

(2015) 11 DEL CK 0259
In the Delhi High Court
Case No : W.P.(C) 7019/2015

Om Prakash Bhatnagar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 3

Citation : (2015) 11 DEL CK 0259

Hon'ble Judges : G.S. Sistani and Sangita Dhingra Sehgal, JJ.

Bench : Division Bench

Advocate : A.K. Trivedi, Advocate, for the Appellant; Jagjit Singh Advocate Standing Counsel, Nisha and Preet Singh, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.—Challenge in this writ petition is to the order passed by the Central Administrative Tribunal dated 15.07.2008.

2. The necessary facts to be noticed for disposal of this writ petition are that the petitioner was appointed in the Railway Department on 05.01.1972 as a field worker in Medical Department of Western Railway, Jaipur. In the year 1989, the petitioner was transferred to the Rajkot Division. This order of transfer was challenged by the petitioner before the Central Administrative Tribunal. The Central Administrative Tribunal stayed the order of transfer although subsequently in the year 1992 the OA filed by the petitioner was dismissed by the Tribunal. It is the case of the petitioner that while he was posted at the Railway Hospital, Bandikui, he became sick on 07.04.1992 and during the period of his sickness, the petitioner was transferred to Western Railway, Rajkot Division in the year 1992. The petitioner was able to resume his duties only on 28.11.1996. The petitioner claims to have performed his duties upto 30.11.1996 i.e. his date of superannuation. The retirement order of the petitioner was passed

on 16.06.2000 fixing the pension of the petitioner on the basis of the revised pay scale of the 5th pay commission. It is also claimed that the Competent Authority did not decide the period of his sickness i.e. between the years 1992 to 1996. The petitioner made a representation in the year 2005 which was not considered by the respondents forcing him to file the OA No. 2344/2007 before the Central Administrative Tribunal. In the year 2007, the OA filed by the petitioner was dismissed on 15.07.2008. After the OA was dismissed, the petitioner filed a writ petition in the Rajasthan High Court against the order of the Tribunal dated 15.07.2008. The writ petition was dismissed in September, 2012 on the ground of jurisdiction. The petitioner thereafter withdrew the writ petition and filed the present writ petition in February, 2015.

3. The main thrust of arguments of Mr. Trivedi, learned counsel for the petitioner is that after his long leave of absence for almost four years, the petitioner joined his department three days prior to his retirement, his joining was accepted and once joining was accepted, the pay fixation of the petitioner was bound to be fixed based on the 5th pay commission. Counsel submits that the petitioner could not seek the remedies available to him in the year 1996 as his retirement order was passed after four years of his retirement in the year 2000.

4. Mr. Jagjit Singh, learned counsel for the respondent has opposed this writ petition firstly on the ground that the same is barred by delay and laches. Even on the merits, Mr. Jagjit Singh submits that the Tribunal has returned a finding that the leave of the petitioner was not a sanctioned leave and the period of leave of the petitioner has not been regularized. Mr. Jagjit Singh further submits that the plea raised by the petitioner that he was unwell is a false plea not supported by documents. It is also contended that merely because the petitioner submitted a letter of joining that by itself is not a joining in the eyes of law. He submits that if the stand of the petitioner is to be believed then the petitioner should have annexed the copies of his medical record in terms of Rule 514 of the Indian Railways Medical Manual (Volume-I).

5. Counsel submits that even during the course of arguments, the learned counsel for the petitioner has disclosed the illness of the petitioner as heart ailment. He submits that a vague plea raised with regard to the illness of the petitioner cannot justify his unauthorized absence of almost four years. It is thus contended that the joining letter would not confer any rights upon the petitioner as the joining letter cannot be treated as a joining letter in accordance with law and by simply forwarding the letter does not amount to resuming his duties.

6. Mr. Jagjit Singh also submits that as noticed by the Tribunal, the petitioner has not approached the courts with clean hands as he suppressed material facts. Counsel submits that the petitioner has suppressed the fact that he had approached the Rajasthan High Court as far as back as in the year 1998 for the first time. The petitioner also has not explained the delay in approaching this court after the dismissal of the OA in the year 2008. He has also not satisfactorily explained the delay in approaching this court after the writ petition filed by the

petitioner before the Rajasthan High Court was dismissed.

