
(2012) 04 AHC CK 0211

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 40601 of 2009

Ram Chabila Pandey and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Citation : (2012) 8 ADJ 403 : (2013) 1 AWC 168 : (2012) 135 FLR 585

Hon'ble Judges : Rakesh Tiwari, J;Ashok Pal Singh, J

Bench : Division Bench

Advocate : Sanjay Kumar Om, for the Appellant; Govind Saran and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Rakesh Tiwari, J.—Heard Learned Counsel for the parties and perused the record. Brief facts of the case are that petitioner No. 1 while he was working as "Kantewala" at Bansdih Road Station of North Eastern Railway in the year 1974, the Railway employees all over India had gone on a general strike demanding bonus and restructuring of the cadre etc. wherein all the railway works including running of trains etc. were totally paralysed w.e.f. 8.5.1974 to 28.5.1974. The petitioner No. 1 claims that he being a sincere and dedicated employee did not participate in the strike. However, the then Railway Minister issued a policy whereby he rewarded all those Loyal staff/employees who had worked during strike with certain benefits i.e. an option was given to them either to accept one advance increment or get an appointment for one of their dependents. It was alleged that the then Hon'ble Railway Minister had announced in the Parliament that services of Loyal Workers will not go unrecognized and in pursuance thereof the Railway Board issued letters dated 13.2.1974 and 20.5.1974 to give employment to the sons/ daughters/ dependents of Loyal workers but to no avail. Accordingly, a scheme for implementation of the policy decisions was framed. The Railway Board then issued letters dated 13.2.1974 and 20.5.1974 by which the sons/daughters/

dependents of Railway employees who performed duty during the period the railway employees had gone on strike all over India, were directed to be given due consideration in the matter of their appointment.

2. According to petitioner No. 1 he had performed his duties as "Kantewala" Bansdih Road Station of North Eastern Railway with full devotion, zeal and sincerity despite there being a state of turmoil and violence prevailing during the period of strike between 8.5.1974 to 28.5.1974 under the instructions of the respondents. A certificate in this regard had also been issued by the Assistant Personnel Officer, Eastern Railway Varanasi in his favour in which it was mentioned that petitioner No. 1 had not been granted any other benefit viz., special increment. He had applied for appointment of his son (petitioner No. 2) at the very inception of the Scheme promulgated by the Railway Board vide his representation dated 2.2.1975.

3. The grievance of the petitioners is that though petitioner No. 1 has consistently pursued the case for appointment of his son (petitioner No. 2) under "Loyal Quota" and has also preferred a number of representations to the Divisional Railway Manager, Varanasi with effect from 2.2.1975 to 22.3.2002 and General Manager North Eastern Railway, Gorakhpur but to no avail. It was in the year 2005 that he came to know about the order dated 19.12.2005 passed by the High Court in W.P. No. 43111 of 2005, Santosh Kumar Gupta v. CAT, Allahabad giving appointment to Sri Santosh Kumar Gupta that he also filed Original Application No. 246 of 2006, Ram Chhabila Pandey and another v. Union of India and another, before the Central Administrative Tribunal, Allahabad Bench, Allahabad (hereinafter referred to as the "Tribunal") which was dismissed vide judgment and order dated 8th May, 2009 by the CAT.

4. Aggrieved, the petitioners have filed this writ petition for the following reliefs.

(i) Issue a writ order or direction in the nature of certiorari quashing the order dated 8.5.2009 passed by respondent No. 3, Central Administrative Tribunal, Allahabad Bench, Allahabad (Annexure-1 to the writ petition);

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to consider the representation of the petitioners dated 17.1.2006 and thereby consider petitioner No. 2 for appointment against "Loyal Quota" in pursuance to Railway Board's circular dated 12.2.1974;

(iii) To issue any other writ order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case; and

(iv) To award the present petition in favour of the petitioner.

