
(2009) 02 DEL CK 0178

In the Delhi High Court

Case No : Writ Petition (C) No. 6909 of 2009

Mohan Swami Nathan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 02 DEL CK 0178

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : I.C. Mishra, for the Appellant; V.P. Sharma and V. Sudeer, for the Respondent

Judgement

Kailash Gambhir, J.—By way of the present writ petition filed under Article 226 and 227 of the Constitution, the petitioner seeks to challenge the order dated 6.11.93, whereby the appeal filed by the petitioner against the order of the Disciplinary Authority was dismissed. The petitioner also assails the order dated 28.6.93, whereby the Disciplinary Authority had passed the order upholding the findings of the Enquiry Officer and found that various acts of misconduct committed by the petitioner were very serious in nature to attract a major penalty. The Disciplinary Authority after taking into account the seriousness and gravity of various acts of misconduct committed by the petitioner imposed punishment of compulsorily retiring the petitioner from the respondent Bank. This order of the Disciplinary Authority was challenged by the petitioner by way of filing an appeal and the said appeal of the petitioner was decided by the Appellate Authority vide order dated 6.11.93. The petitioner approached this Court in the year 2002 by way of filing writ petition bearing W.P.(C) No. 2874/2002, wherein the grievance was raised by the petitioner that the Appellate Authority did not dispose off his appeal and also various representations made by him so as to seek redress of his grievance. Vide order dated 8.5.2002, this court directed notice on the said petition which was accepted by the counsel for the UOI. Rule was also directed in the said petition. This writ petition was withdrawn

by the petitioner vide order dated 29.5.2002 as by that time, the petitioner came to know about the order dated 6.11.93 passed by the Appellate Authority. The petitioner requested the liberty to file a fresh petition so as to raise all other grounds as were available to the petitioner. The said petition was dismissed as withdrawn after reserving the right of the petitioner to file a comprehensive writ petition. The petitioner thereafter slept over the matter and did not take any steps to challenge the order of the Appellate Authority and it is only by way of writing a letter dated 28.4.2008, the petitioner raised a grievance that copy of the order passed by the Appellate Authority was never supplied to him. The said letter of the petitioner was duly replied by the respondent bank vide their reply dated 9.5.2008, refuting the request of the petitioner. Thereafter, the petitioner filed another writ petition bearing W.P.(C) No. 5531/2008 to seek directions against the respondent bank for making available copy of the order of the Appellate Authority and the said petition (W.P.(C) No. 5531/2008) of the petitioner was dismissed by this Court vide order dated 1.8.2008.

2. It would be worthwhile to reproduce the said order dated 1.8.2008 as under:

The petitioner was compulsorily retired from the service of Syndicate Bank (respondent No. 2) on 28.06.1993. He filed a statutory appeal against the impugned order of his retirement and his said appeal stood dismissed by the appellate authority vide order dated 06.11.1993. Thereafter, after about a year of his dismissal of his statutory appeal, the petitioner filed a writ petition being WP(C) No. 2874/2002 in this Court and challenged his compulsory retirement.

The said writ petition was dismissed as withdrawn vide order passed by this Court on 29.05.2002 granting liberty to the petitioner to file a fresh petition on all grounds raised in the earlier petition. After the earlier petition was withdrawn by the petitioner, the petitioner slept over the matter for more than 6 years and has now filed the present writ petition seeking directions to respondent No. 1 for immediate disposal of his appeal/representation dated 01.09.1994/16.07.1997 and for directions to respondent No. 2 to supply the appeal order dated 06.11.1993. The counsel appearing on behalf of respondent No. 2 says that the order by which the appeal was dismissed was sent to the petitioner long back in 1993 itself.

However, she has given another copy of the order dated 06.11.1993 to the counsel for the petitioner in Court today. Be that as it may, the fact remains that the impugned order of compulsory retirement was passed against the petitioner in June, 1993 and his statutory appeal against the said order was also dismissed on 06.11.1993. There is an inexplicable delay on the part of the petitioner in not approaching the court in case he was aggrieved by his compulsory retirement which took place way back in 1993. This writ petition is hopelessly barred by delay and laches and cannot be entertained at this belated stage. In view of the above, this writ petition is dismissed in limine.

