

(2015) 03 TP CK 0019
In the Tripura High Court
Case No : Writ Petition(C) No. 426 of 2013

Prasanna Hari Jamatia

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 03 TP CK 0019

Hon'ble Judges : Deepak Gupta, C.J.;S.C. Das, J.

Bench : Division Bench

Advocate : S.S. Debnath, for the Appellant; T.D. Majumder, Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—By filing this writ petition the petitioner prayed for issuing appropriate writ(s) directing the respondents to reinstate him in the service of Tripura State Rifles (for short "TSR"), 2nd Bn in the post of Havildar from which he was discharged by an order dated 16.03.1999, issued by respondent No. 4 and also prayed for allowing him all service benefits.

2. Heard learned counsel, Mr. S.S. Debnath, for the petitioner and learned Government Advocate, Mr. T.D. Majumder for the State-respondents.

3. The petitioner in his affidavit, inter alia, contended that he joined TSR 1st Bn as a Rifleman on 01.09.1985 and had been serving with all his sincerity and devotion to the satisfaction of his authority. On 01.08.1991 he was promoted to the rank of LNK and thereafter on 12.08.1993 he was further promoted to the rank of NK. Subsequently, he was promoted to the rank of Havildar in the 1st Bn of TSR on 25.11.1995. On 04.12.1995 he was posted in the 2nd Bn of TSR.

It is the case of the petitioner that on 04.12.1998 he applied to the Commandant 2nd Bn. TSR, R.K. Nagar for granting him five days' casual leave with permission to leave station for the treatment of his father, who was seriously ill. On

05.12.1998 he left the station with verbal permission from the Station Officer in anticipation of granting of the casual leave. On reaching home he arranged for the treatment of his father, but his father expired on 07.12.1998. On 09.12.1998 he again applied for 27 days" earned leave w.e.f. 05.12.1998 in cancellation of his earlier prayer of five days" casual leave and sent his application to the Commandant 2nd Bn TSR by special messenger. On 01.01.1999 he reported for his duties, but he was not allowed to join. He was waiting in the 2nd Bn Headquarters for seven days and attended the office, but he was shown absent. After staying for seven days, he returned home being compelled since his joining was not accepted.

On 16.03.1999 he was terminated from the service by the Commandant 2nd Bn TSR issuing Memo dated 16.03.1999 (Annexure-IV to the writ petition) and before issuance of such termination order, no notice was issued and no disciplinary proceeding was initiated against him. He did not get any warning letter or notice from the authority. The order of discharge was issued invoking the provision of Rule 15(3) of the Tripura State Rifles (Recruitment) Rules, 1984 (for short "Rule 1984") and that rule was not applicable to the case of the petitioner since the petitioner was a regular staff of the TSR and he was not on probation. He was even not given one month's salary as per the provision of Rule 15(3) *ibid*. He was wrongly and illegally dismissed/terminated from the job without affording him any opportunity of being heard and so, the order of dismissal is liable to be interfered and set aside.

On 03.06.2013 he made an application before the Director General of Police, Tripura requesting him to reinstate him in the service, but that was not entertained. On 17.10.2013 a notice was issued to the Inspector General of police through his Advocate seeking reinstatement, but that was also refused. It is further contended by the petitioner that since after dismissal from service he was suffering from financial distress and, therefore, he could not approach the Court and recently he was given free legal aid by the learned counsel and thereafter he approached the Court by filing this writ petition seeking the relief as stated herein before.

4. The respondents by filing counter affidavit contended that the writ petition is bad for delay and laches and it is stated that equity aids the vigilant, not those who slumber on their rights. Because of long delay and laches the post which was vacated due to termination of the petitioner had been filled up by other person and, therefore, the relief sought by the petitioner cannot be granted by this Court after lapse of 15 years.

The respondents contended that the petitioner without taking any permission from the competent authority left his place of posting, Baganban Outpost, on 05.12.1998. The respondents also contended that no application for leave dated 04.12.1998 filed by the petitioner was received by the respondents and no such application dated 09.12.1998 for earned leave was also received by the respondents and the petitioner was unauthorizedly absent from his duties w.e.f.

05.12.1998.

It is also contended that the petitioner was not a confirmed employee in the post of Havildar at the relevant point of time of his dismissal and, therefore, respondent No. 4 rightly terminated him from the job invoking the power under Section 15(3) of the Rules 1984. Before issuing order dated 16.03.1999 all opportunities were given to the petitioners, but he did not avail those opportunities. Notice by registered post was issued to him three times, which were sent to his address, but he did not turn up. The copies of those notices dated 28.12.1998, 11.01.1999 and 15.02.1999 annexed with the counter affidavit as Annexure-R/1 series. He was initially asked to join his duties, since he was unauthorizedly absent, but he did not respond. Thereafter, show cause notices dated 11.01.1999 and 15.02.1999 were issued, but he did not respond and, therefore, there was no other option open before the authority except terminating him from the service. After such termination on 16.03.1999, he was sleeping over the issue and never challenged it. He could have filed an appeal before the superior authority as per rules, but he did not avail this scope. One month's salary could not be given to him since he was not traceable and since he did not claim the one month's salary within a month from the date of his dismissal, he is not entitled to get it. The writ petition is hopelessly barred by delay and laches and, therefore, it should be dismissed.

