
(2015) 09 MP CK 0011
In the Madhya Pradesh High Court
Case No : W.P. No. 18598 of 2006

Raghuveer Singh Uplabdhia and Others	APPELLANT
Vs	
State of M.P. and Others	RESPONDENT

Date of Decision : 29-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2015) 4 MPLJ 304

Hon'ble Judges : Ravi Shankar Jha, J.

Bench : Single Bench

Advocate : M. Chanduarkar, for the Appellant; Pramod Kumar Pandey, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ravi Shankar Jha, J.—Shri M. Chanduarkar, learned counsel for the petitioners. Shri Pramod Kumar Pandey, learned Government Advocate for the respondent/State. In spite of several opportunities, no return has been filed by the respondent/State, in the circumstances, the matter is heard on the question of admission.

2. The petitioners have filed this petition for appointment on the post of Lower Division Teacher claiming parity with one Shri Pradeep Mehta whose petition was allowed by the State Administrative Tribunal, which order was confirmed upto the Supreme Court.

3. The brief facts leading to the filing of the present petition are that the petitioners had appeared in the competitive examination held by the M.P. Junior Service Selection Board in the year 1984-85 for selection and appointment for posts of Lower Division Teachers and being successful, their names were mentioned in the list of selected candidates at Serial Nos. 477 and 490 published in the news paper Rojgar and Nirman dated 10-4-1986, in spite of being selected, no orders of appointment in respect of the petitioners were issued.

4. It is stated by the learned counsel for the petitioners that one similarly situated candidate Shri Pradeep Mehta had filed an application before the State Administrative Tribunal at Indore Bench which was registered as OA No. 120/1993 which was allowed in view of the orders passed by this Court in MP No. 928/1987 and TA No. 56528/1998. The order passed by the State Administrative Tribunal in the case of Shri Pradeep Mehta was assailed by the State before the High Court by filing W.P. No. 533/2000 which was dismissed on 15-9-2004 and the SLP filed by the State also suffered dismissal vide order dated 7-3-2005, a copy of which has been filed by the petitioners as Annexure P/4.

5. It is submitted by the learned counsel for the petitioners that after the decision of the Supreme Court in the case of Shri Pradeep Mehta, the petitioners have approached this Court claiming parity and similar relief as granted by this Court to Shri Pradeep Mehta. It is stated that Shri Pradeep Mehta's name appeared at serial No. 1873 in the select list of successful candidates published for Ratlam District and in such circumstances the petitioners being better placed, are entitled to similar relief as granted to Shri Pradeep Mehta.

6. Having heard the counsel for the parties, it is observed that the selection was undertaken by the M.P. Junior Service Selection Board on 4-4-1985 and the select list was published on 10-4-1986 whereas the present petition has been filed by the petitioners in the year 2006 after a long lapse of 20 years. In view of the aforesaid undisputed and undenied facts, the petitioners cannot be permitted to claim parity with Shri Pradeep Mehta as the petitioners have slept over the matter for a long period of 20 years.

7. In the circumstances, it is apparent that the petition filed by the petitioners suffers from tremendous delay and laches on their part and there is no explanation furnished by them in that regard. The Supreme Court in the case of Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another, has held that the persons who file belated petitions claiming similar and identical relief which has been granted to those similarly situated persons who were vigilant and approached the Court in time are not entitled to any relief on the ground of delay and laches in the following terms:--

"5. So far as the principal issue is concerned, that has been settled by this Court. Therefore, there is no quarrel over the legal proposition. But the only question is grant of relief to such other persons who were not vigilant and did not wake up to challenge their retirement and accepted the same but filed writ petitions after the judgment of this Court in Harwindra Kumar Vs. Chief Engineer, Karmik and Others, . Whether they are entitled to same relief or not? Therefore, a serious question that arises for consideration is whether the employees who did not wake up to challenge their retirement and accepted the same, collected their post-retirement benefits, can such persons be given the relief in the light of the subsequent decision delivered by this Court?