5. Learned Counsel for the petitioners submits that the Tribunal has not considered the judgment and order dated 26.5.2005 in Civil Misc. Writ Petition No. 43111 of 2005, Santosh Kumar Gupta v. CAT, Allahabad Bench, Allahabad, wherein the Court while allowing the writ petition partly had directed the petitioner to file a comprehensive representation alongwith certified copy of the

order, as well as, complete copy of the writ petition with all annexures before the competent authority within three weeks from the date of the order and on such representation being filed, as stipulated above, the same to be decided by the competent authority within a period of three months from the date of receipt of representation exercising its unfettered discretion on the basis of record before him in accordance with relevant Rules, Government Orders, Scheme/Policy without being influenced by any of the observations in the judgment since the Court had not entered into the merits of the case.

6. It is stated that following the aforesaid judgment in Santosh Kumar Gupta (supra) petitioner No. 1 again moved representations dated 1.6.2005 and 17.1.2006 annexing copy of the judgment aforesaid praying that the applicants are similarly situated persons and in any view of the matter the case of petitioner No. 2 may also be considered for appointment under "Loyal Quota".

7. Learned Counsel for the petitioners then submits that no benefit under the "Loyal Quota" whatsoever has been given to the petitioner in pursuance to the circular dated 13.2.1974 as neither he has been granted any advance increment nor any one of his dependents has been given appointment by the Railways. The appointments under the "Loyal Quota" have been treated at par with compassionate appointment, therefore, the guidelines and circulars issued by the Railway Board from time to time including the circular dated 15.11.1995 would also be applicable to his case and his son who is dependent upon him cannot be deprived of the employment in the railways.

8. He argues that action of the respondents in non-consideration of petitioner No. 2 for appointment under the aforesaid scheme was wholly illegal and arbitrary particularly in view of the circular dated 15.11.1995 whereby the period of limitation for compassionate appointment has been extended by 20 years from the date the dependent attains age of majority; that notice may also be had to the fact that the benefit has been granted even to posthumous child.

9. It is contended by the counsel for the petitioners that petitioner No. 2 has been discriminated without any rhyme or reason. It is stated that since Sri Santosh Kumar Gupta a similarly situated person has already been given appointment in Group "D" category under the scheme vide order dated 19/21.12.2005 by the 1st respondent, there is hardly any justification for the railways for not providing appointment to petitioner No. 2, the son of petitioner No. 1. It is also stated that there is no delay in filing the case by the petitioners before the Tribunal and the O.A. has illegally been rejected on the ground of delay and laches particularly in view of the judgment and order dated 26.5.2005 in Santosh Kumar Gupta (supra).

10. It is urged by him that cause of action for claiming benefit in terms of letter dated 13.2.1974 accrued to the petitioners in November, 1992 when petitioner No. 2 attained the age of majority and since then they are continuously approaching the authorities for grant of appointment to petitioner No. 2 under

the policy decision/scheme framed by the Railways; that delay, if any has accrued on the part of the respondents themselves in not considering the case of the petitioners timely on his representation. As such the view taken by the Tribunal in its judgment and order dated 8th May, 2009 that Original Application is barred by time and has been filed after delay of 32 years, is wholly erroneous and against the material on record. Hence, the same is liable to be quashed as provisions of Limitation Act would not be applicable and the OA cannot be dismissed on the ground of limitation. It is stated that the Tribunal has failed to consider that absolutely no benefit whatsoever in pursuance of circular dated 13.2.1974 was given to the petitioners and if the appointment of petitioner No. 2 was not available then in that case also, other benefits should have been granted to the petitioner No. 1.

11. Per contra, Learned Counsel for the respondents submits that admittedly the strike took place in the year 1974 during the period from 3.5.1974 to 28.6.1974; that petitioner No. 2, who is seeking his appointment under "Loyal Quota" was not even born then. He was born on 15.11.1974. In the letter of the Railway Board there was no such stipulation that appointment shall be given to the sons and wards of the Railway employees who took birth after the strike was over. It is stated that vide letter dated 28.1.1976 the Railway Ministry had decided that recruitment of sons/daughters of loyal staff would be considered up to 31.3.1976 to finalize pending cases received prior to 31.12.1975 and since petitioner No. 1 did not apply prior to 31.12.1975 his case could not be considered.

