

(2011) 08 J&K CK 0047

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 855 of 2008, CMP No's. 1580 of 2008 and 1281 of 2008

Parkash Chander Chowdhary

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 30-08-2011

Acts Referred:

Citation : (2011) 3 JKJ 281

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hasnain Massodi, J.—The petitioner way back on 10th September, 1963 was vide Government Order No. 80/COOP of 1963, appointed

as Assistant Registrar in Cooperative Department of the State Government and later vide Order No. Adm./1939-47 dated 19th June, 1972

transferred and posted as such at Bani, District Kathua. Due to personal problems, the petitioner could not join at new place of posting and

applied for casual leave w.e.f. 20th June, 1972 to 24th June, 1972. This was followed by successive leave applications till March, 1973. The

petitioner because of his failure to report to his duty was placed under suspension and charge sheeted. The charge sheet was published in the

Government Gazette in March, 1973 to which reply was submitted by the petitioner in May 1973. The Registrar, Cooperative Societies -

respondent No. 2 herein, not satisfied with the reply submitted by the petitioner, directed an enquiry to be held by the Joint Registrar

Headquarters. The results of enquiry prompted the Registrar, Cooperatives to pass order No. Adm/491-92 dated 19th June, 1974, terminating

the service of the petitioner.

2. The aforementioned order terminating the service of the petitioner is assailed in the present writ petition on the grounds that as the casual leave

application dated 19th June, 1972 and the applications submitted thereafter for extension having not been expressly rejected by the respondents,

the respondents were not justified in treating the petitioner as absent from duty. It is next pleaded that the charge sheet having been framed by an

incompetent officer was not sustainable inasmuch as the petitioner was appointed by Government and the Government alone had powers to frame

the charge sheet against the petitioner. The charge sheet, again, according to the petitioner, was vague and not accompanied by the details of his

alleged misconduct, list of documents to be relied upon, preventing the petitioner from submitting an effective reply to the charge sheet. The

petitioner further claims to have been not in a position to defend the charge sheet because of failure on part of the respondents to pay subsistence

allowance to the petitioner. The enquiry in consequence of charge sheet is said to have been held in violation of principle of natural justice without

giving due weight age to reply to the charge sheet submitted by petitioner and further denying the petitioner an adequate opportunity to project and

prove his case set up in reply to the charge sheet. The petitioner complains that the report of the enquiry was not served upon him and he was not

made aware of the conclusions arrived at by the Enquiry Officer and material on such conclusions were not based. The respondents, once the

charges were claimed to have been proved, are said to have avoided to issue a show cause notice as regards the proposed punishment to the

petitioner, so as to enable the petitioner to convince the respondents that proposed punishment was harsh, excessive and unwarranted. The

petitioner questions the impugned order on the ground that it was issued by incompetent Authority in terms of Jammu and Kashmir Civil Services

(Classification, Control & Appeal) Rules, 1956. It is insisted that as the petitioner was appointed by the Government and not by the Registrar,

Cooperatives, only the Government was competent to terminate service of the petitioner. The petitioner conscious that he was approaching the

Court with the writ petition, questioning an order after lapse of 34 years, seeks to explain the delay on the ground that the order was never served

on the petitioner; that the respondents did not reject any of the successive representations made by the petitioner from the date of termination of his services till filing of the writ petition; that the petitioner because of his transfer to Bani and termination, thereafter, was caught in financial crisis and was not in a position to question his termination. It is insisted that exercise of extraordinary writ jurisdiction at belated stage is not forbidden by any rule of procedure but purely a rule of practice and that Court is competent to entertain a writ petition and grant a writ even where the petitioner approaches the Court after considerable delay but is in a position to explain such delay in filing the writ petition.

The writ petition is opposed on the ground that it is hopelessly time barred and liable to be dismissed on account of un-explained delay and laches

on part of the petitioner. The respondents insist that none of the fundamental Constitutional or legal rights of the petitioner, was violated as would

entitle the petitioner to invoke writ jurisdiction of the Court. The respondents disputing the factual averments made in petition insist that the

petitioner was informed and made aware of termination of his services vide Order Nos. 142/902 dated 31.5.1975 and Adm. 131 dated 3.7.1992.