7. We have heard the learned counsel for the parties and considered their rival submissions and also examined the pleadings placed on record.

8. It is not in dispute that the petitioner remained absent from duty between the period 1992 to 1996. It is also not in dispute that during this period, his leave was not sanctioned. It is also not in dispute that the petitioner claims to have joined his duties three days before his retirement. Learned counsel for the petitioner has contended that he joined his duty on 28.11.1996 and placed reliance on a communication dated 04.06.1996 by which he was asked to join his duties at BCT Division (Bombay Central Division). Counsel submits that the petitioner joined the Bombay Central Division which is evident upon the communication received by him under the Right to Information Act which acknowledges the fact that the petitioner had made an attempt to resume his duties. Mr. Jagjit Singh in response to this submission has submitted that a simple letter to show that the petitioner had joined duties cannot be accepted in view of the Indian Railways Medical Manual (Volume-I). Reliance is placed on Rule 541 of Indian Railways Medical Manual (Volume-I) which reads as under :

"541. Fit Certificates :

1. A Railway employee who has been on leave on medical certificate shall not be permitted to resume duty till he/she has produced a fit certificate or a duty certificate in the prescribed form from the competent Railway Doctor.

2. When a Railway employee, who has been under the treatment of the authorised medical officer and in whose favour a sick or a change of air or recuperation certificate has been issued is after examination found fit for duty, the competent Railway doctor will issue the necessary fit certificate in the prescribed form as given in annexure XI.

3. Where a Railway employee remained on leave on medical grounds, up to and including three days duration and reported back for duty with a fitness certificate from a private medical practitioner, he may be allowed to join duties without obtaining fitness certificate from the Railway Medical Officer, subject to the condition that the employee furnishes a declaration that he/she has not suffered from any eye disease during this period. In cases where the duration of sickness is more than three days, the Railway employee should be put back for duty within 24 hours on his/her producing fit certificate from a private medical practitioner, provided he/she is found fit by the Railway Medical Officer. However, in case there is any delay beyond 24 hours in obtaining a fitness certificate from the competent Railway Medical officer, the employee concerned will be deemed to have been put back to duty within 24 hours of his producing the medical certificate from the private medical officer."

9. Reliance is also placed by Mr. Jagjit Singh on a circular dated 10.12.1996 which reads as under :

"WESTERN RAILWAY

Divisional Office, Mumbai Central

No. E/MD/839/7

Dated 10.12.1996

To, CM (E) CCC

(Attn. : Shri S.M. Meena) SPO

Sub.:-- Promotion, version and transfer of NC Staff-Medical Dept. FW ORG.

Ref. : - Your letter No. ED/MD/839/10/15/vol. IV dt. 29.11.1996

1. Reference above, the case of Shri O.P. Bhatnagar Field Worker, Railway Hospital, Bandikui, position has been examined.

2. For assumption of charge at new station of posting procedure is prescribed, which is required to be followed as under:--

i) Produce relieving letter from old station of posting.

ii) Furnish details on Transfer Pass etc.

iii) Furnish necessary proof of being the Railway Employee in question, in whose favour the transfer order is issued. In absence of which any person can come and assume charge of new post.

iv) Furnish declaration and proof regarding intervening period, i.e. regarding employment, court case, police case etc.

(On perusal of his representation and examination of his post records, it is seen that he has been absconding from duty from 18.11.1992 i.e. for more than 4 years.)

3. It is, however, seen that no such document proof has been furnished by Shri Bhatnagar. The question of his resuming duties of Division, therefore, does not arise.

Moreover, no records of Shri O.P. Bhatnagar are available on BCT Division i.e. Leave Records, Service Sheet, Personal File, LTC etc.

In view of the above, it will be seen that Shri Bhatnagar is not an employee of BCT Division.

For Divisional Railway Manager, Western Railway, Mumbai Central."

