be passed within a period of six months from the date of receipt of a certified copy of this order;

(iv) Staff members and teachers appointed as per the orders passed by the Chief Municipal Officer including the petitioner will be permitted to continue in service upto the period when the Government will pass the orders of absorption in pursuance to the aforesaid order and the salary of the petitioner and other staff members and teachers be paid by the Government accordingly. Arrears of salary be also paid by respondents No.1 and 2.

(v) No order as to cost."

It appears that only after dismissal of the SLP, the petitioner realized that had he been in the job, then he would have been certainly absorbed in the State service, however, he did not file the writ petition till 2012. In the present case, although the petitioner has stated that he was serving the school till filing of the writ petition, but in fact after disposal of the writ petition by this Court, by which the order of the State Government was set aside, the State Government was directed to take over the schools and in fact the State Government had started running the schools. The petitioner should have approached the State Government or the Government officials to obtain the certificate to show that he was serving the school even after the year 2000. The petitioner could not place any document to show that he was ever serving the school after tendering his resignation. Even otherwise, the petitioner in the light of the enquiry report submitted by the authorities has not disputed his signature on the resignation. Now he has come forward with a stand that the society had taken the blank papers duly signed by him on the earlier occasion, which has been misused for preparing forged resignation. When the petitioner has not disputed his signature on the resignation and when he has not taken a specific stand at the earliest that his signatures were ever obtained by the society on the blank papers, which have

been used for preparing forged resignation, this Court is of the considered opinion that this afterthought stand taken by the petitioner cannot be considered. Even in the writ petition it is not the stand of the petitioner that the forged resignation was prepared on the blank paper which was already containing the signature of the petitioner. Thus, when the petitioner had submitted his resignation on 8/9/2000, then he ceased to be an employee of the society/school and thus, on the day when the school was taken over by the State Government, he was not serving in the school and was not liable to be absorbed.

Considering the fact that the question of resignation has been challenged by the petitioner after 12 years of his so called resignation, this Court is of the considered opinion that the petitioner is not entitled for the relief as claimed by him on merits and even this petition suffers from delay and laches.

The Supreme Court in the case of Karnataka Power Corpn. 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 Prasad 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, 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 relates to the remedy."

8. It was stated in *State of M.P. v. Nandlal Jaiswal* 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 *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.)

18. In Shiv Dass v. Union of India this Court held: (SCC p. 277, paras 9-10)

"9. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in K.V. Rajalakshmiah Setty v. State of Mysore. There is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In State of Orissa v. Pyarimohan Samantaray making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. (See also State of Orissa v. Arun Kumar Patnaik.)

In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit the appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

Accordingly, the petition is dismissed as misconceived.