3. It would be apparent from the observations made by the S.N. Aggarwal, J.

that although fresh copy of the order dated 6.11.93 was made available to the petitioner but the Court strongly felt that there was inexplicable delay on the part of the petitioner in not approaching the court against the said order of the Appellate Authority which was passed way back in the year 1993.

4. The aforesaid order also refers to the stand taken by the respondent bank that copy of the order of the Appellate Authority was supplied to the petitioner in the year 1993 itself. Now again by way of present writ petition, the petitioner seeks to challenge the order dated 28.6.93 passed by the Disciplinary Authority and that of the Appellate Authority dated 6.11.93 and also seeks directions against the respondent to reinstate the petitioner with all the terminal benefits along with full back wages and consequential benefits. The petitioner also seeks directions for the release of the amount of Rs. 1,65,469.78/- which as per the petitioner was illegally deducted by the respondent from his Provident Fund Account on 11.1.99.

5. Indisputably, the appeal was filed by the petitioner challenging the order of the Disciplinary Authority dated 28.6.93 and the said appeal of the petitioner was decided by the Appellate Authority vide order dated 6.11.93, It cannot be believed that the appellant would not have known the fate of his appeal till 29.5.2002, when the said writ petition (W.P.(C) No. 2874/2002) was withdrawn by the petitioner. It is equally not believable that the Appellate Authority would hide the fact of deciding the appeal and would not send any communication in that regard.

6. Be that as it may, in any case, as per the own case of the petitioner he came to know about the order of the Appellate Authority on 29.5.2002 when he withdrew the said petition(W.P.(C) No. 2874/2002), so as to challenge the order of the Appellate Authority by filing a fresh writ petition, but still the petitioner remained complacent and did not make any efforts to obtain copy of the order of the Appellate Authority and it is only by way of a legal notice dated 28.4.2008, i.e. almost after a lapse of six years, the petitioner took the issue with the respondent bank to supply copy of the order of the Appellate Authority. The respondent bank sent a reply vide order dated 19.5.2008 stating that they do not believe that there is any basis for the petitioner to state that he had never received copy of the Appellate Authority. The petitioner, thereafter filed a writ petition (W.P.(C) No. 5531/2008) to seek copy of the order passed by the Appellate Authority which was made available by the respondent bank on 1.8.2008. Now again after a lapse of about seven months, the petitioner has filed the present writ petition challenging the said two orders which were passed against him way back in the year 1993. It is no doubt true that in an appropriate case, the delay can be condoned but in the present case the present petition is not only bad due to delay and laches but no explanation much less any plausible explanation has been offered by the petitioner for not taking any steps after he came to know about the passing of the order of the Appellate Authority. The first letter/legal notice making a request to supply copy of the said order was sent by

the petitioner on 28.4.2008, and prior thereto no such request was made by the petitioner for supply of copy of the said order. Even copy of the letter/legal notice dated 28.4.2008 has not been placed by the petitioner on record. The petitioner has also deliberately not filed copy of the order dated 1.8.2008, wherein strong observations were made by this Court on the conduct of the petitioner, though very casually the petitioner has made reference to filing of said writ petition. It is only the counsel for the respondent bank who has put in appearance on advance notice, produced copy of the said order dated 1.8.2008 before this Court.

7. In view of the fact that the petitioner has failed to give any reasonable or plausible explanation for such protracted delay on his part in approaching this Court against the order of the Disciplinary Authority as well as Appellate Authority which were passed long back in the year 1993, and also on account of the fact that no explanation has been given by the petitioner for not taking any proper steps to obtain the copy of the order of the Appellate Authority, I do not feel inclined to exercise writ jurisdiction in favour of the petitioner. In any event of the matter, since the counsel for the respondent Nos. 2 to 4 appears on advance notice, he shall ensure that if any dues with regard to the retiral benefits of the petitioner are still left to be paid, the same shall be paid to the petitioner within a period of one month.

8. With these directions, the petition stands disposed of.