

(1974) 04 KL CK 0006
In the High Court Of Kerala

P.J. Thomas and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-04-1974

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (1975) 1 LLJ 284

Hon'ble Judges : V.P. Gopalan Nambiyar, J;T. Chandrasekara Menon, J

Bench : Division Bench

Judgement

V.P. Gopalan Nambiyar, J.—This is an appeal against the judgment of a learned Judge of this Court, dismissing O.P. 725 of 1971, on the ground of delay and laches. The two writ petitioners were employees under the Kottayam Orient Bank Ltd. They will be referred to in this judgment as petitioners. The Ist petitioner joined the Bank on 2-1-1954 and was an "Agent" in one of the "Branches" of the Bank, from 1-3-1955 to 16-6-1961. He is a graduate of the Madras University, was a J.C.O., and claims to be well-qualified for preferment and promotion. The 2nd petitioner, likewise, was "Agent" from 1-2-1947 to 30-5-1960. He was transferred to the Central office of the Bank and was working there till 17-6-1971. He had studied upto B.A. class, although not taken the degree, and has experience in banking. In pursuance of Ext. P1 Scheme prepared by the Reserve Bank, u/s 45, Clause (4), Sub-clause (4) of the Banking Regulation Act 1942, and sanctioned by the Government of India, u/s 45, (7) of the Act, the Kottayam Orient Bank was to be amalgamated with the State Bank of Travancore. Under Clause (13) of the Scheme, the Employees of the Transferor Bank, other than those specified in the Schedule were to continue in service and be deemed to have been appointed in the Transferee Bank at the same remuneration, and on the same terms and conditions, as were applicable to such employees before 18-12-1960. Under Clause (15), the Transferee Bank was, on the expiry of a period, not longer than three years from the sanctioning of the Scheme, to grant the employees of the transferor Bank the same remuneration and the same terms and conditions of service as are applicable to the employees

of the corresponding rank or status of the transferee Bank, subject to the qualifications and experience of the said employees of the transferor Bank being the same as, or equivalent to, all such other employees of the transferee Bank. Under Clause (19), doubts in regard to the interpretation of the provisions of the Scheme are to be referred to the Reserve Bank of India, whose opinion shall be conclusive and binding on both the transferee and the transferor Banks.

2. The petitioners and other employees of the Kottayam Orient Bank were absorbed in the State Bank of Travancore, the transferee Bank, on and from 16-5-1961 under Clause (15) of the Scheme. There was an outer limit of three years for granting to them, the same terms and conditions of service as are applicable to employees of the corresponding rank or status in the transferee Bank. The material date for purpose of Clause (15) was fixed as 1-7-1963. The petitioners claimed fitment in the appropriate cadre in the transferee Bank. But they were aggrieved, as their designation was converted to that of clerks in the transferee Bank, and also because, persons with inferior qualifications than they, were allowed to hold posts of officers in the transfer-e-Bank. This latter, according to them, amounted to discrimination. Although this was pleaded, at the stage of the argument, Sri Hardyal Hardy who appeared for the appellants conceded that he cannot usefully urge the case of discrimination.

3. According to the petitioners, they were dissatisfied with the fitment made in the transferee Bank and made the representations; Ext. P6 dated 18th October, 1963, and Ex. P1 dated 30-10-1963, are copies of these representations. Meanwhile, the petitioners would have it that one Elias complained by O.P. No. 76 of 1964 in this Court against the fitment given to him in the Kottayam Orient Bank. The writ petition was dismissed in the first instance, by one of us ; but was allowed on appeal, by a Division Bench ; which decision was confirmed on further appeal, by the Supreme Court. The judgment of the Supreme Court dated 10-7-1970 is reported in State Bank of Travancore Vs. Elias Elias and Others, . The petitioners would have it that emboldened by this decision of the Supreme Court, they filed Exts.P2 and P3 representations dated 11-11-1970 and 18-11-1970, to the General Manager of the State Bank of Travancore (2nd respondent), but no reply was given to their representations. The counter-affidavit of the 2nd respondent in paragraph 4 would admit the receipt of this representation. There is no express averment that any reply was given to these representations. The petitioners filed representations Exts. P4 and P5 dated 4-2-1971 and 5-2-1971 to the Reserve Bank of India, praying that a direction may be given to the 2nd respondent to assign the appropriate rank and status and emoluments to therefrom 1-7-1963. The petitioners, therefore, prayed for a writ of mandamus to the 3rd respondent to dispose of the representations filed before it and for other appropriate writ or direction to the respondents to fit the petitioners in their appropriate rank and status in the State Bank of Travancore, as officers entitled to the emoluments of the said post from 1-7-1963.

