

(2024) 05 GAU CK 0006

In the Gauhati High Court

Case No : Writ Petition (C) No. 2124 Of 2020

Narendra Roy @ Narendra Nath Roy

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 15-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2024) 05 GAU CK 0006

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : A. Das, Cks Barua

Final Decision : Dismissed

Judgement

1. The power and jurisdiction exercised by a High Court under Article 226 of the Constitution of India is essentially a power of equity wherein the conduct of the party approaching the Court is of paramount importance. The instant case is another example of a party approaching this Court not only after inordinate and unexplained delay but has slept over his rights.

2. The facts, bereft of the details are that the petitioner was appointed as a Constable in the Assam Police on 13.11.1971. A Departmental Proceeding No. 10/85 was initiated against him for unauthorized absence. The petitioner was accordingly dismissed from service, vide the impugned order dated 13.08.1985. It is projected that though the petitioner had preferred a departmental appeal, the same was rejected on 01.09.2014 and challenging the same, the instant petition has been filed in the year 2020.

3. I have heard Shri A. Das, learned counsel for the petitioner whereas the State respondents are represented by Shri C. K. Sharma Barua, the learned State Counsel.

4. Shri Das, the learned counsel for the petitioner has submitted that the impugned action of dismissal from service is because of a grudge by the

disciplinary authority against the petitioner and accordingly it has been contended that the same is not sustainable because of want of bona fide. It is submitted that pertaining to an incident of alleged smuggling of illegal timber wherein the petitioner had allegedly requested for taking action, the higher authorities had taken exception to the fact, and the outcome of such grudge is the order of dismissal. The learned counsel accordingly submits that the impugned order of dismissal and the appellate order rejecting the appeal are to be interfered with.

5. The learned State Counsel, on the other hand, has submitted that before even going to the merits of the challenge, the impugned order of dismissal is of the year 1985 and the same has been challenged in this petition filed in the year 2020. The learned State Counsel has also placed on record the communications exchanged with regard to the original record of the disciplinary proceeding. A communication dated 04.04.2023, issued by the Superintendent of Police (B), Dhubri has been placed on record whereby it was informed that the records being sufficiently old were found to be damaged by termite attack and were accordingly destroyed. With regard to the aspects of GPF / subsistence allowance, there were no individual records maintained in the office.

6. On the allegation of malice in fact, the learned State Counsel has submitted that the same is a vague allegation and the unauthorized absence from duties was for a long period of time and therefore, the order of dismissal from service is fully justified, more so, when the services of the petitioner was with a disciplined force.

7. The rival contentions have been duly examined and the records placed before this Court have been perused.

8. The impugned order of dismissal dated 13.08.1985 was on culmination of a disciplinary proceeding. The records reveal that show-cause notice was issued on 18.07.1985 which was replied to on 22.07.1985 and thereafter, on the own admission of the petitioner, an enquiry was held. It is however pleaded that the petitioner was not allowed cross-examination of the witnesses and the impugned action was taken at the behest of the Superintendent of Police who had a grudge against him.

9. What is however striking is the fact of the inordinate and unexplained delay of about three decades from the date of the order of dismissal till the date of preferring an appeal. Even the action of the petitioner to obtain the relevant papers is of the year 2014. In paragraph 12 of the petition, the following has been stated:

"12. That the aforesaid arbitrary and unreasonable action of the enquiry officer and disciplinary authority pushed the petitioner to such a mental condition that he started to suffer from serious mental depression and lost all interest in the family and earthy life and started pilgrimages to various parts of India and in this way spent about 28 years of his valuable service life. In the month of May 2014,

he recovered from mental depression and realized his family life and his duties towards family members and to himself and returned home from Jagannath, Puri, Odisha on 1.6.2014. During his mental depression period, he made representations/ appeals without supporting documents which were rejected summarily vide Orders dated 12.7.1989 and 1.3.1990."

10. The aforesaid explanation cannot be held to be reasonable or acceptable as it clearly reflects that the petitioner has slept over his rights for about three and half decades and has suddenly woke up from a deep slumber and instituted this petition in the year 2020. The dismissal of the appeal in the year 2014 will not extend the limitation inasmuch as, the appeal itself was preferred after about three decades and by the order passed by the appellate authority, it has been clearly reflected that on the ground of delay itself, the same was rejected. In the considered opinion of this Court preferring of an appeal in the year 2014 followed by a rejection thereof pertaining to a cause of action which has arisen in the year 1985 cannot be a matter of adjudication in a writ petition filed in the year 2020. Even from the date of rejection of the appeal which was 01.09.2014, the petitioner took about six years to file this writ petition. That apart, the ground of challenge which is a perceived bias by the Superintendent of Police is absolutely vague and not at all convincing which would inspire any confidence.

11. The Hon'ble Supreme Court upon discussion of a number of earlier judgments on the aspect of delay in approaching a Writ Court has made the following observations in the case of NDMC v. Pan Singh reported in (2007) 9 SCC 278:

"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.

12. In view of the aforesaid discussion and mainly on the aspect of inordinate delay of more than three and a half decades in espousing the cause, the writ petition is dismissed.

13. Cost made easy.