10. It is thus contended by Mr. Singh that it cannot be stated that the petitioner resumed his duties as per prescribed procedure. The petitioner has not produced a single document on record to show that during his period of absence, he had applied for leave or his leave was sanctioned at any stage. In fact the Tribunal has rightly given a factual finding that no leave application as alleged by the

petitioner was found available in the records of the respondent.

11. We have heard the learned counsel for the parties and considered their rival submissions. We also find force in the submission of Mr. Jagjit Singh, learned counsel for the respondent that in the absence of medical leave having been sanctioned, the petitioner could not have resumed the duties in the manner stated by him as the case of the petitioner is that he was on medical leave in which case resumption of duties according to him would not be in accordance with the Indian Railways Medical Manual (Volume-I) more particularly Rule 541.

12. As far as the plea of limitation is concerned, we find this writ petition to be barred by delay and laches. The order of Central Administrative Tribunal was passed on 15.07.2008 while this writ petition has been filed in the year 2015. Delay in approaching this court has been explained by Mr. Trivedi on the ground that the petitioner had filed the writ petition in the Jaipur High Court even this is not acceptable as the Jaipur High Court dismissed the writ petition on 10.09.2012 and there is no explanation with regard to the delay in approaching this court in the year 2015.

13. In our view there is delay at every stage. The petitioner approach the Rajasthan High Court in the year 2003 while the retirement order was passed in the year 2012 when according to him first time he came to know about his pay fixation. After the Rajasthan High Court dismissed the writ petition, he approached the Central Administrative Tribunal in the year 2005. There is no cogent explanation for this delay as well. From the year 1998, this petitioner has approached the Central Administrative Tribunal on two occasions, Rajasthan High Court on two occasions and Delhi High Court on one occasion and there is delay at every stage. Delay in our view has also not satisfactorily been explained.

14. In the case of State of M.P. and Others Vs. Nandlal Jaiswal and Others, , the Hon"ble Supreme Court observed that it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the 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 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 further observed by the Apex Court that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which High Court also weighs in deciding whether or not to exercise such jurisdiction.

15. In State of Orissa and Another Vs. Mamata Mohanty, the issue of limitation

came up for consideration before the Hon''ble Supreme Court. In para 52, 53 and 54, the Hon''ble Supreme Court observed that even in the case of pay scale, which may give rise to a recurring cause of action, the petition may be dismissed on ground of delay and laches:

"52. In the very first appeal, the respondent filed Writ Petition on 11.11.2005 claiming relief under the Notification dated 6.10.1989 w.e.f. 1.1.1986 without furnishing any explanation for such inordinate delay and on laches on her part. Section 3 of the Limitation Act 1963, makes it obligatory on the part of the court to dismiss the Suit or appeal if made after the prescribed period even though the limitation is not set up as a defence and there is no plea to raise the issue of limitation even at appellate stage because in some of the cases it may go to the root of the matter. (See: Lachhmi Sewak Sahu vs. Ram Rup Sahu and OthersAIR 1944 24 (Privy Council) ; and Lachhmi Sewak Sahu vs. Ram Rup Sahu and OthersAIR 1944 24 (Privy Council) .

53. Needless to say that Limitation Act 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the respondent claimed the relief from 1.1.1986 by filing a petition on 11.11.2005 but the High Court for some unexplained reason granted the relief w.e.f. 1.6.1984, though even the Notification dated 6.10.1989 makes it applicable w.e.f. 1.1.1986.

54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time. (See: Lachhmi Sewak Sahu vs. Ram Rup Sahu and OthersAIR 1944 24 (Privy Council) ; Lachhmi Sewak Sahu vs. Ram Rup Sahu and OthersAIR 1944 24 (Privy Council) ; and Lachhmi Sewak Sahu vs. Ram Rup Sahu and OthersAIR 1944 24 (Privy Council))."

16. Applying the law laid down by the Apex Court to the facts of this case, we are of the considered view that the principles indicated above would give a clear indication that the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason,

approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not.

17. We find no merit in this writ petition in fact this writ petition is misconceived and the same is dismissed. Having regard to the financial condition of the petitioner, we restrain and refrain ourselves upon imposing cost on the petitioner.

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18. In view of the order passed in the writ petition, the application is also dismissed.