4. The defence to the petition was mainly that the petitioners had been barred by

delay and laches. In addition to these, it was pleaded that by their conduct they had abandoned the relief claimed or at least brought about such a change of situation and circumstances, as to render it inequitable and inappropriate to grant them relief under Article 226. The pleas found favour with the learned single Judge.

5. The fitment, as noted, was on and from 1-7-1963, and the writ petition was filed on 26-2-1971. The petitioners would explain the reasons for the delay on the ground that Elias was fighting his battle in the Courts against his fitment, and this was finally decided by the Supreme Court only on 10-7-1970. This is said to constitute sufficient excuse for the inaction of the petitioners, and for condoning the delay and laches on their part. It has been pointed out in the counter-affidavit of the 2nd respondents that in 1963, a committee was appointed by the State Bank of Travancore to go into the individual grievances of employees like the petitioners, that neither the 1st petitioner who held the Office of "agent" of a "branch", nor the 2nd petitioner who was an "Officer" were considered suitable by the Committee, to be fitted into the corresponding posts in the transferee Bank, and hence they were fitted only in the clerical frame. Against this fitment, the 2nd petitioner by Ext. P6 dated 18-10-1963, and the 1st petitioner by Ext. P7 dated 30-10-1963, protested stating that their pay and allowances will be received without prejudice to their right to the correct status, that may be established in appropriate proceedings. Neither at the time of fitment, nor at the time of the protest, had Elias emerged in the horizon, nor had the battle waged by him in the Courts commenced, Yet, the petitioners took no action till these occurred in 1964. In the rejoinder affidavit of the 2nd respondent it is stated in para. 11 that the petitioners and others similarly placed, who had given representations like Exts. P6 and P7 were given replies. A copy of the reply given to the 2nd petitioner, has been produced as Ext. R6 dated 21-10-1963. It has stated that the duplicate copy of the reply given by the 1st petitioner, could not be traced from the files. There was no denial in the further affidavit filed by the petitioner that the replies mentioned herein had not been given.

6. In para. 17 of their petition, the petitioners would allege that they did not immediately move this Court as a person similarly situated, namely, Elias, had moved the Supreme Court. This was repeated in the arguments. But it should be noted that although Elias lost the first round of battle, he won the second round before a Division Bench of this Court in November, 1967. This was confirmed by the Supreme Court in July 1970. From November, 1967 to July, 1970 again, although Elias had won his battle in this Court and put the 2nd respondent on the defence, there was no action on the part of the petitioners to vindicate their rights. In the circumstances, we are not satisfied that there has been any satisfactory explanation for the delay and laches of the petitioners.

7. But the petitioners' counsel would contend that the wrong done to them was a continuing one, and so long as the wrong continued, they had a cause of action with which they could approach this Court. It is enough to point to the decision in

Poulose's case, 1967 K.L.J. 969, where, on a review of the authorities, the distinction has been noticed, between the continuance of an injury and the continuance of the injurious effects of the injury. We have little doubt that in this case, the injury or the infraction of rights of the petitioners was complete on 1-7-1963, by their fitment into the clerical cadre, and what continued was merely the evil effects of that injury. There was no question of any continuing injury.