3. Heard learned counsel for the parties and perused the record.

4. The law lies in favour of those, who are alert and vigilant. The Court may not inquire into belated and state claims and is to be slow in exercising

writ jurisdiction, which is essentially equitable and discretionary in nature, where party invoking such jurisdiction, is guilty of inordinate delay. The

refusal by the Court to entertain and deal with state claims though not a rule of law is nonetheless a rule of practice that has over years earned

respectability. The delay or laches has come to be accepted as a relevant factor to determine the question as to whether the claim put forth by the

petitioner deserves consideration. The Court in exercise of its discretion, it has been held times without number, must not ordinarily assist tardy,

indolent, acquiescent and lethargic. If there is inordinate delay on the part of aggrieved and such delay is not satisfactorily explained, the Court may

very well decline the relief. The omission and negligence on the part of an aggrieved to assert his right for a considerably long time may cause

prejudice to his adversary in the event the matter is inquired into despite his having slept over the matter for too long. Though there is no universal

or inviolable rule that whenever there is delay, the claim put forth must meet failure yet inordinate and unexplained delay and that too stretching over a long, long period is to stand in the way of aggrieved to get the relief that he avoided or forgot to seek though there was a cause. However, the discretion is to be exercised judiciously and reasonably. There are two circumstances that have been held to be important in such cases and must guide exercise of discretion - firstly, the length of the delay and secondly the nature of acts done during interval, which might affect either party, and influence balance of justice and injustice in taking the one course or the other, so far these relate to the remedy.

5. In the present case the petitioner, terminated from service vide Order No. Adm/491-92 dated 19th June 1974, has woken up from deep slumber and felt persuaded to question the termination order in the year 2008 i.e., after 34 long years. The case set up by petitioner to explain long and inordinate delay of 34 years is that the termination order No. Adm/491-92 dated 19th June 1974 was not served on the petitioner. The explanation tendered by the petitioner is far from convincing. The petitioner was vide Order No. Adm/193-94 dated 19th June 1972 transferred and posted as Assistant Registrar, Cooperatives at Bani District Kathua. The petitioner did not obey the transfer order and failed to report at his new place of posting. The petitioner instead applied for casual leave followed by successive leave applications. However, leave was not sanctioned in his favour. The respondents instead placed the petitioner under suspension, framed charge-sheet against him, which was duly published in Government Gazette of March 1973. The petitioner, aware of rejection of his successive leave applications, his suspension and charge-sheet, responded to charge-sheet and filed his reply to it in May 1973. The petitioner thus was well aware of rejection of his successive leave applications, disciplinary proceedings having been initiated against him, and can be reasonably expected to have been conscious of outcome of the proceedings. The respondents admittedly did not pay any salary to petitioner after his failure to report to Bani in June 1972, and was not paid any subsistence allowance after his suspension ordered in March 1973. The petitioner, in the circumstances, cannot be heard saying that he was not aware of termination order No. Adm/491-92 dated 19th June 1974.

6. The petitioner was working on a senior position in Cooperative Department and is presumed to be well aware of his rights including right to claim salary prior to his suspension and subsistence allowance after his suspension was ordered. Similarly, the petitioner is expected to have been aware of the course that disciplinary proceedings are to follow and how the results of such proceedings were to shape up. The petitioner cannot explain long delay of three and a half decades merely on the ground that he made successive applications for grant/extension in his leave from June 1972 to March 1973 (Annexures B to Q to the petition) or grant of suspension allowance in the year 1973 (Annexure T&V). The fact that the petitioner was fully aware of the termination order in the year 1974 itself is borne out by Annexure-X, annexed by the petitioner with the writ petition, whereby petitioner on 19th September 1974 submitted an application to the Registrar, Cooperative Societies, asking for a copy of termination order. The review petitions and representations filed by the petitioner thereafter, after intervals of one to two years do not indicate that the petitioner at any point of time intended to seriously question the termination order. The purpose appears to have been only to keep the pot - not boiling but on low intensity fire and allow the issue to be alive till the petitioner crossed the age of superannuation and would turnaround to seek the benefits that were never claimed, without rendering any actual service. The petitioner obviously after he did not chose to obey the transfer order and join as Assistant Registrar, Bani in June 1972 must have pursued a profession of his choice, feeling no urge to resume the duty or question the termination order.

7. This Court in Shakeel Ahmad Shal v. State of J&K and Ors. JKJ[HC] (1) 2008 104, 2008 (1) S.L.J. 261 after a threadbare discussion of the law on the subject of laches held that an unexplained delay of six years in throwing challenge to the termination order would stand in the way of the petitioner to invoke extra ordinary writ jurisdiction of the Court. It was held that the very fact that the petitioner was not paid salary after his dismissal would dissuade the Court from recording agreement with the plea that the dismissal order was not communicated to the petitioner. The Court while holding the petition belated relied upon law laid down in State of Maharashtra Vs. Digambar, , State of M.P. and Others Vs. Nandlal

Jaiswal and Others, , Ashok Kumar Mishra and Others Vs. Collector, Raipur and Others, and Life Insurance Corporation of India and Others Vs.

Jyotish Chandra Biswas, .

8. For the reasons discussed above, the petitioner because of inordinate, unexplained delay and laches on his part is not entitled to invoke writ

jurisdiction of the Court.

9. This apart, the writ petition, if allowed shall result in immense administrative difficulties inasmuch as the respondents would be required to

enquire into a Misconduct, that the petitioner allegedly indulged in 39 years back.

10. The petition, is accordingly, dismissed.