5. Mr. Debnath, learned counsel appearing for the petitioner candidly submitted that the petitioner was appointed on 01.09.1985 as a Rifleman of TSR 1st Bn and he completed the period of probation satisfactorily and thereafter he was confirmed in the post of Rifleman, which is evident since he was promoted in the rank of LNK on 01.08.1991 and then promoted to the rank of NK on 12.08.1993 and lastly promoted in the rank of Havildar on 25.11.1995. Since he was a confirmed staff of TSR force, Rule 15 of Rule 1984 was not applicable in his case. Only after a regular proceeding he could have been dismissed and, therefore, the order of dismissal from service dated 16.03.1999 (Annexure-IV to the writ petition) is palpably illegal and liable to be interfered.

6. Learned Government Advocate, on the other hand, has submitted that the petitioner was promoted in the rank of Havildar on 25.11.1995 and he was not confirmed in the post of Havildar and, therefore, termination from service invoking the provision of Rule 15 was justified.

7. Rule 15 of the Rules 1984 reads as follows:-

"15. Period of service.

A member of the Rifles shall be on probation for the period of 3 years during which period he shall be liable to discharge at any time on one month notice or on payment of one month's salary in lieu of the same under the orders of the appointing authority.

(2) At the end of the period of probation of three years, a members" may be

confirmed and if he is not confirmed, he may be considered for being declared as quasi-permanent by the appointing authority.

(3) If a member is not declared confirmed or quasi-permanent under sub-rule (2) as the case may be, by the appointing authority, he shall continue to be deemed as temporary member of the Rifles, liable to discharge at any time on one month's notice or on payment of one month's salary in lieu of the same under the orders of his appointing authority.

(4) A quasi-permanent member of the Rifles shall be liable to discharge on three month's notice or on payment of three month's salary in lieu of the same under the orders of his appointing authority.

(5) The power to confirm a member of Rifles shall vest in his appointing authority.

(6) Should the State Government decide at any time to disband the Rifles or any part of it, either before termination of the period for which a member of the Rifles is enrolled or at any time thereafter, he shall be liable to discharge without compensation from the date of disbandment."

8. It is an admitted position that the petitioner was appointed in the post of Rifleman of TSR on 01.09.1985 and while in service he got three promotions and the last promotion in the post of Havildar on 25.11.1995. Nothing is produced by the respondents that the petitioner was in probation in the post of Havildar after his promotion on 25.11.1995. In the absence of any such document or any provision in the relevant Act and Rules, the stand of the respondents that the petitioner was not confirmed in the post of Havildar or that he was on probation, cannot be entertained and, therefore, discharge of the petitioner from the service invoking the power prescribed under Rule 15 of the Rules 1984 was per se not tenable in law.

9. The petitioner contended that he applied for five days' casual leave on 04.12.1998 on the ground of his father's illness. In support thereof the petitioner annexed a copy of the petition marked as Annexure-I, but there is no endorsement on the copy that such application was received by the office of the respondents. Similarly, the petitioner stated that on 09.12.1998 he made another application for 27 days' earned leave cancelling the casual leave application of five days and that application was sent by messenger to the respondents. But on that copy of the application, which is marked as Annexure-II, there is no endorsement that such application was received by the respondents. The petitioner, therefore, has failed to prove that he made applications for leave and those applications were received by the respondents. He has also failed to prove the fact as to who authorized him to leave the place of posting. The petitioner in his petition stated that he left the place of posting after taking verbal permission of the Station Officer, but nothing stated in details that who was the Station Officer permitted him to leave. The respondents specifically denied the fact and stated that the petitioner left the place of posting without taking any permission from the competent authority. The respondents by

filing Annexure-R/1 series brought on record a notice dated 28.12.1998 asking the petitioner to join his duties and also two other show cause notices dated 11.01.1999 and 15.02.1999. The petitioner contended that he has not received any such notice. The respondents contended that those notices were sent by registered post. It is, therefore, clear that the petitioner did not care at all as to what was happening as to his job while his leave was not sanctioned and he was not permitted to join his duties.

10. Now, the question is whether this Court should interfere in the order after lapse of more than 15 years. Since after dismissal on 16.03.1999, admittedly the petitioner was sleeping over the issue. The petitioner contended that he was frustrated after issuance of his termination order dated 16.03.1999 and thereafter because of financial distress he could not approach the Court. He has contended that his engaged learned counsel offered him free legal aid and, therefore, he could approach the Court. No other reason has been assigned.

11. The petitioner was working in the rank of Havildar of TSR. He is not a lay man. If he was in financial distress, he would approach the legal services authority for legal assistance, but he never approached the legal services authority. If he could approach the present learned counsel to afford him legal aid, he could make such approach immediately after he was discharged from the service and not after 15 years. Practically the petitioner assigned no satisfactory reason at all for his approaching the Court at such a belated stage. The case of the petitioner, therefore, suffers from the mischief of delay and laches.