8. After the Supreme Court decision in Elias case, we get the representations of the petitioners Exts. P2 and P3 dated 11-11-1970 and 18-11-1970, more than seven years after the fitment. Even here, they do not plead the pendency of the proceedings by Elias as a ground for their inaction or for mitigation of their delay and laches. In para. 11 of Ext. P2, for instance, reference was made to the Supreme Court decision in Elias case and portions of the judgment were appended. But beyond that there was no plea that by reason of this judgment, the petitioners are entitled to reconsideration of their claims, or that in view of the pendency of the proceedings taken by Elias, they had refrained from taking any action in regard to their claims. The petitioners' representations dated 4-2-1971 (Ext.P4) and 5-2-1971 (Ext P4) did not solicit any action by the Reserve Bank, in pursuance of its powers under the Scheme or the Banking Regulation Act. These are mere idle representations seeking mercy at the hands of the Reserve Bank and praying for its intervention to assign rank, status and emoluments to the petitioners from 1-7-1963.

9. While the unexplained delay by itself seems to be fatal to the maintainability of the writ petition, the other proved circumstances tell more strongly against the petitioners. In paragraph 6 of the counter-affidavit of the 2nd respondent, it has been pleaded that the petitioners and a large number of other similar employees of the Bank did not challenge the fitment, and their cases were closed ; that thereafter, the Bank had reorganised and fixed its staff pattern after 1963, and appointed and promoted suitable candidates to the various posts, that since 1963 as many as 440 persons were appointed and promoted as Officers in the Bank; and that the grant of any relief to the petitioners will adversely affect the rights and interests of these persons. It is not a satisfactory answer for the petitioners to state that they do not want any dislocation or unsettlement of these promotions or recoupment of the emoluments granted to the others and that they would be merely content with their being fitted to the appropriate cadre and the legitimate emoluments due to them being paid, and no more. The change of circumstances and situations brought out by lapse of time, is a powerful factor to disentitle the petitioner to relief under Article 226.

10. There is again yet another fact. On 31-6-1968, an agreement evidenced by Ext. R 1 was entered into between the State Bank of Travancore and the Employees' Union of the Bank. It is recorded in the agreement, that the State Bank of Travancore Employees' Union proposed to treat all disputes (except the one relating to the issue of absorption of "civil agents" into "subordinate cadre final settlement of which had to be deferred as the matter was sub judice)

connected with the refixation of the employees of the Bank as settled, if the State Bank of Travancore would grant with effect from 1-7-1966 an additional increment to all the employees of the Bank This was agreed to, and the union assured that all disputes, representations, writ petitions, suits, etc., preferred by individual employees of the Bank would be unconditionally withdrawn and that no such disputes, representations, writ petitions, etc., would be preferred in future. By this time, Elias had won his battle before the Division Bench, and the matter was pending in the Supreme Court. Hence the dispute regarding his category alone was excluded, as indicated in the portion within brackets in Ext. R 1, noticed earlier. This settlement (Ext. R 1) was accepted by the petitioners. The counter-affidavit of the 2nd respondent has alleged in paragraph 5, that the petitioners accepted the increments granted to them in their scales of pay as clerks without any protest, and they had been receiving their pay on that basis thereafter. This allegation has not been denied except in a very bald and general way in the affidavit filed in reply by the petitioners. It is also significant that while, after the fitment, the petitioners at least signified their protest and threatened appropriate proceedings by Exts. P6 and P7, they did not even register, or place on record, their protest, but accepted and enjoyed the terms of Ext. R 1 settlement without reserve. In the circumstances, the objection raised by counsel for the respondent, that there was an unconditional acceptance of the terms of Ext. R 1 settlement and submission to its benefits including the conferment of a higher retirement age and a retrospective increment, must be accepted. Counsel for the respondent is well-founded in his submission that, as a result of these, there was an abandonment of the rights of the petitioner. At any rate, their conduct is such as to disentitle them to relief under Article 226. Our attention was called to the decision in *Slough Estates Ltd. v. Slough Borough Council and Anr.* [1969 2 A.E.R. 988, which supports the stand of counsel for the respondent on this aspect.

11. We were taken through a welter of authorities by counsel on either side on the question as to how far delay and laches would disentitle the petitioner to relief under Article 226. Counsel for the petitioner maintained that there was no inflexible rule of limitation or of delay in regard to the maintainability of a petition under Article 226. While this is so, counsel for the respondent contended that the question of delay and laches, is, ultimately, one of discretion relating to the, grant or refusal of relief under Article 226. In the flow of Authorities, the source of the principle is sometimes lost sight of. That has, however, been immortalised by the Judgment of the Supreme Court in *Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others*, , where the classic observations of Sir Barnes Peacock were quoted. The Court observed:

It is well established that the writ of certiorary will not be granted in a case where 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 adverse party. The principle is to a great extent, similar

to, though not identical with the exercise of discretion in the Court of Chancery. The principle has been clearly stated by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp* [1874 5 P. C. 221 at p. 239, as follows:

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 limitations, 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.