6. xxxx xxxx xxxx xxxx

7. Learned Senior Counsel for the appellants has invited our attention to various decisions to impress upon that persons who are guilty of such laches and acquiesced with the situation should not be granted any relief because it is going to cost the Nigam a heavy financial burden to the tune of Rs. 17,80,43,108. Therefore, relief should be confined to those persons who were continuing in service and filed their writ petitions in time but not to all and sundry who woke up to file the writ petitions much after their retirement. In this connection, our attention was invited to a decision of this Court in *Rup Diamonds and Others Vs. Union of India and Others*, wherein their Lordships observed that those people who were sitting on the fence till somebody else took up the matter to the Court for refund of duty, cannot be given the benefit. In that context, their Lordships held as follows: (SCC pp. 356-57)

"Petitioners are reagitating claims which they had not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a Court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate delay in preferring the present writ petition which is brought after almost a year after the first rejection. As observed by the Court in *Durga Prashad Vs. Chief Controller of Imports and Exports*, , the exchange position of this country and the policy of the Government regarding international trade varies from year to year. In these matters it is essential that persons who are aggrieved by orders of the Government should approach the High Court after exhausting the remedies provided by law, rule or order with utmost expedition. Therefore, these delays are sufficient to persuade the Court to decline to interfere. If a right of appeal is available, this order rejecting the writ petition shall not prejudice petitioners" case in any such appeal."

8. Our attention was also invited to a decision of this Court in *State of Karnataka and Others Vs. S.M. Kotrayya and Others*, . In that case the respondents woke up to claim the relief which was granted to their colleagues by the Tribunal with an application to condone the delay. The Tribunal condoned the delay. Therefore, the State approached this Court and this Court after considering the matter observed as under: (SCC p. 268)

"Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-sections (1) or (2) of section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August, 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy

of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay."

9. Similarly in Jagdish Lal and others Vs. State of Haryana and others, this Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the Court, then such person cannot stand to benefit. In that case it was observed as follows: (SCC p. 542)

"The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Union of India and others etc. Vs. Virpal Singh Chauhan etc., . The appellants' desperate attempt to re-do the seniority is not amenable to judicial review at this belated stage."

10. In Union of India and Others Vs. C.K. Dharagupta and Others, it was observed as follows: (SCC p. 398, para 9)

"9. We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P. Joshi vs. Union of India, OA No. 497 of 1986 decided on 17-3-1987 gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit of Joshi case. In view of our finding that the benefit of the judgment of the Tribunal dated 17-3-1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief."

11. In Government of West Bengal Vs. Tarun K. Roy and Others, their Lordships considered delay as serious factor and have not granted relief. Therein it was observed as follows: (SCC pp. 359-60, para 34)

"34. The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in State of West Bengal and Others Vs. Debdas Kumar and Others, . The plea of delay, which Mr. Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate Courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a Court of law."

12. The statement of law has also been summarised in Halsbury's Laws of England, para 911, p. 395 as follows:

"In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

(i) acquiescence on the claimant's part; and

(ii) any change of position that has occurred on the defendant's part."

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where, by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

8. The Supreme Court in the case of Union of India (UOI) and Others Vs. M.K. Sarkar, held that the practice of the High Courts in directing to consider representation even in cases of long delay and laches and thereby reopening the cases which are dead due to lapse of time is not proper and should not be done in the following terms:--

"16. A Court or tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the Court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the Court or tribunal deciding to direct "consideration" without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the Court does not expressly say so, that would be the legal position and effect."

9. This Court in the case of Qadeer Mohd. Vs. State of M.P. and Others, has taken the same view on the basis of the aforesaid law laid down by the Supreme Court.

10. In the facts and circumstances of the case it is also undisputed that the petitioners have approached this Court after a long lapse of 20 years and, therefore, I am of the considered opinion that the petition filed by the petitioners also suffers from delay and laches in view of the decisions rendered by the Supreme Court in the cases of Karnataka Power Corporation Limited through its Chairman and Managing Director and Another Vs. K. Thangappan and Another, , Union of India (UOI) and Others Vs. M.K. Sarkar, and New Delhi Municipal Council Vs. Pan Singh and Others, . In the circumstances, in view of the law laid down by the Supreme Court in the aforesaid cases, the petition filed by the petitioners being misconceived is, accordingly, dismissed.