12. "The doctrine of laches" is based upon maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as neglect to assert a right or claim which, taken together with the lapse of time and other circumstances causing prejudice to adverse party, operates as bar in Court of equity. The elements of laches are - (i) unreasonable lapse of time, (ii) neglect to assert a right or claim, (iii) to the detriment of another. If these three elements are met, then the doctrine of laches will act as a bar in Court.

Laches is, therefore, considered as an unreasonable delay in pursuing a right or claim. In a way it prejudices the opposing party. When asserted in litigation, it is an equitable defence, or doctrine. The person invoking laches is asserting that an opposing party has slept of on his "right" and that as a result of this delay, circumstances have changed such that it is no longer just to grant the petitioner's claim. To put in other way, failure to assert one's right in a timely manner results in a claim being barred by laches.

Laches is a defence to a proceeding in which a petitioner seeks equitable relief. Cases in equity are distinguished from cases at law by the type of remedy, or judicial relief, sought by the petitioner. Generally, law cases involve a problem that can be solved by the payment of monetary damages. Equity cases involve remedies directed by the Court against a party. The law encourages a speedy resolution for every dispute. Cases in law are governed by statutes of limitation,

which are lodged that determine how long a person has to file a law suit before the right to sue expires. Different types of injuries have different time periods in which to file a law suit. Laches is the equitable equivalent of statutes of limitation. However, unlike statutes of limitation, laches leaves it up to the Court to determine, based on the unique facts of the case, whether a petitioner has waited too long to seek the relief.

13. In the case at hand, the petitioner was discharged from the service on 16.03.1999. He was sleeping over the issue for more than 15 years. It is stated that he made first representation on 03.06.2013 to the Director General of Police and thereafter he sent an Advocate's notice through his counsel on 17.06.2013 and those were responded by the respondents informing the petitioner that he was discharged from the job on 16.03.1999 and he did not prefer any appeal as per rules within statutory period of time and, therefore, his representation could not be entertained. Since the petitioner was sleeping over this right for a pretty long time, this Court, in our considered opinion, should be loathe in granting any relief to the petitioner. The Court should not exercise its extraordinary jurisdiction to unsettle a thing which has been settled during last 15 years.

14. The Supreme Court in the case of State Bank of Indore Vs. Govindrao, , in a case where the writ petitioner was dismissed from service and he filed writ petition after 10 years for his reinstatement which was entertained by the High Court wherein the Apex Court has observed that there was no reason for the High Court, after a long lapse of nearly ten years from the date of the order of dismissal, to entertain the writ petition and quash the order of dismissal. The Apex Court was of the view that the High Court should not have entertained that at all. It should have dismissed in limine.

15. In the case of Government of Andhra Pradesh and Others Vs. M.A. Kareem and Others, , the Apex Court in a case where a petition was entertained after 13 years has observed that the Courts and Tribunals should be slow in disturbing the settled affairs in a service after such a long period.

16. In the case of Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar and Others, , the Apex Court in para 46 and 47 has held as follows:-

"46. Delay and laches is one of the factors that requires to be borne in mind by the High Courts when they exercise their discretionary power under Article 226 of the Constitution of India. In an appropriate case, the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his rights taken in conjunction with the lapse of time and other circumstances.

47. The Privy Council in Lindsay Petroleum Co. v. Hurd, (1874) LR 5 PC 221, which was approved by this Court in The Moon Mills, Ltd. Vs. M.R. Meher, President, Industrial Court, Bombay and Others, and Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, , has stated: (Lindsay Petroleum Co. Case, LR pp. 239-40).

"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 it relates to the remedy." 17. The present writ petition of the petitioner, in our considered opinion, is suffering from the mischief of delay and laches and, therefore, we are not inclined to interfere with order dated 16.03.1999 passed by respondent No. 4, discharging the petitioner from service.

18. The petitioner joined the services of TSR as a Rifleman on 01.09.1985. Thereafter he got three promotions and the last promotion in the post of Havildar, he got on 25.11.1995. He left his place of posting on 05.12.1998. He seems to have abandoned the job, for which the competent authority by impugned order dated 16.03.1999 "summarily discharged" him from TSR services under Rule 15(3) of TSR (Recruitment) Rules, 1984 for his unauthorized prolonged absence from duty. We have already held that Rule 15(3) was not applicable in the case of the petitioner, since petitioner was not on probation and so, the order of discharge dated 16.03.1999 was not justified. However, we decline to interfere in the order of discharge, since the writ petition suffers from delay and laches. The petitioner admittedly served the TSR from 01.09.1985 till the date of his discharge without break. Under such circumstances, we consider it appropriate to direct the respondents to give all service benefits as per Rules to the petitioner for the period he served the TSR.

19. Accordingly, the writ petition is dismissed with the observation that the petitioner should be given all his service benefits for the period he served the TSR in different capacity, during the period from 01.09.1985 to 16.03.1999 and the respondents are directed to give such benefits within 60(sixty) days from today.

20. The parties are directed to bear their own costs.