This passage was cited with approval by this Court in a recent case ? *The Moon Mills Ltd. v. M.R. Mehar*, president, Industrial Court, Bombay AIR 1967 S.C. 1450. In our opinion, the principle of this decision applies to the present case and since respondent No. 1 and the other private operators had not even pleaded any circumstances justifying the delay or their conduct, the High Court was in error in granting a writ of certiorari in their favour.

The above passage and the quotation from the judgment of Sir Barnes Peacock, neatly bring out the principle underlying delay and laches. In *Rabindranath Bose and Others Vs. The Union of India (UOI) and Others*, , the Supreme Court declined to grant relief even in a petition under Article 32 of the Constitution involving fundamental rights on the ground of delay and laches. This was what the Court observed:

34. But after carefully considering the matter, we are of the view that no relief should be given to petitioners who without any reasonable explanation, approach this Court under Article 32 of the Constitution after inordinate delay. The highest Court in this land has been given Original Jurisdiction to entertain petitions under Article 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years. It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay.

35. We are not anxious to throw out petitions on this ground, but we must administer justice in accordance with law and principles of equality, justice and good conscience. It would be unjust to deprive the respondents of the rights

which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years.

We may also usefully notice the Supreme Court's answer in the above case to the contention that representations had been filed by the petitioners and, therefore, there was no delay. Observed the Court:

36. Learned counsel for the petitioners, however, says that there has been no undue delay. He says that the representations were being received by the Government all the time. But there is a limit to the time which can be considered reasonable for making representations. If the Government has turned down one representation, the making of another representation on similar lines would not enable the petitioners to explain the delay.

It is enough for us to merely mention that the other cases cited by counsel for the respondent, were M.K. Krishnaswamy, etc. Vs. The Union of India (UOI) and Another, and Kamini Kumar Das Choudhury Vs. State of West Bengal and Others, .

12. Counsel for the petitioners cited to us the decision in Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, , The Secretary to Government Vs. The Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. and Another, , Sachindra Nath Sen Gupta v. The General Manager. North East Frontier Railway. Maligaon and Ors. AIR 1973 Gauhati 108, and many others. We do not think it necessary to examine these cases in detail. It is enough to state that they were all cases where, on the facts, the Court found either that there was no delay, or that the delay had been satisfactorily explained. None of these cases lay down the proposition that delay and laches are not factors to be taken into account in considering a petition under Article 226.

13. Counsel for the petitioners placed reliance on the Belfast College case (1964) 2 A.E.R. 705. The decision is really on the principle of stare decisis, where on the actual facts, the House of Lords had no hesitation to overrule a decision which had stood for nearly 132 years. This has no application here.

14. Counsel for the petitioners contended that Ext. R 1 settlement was not binding or valid, as the petitioners are not "workmen" but belonged to the managerial staff and were, therefore, outside the definition of "workmen" under the Industrial Disputes Act. It was also contended that Ext. P 1 settlement had not been published as required by Rule 58(4) of the Rules framed under the Industrial Disputes Act. The invalidity of Ext. R 1 settlement, has not been expressly pleaded; and a collateral attack against the settlement in these proceedings, cannot be countenanced. Counsel for the respondents also offered to satisfy us by production of the files that Ext. R 1 had been notified and published as required by Rule 58(4) of the Rules. We decline to pronounce on the validity or binding character of Ext. R 1 settlement except in proceedings where the same is directly attacked on proper pleading.

15. We find no ground to interfere with the decision of the learned Judge. We dismiss this appeal, but in the circumstances, without costs.

16. We place on record our thanks to Sri Hardayal Hardy, counsel for the appellants and to Sri F.S. Nariman, the Additional Solicitor-General, for their assistance and our appreciation of their able arguments.