12. It is lastly submitted by the Learned Counsel for the respondents that the cause of action in any case could arise to the petitioners after a lapse of one year from 30.9.1976 i.e. upto 29.9.1977 and the petitioner had admittedly not preferred any suit before the Civil Court in this regard. The OA filed by the petitioners having been filed after inordinate delay of 32 years was time barred and any series of representations filed by the petitioners would not give the benefit of limitation to them. It is stated that the judgment/directions given by the High Court in the case of Santosh Kumar Gupta was not at all applicable to the case of the petitioners as it was a judgment in personem and not in rem; that there was no substantial ground for condonation of delay of 32 years as no plausible explanation was given by the petitioners for condonation of delay, hence the Tribunal after considering the facts and circumstances of the case has rightly dismissed the aforesaid OA as highly time barred.

13. Having considered the submissions of the Learned Counsel for the parties it would be in a fitness of things to reproduce the relevant portion of the judgment and order dated 8th May, 2009 as under:

11. We have given our thoughtful consideration to the pleas advanced by the parties' counsel and in our considered view the claim of the applicants that they may also be given the similar benefits as has been given to Mr. Santosh Kumar Gupta (Supra) appears to be ill-founded mainly on two grounds:

(1) The applicant is not a party to the said O.A.

(2) No ratio of law has been propounded by the Hon''ble High Court, Allahabad in the case of Santosh Kumar Gupta (supra) and as such, there is hardly any occasion for the applicants to claim the same benefit. In the case of State of Karnataka v. S.M. Kotroyya and others, 1996 SCC (L&S) 1488, the Apex Court clearly held that delay cannot be condoned on the ground that some judgment came to the knowledge of the applicant after sometime and as such some benefits should also be extended to the applicant. The decision rendered by the Hon''ble Supreme Court in K.C. Sharma's case (supra) is a well-reasoned judgment. The Hon''ble Supreme Court has elaborately considered the reasons as to why the benefit of a judgment is to be extended when similarly situated persons are involved. In the present case we find no justification to give similar direction as has been given in Santosh Kumar's case (supra) and that too after a lapse of about 30 years.

12. We have also carefully gone through the decision of the Hon''ble Supreme Court in C. Jacob Vs. Director of Geology and Mining Indus. Est. and Another, . The Hon''ble Apex Court has held that-"the Court's directions to consider a stale claim of the applicant to the department should not normally be granted. The Court should be circumspect in issuing such directions as it ultimately leads to consideration of case on merits at a subsequent stage of litigation, as if the cause of action stood revived due to fresh consideration. The Hon''ble Supreme Court further held that the department can reject a stale claim on the ground of delay alone without examining its merits. The reply given to an individual does not give rise to a fresh cause of action or observation made where a terminated employee submitted a representation after 18 years and the Administrative Tribunal directed for disposal of representation within four months.

13. From the aforesaid decision of Hon''ble Supreme Court we are satisfied that the applicant is not a similarly situated/circumstanced person. He was not even born on the date when the Railway Board's circular and letters were issued. If the contention and pleas advanced by the Learned Counsel for the applicant is accepted and the benefits of directions rendered by the Allahabad High Court in Santosh Kumar Gupta's case (supra) is extended, it would lead to an anomalous situation.

14. In our considered view, the applicants have utterly failed to give any reasonable or plausible explanation for the delay of 32 years in filing the aforesaid O.A. The arguments advanced by the Learned Counsel for the applicant that he may also be given all similar benefits of the decision rendered by the Hon''ble High Court of Allahabad, cannot be countenanced for a moment. The original application has no force and is liable to be dismissed on the ground of delay and laches.

15. Accordingly, O.A. is dismissed. No order as to costs.

14. On perusal of record it is apparent that cause of action had arisen to

petitioner No. 2 for appointment against 20% "Loyal Quota" under the scheme which provides for appointment to any one dependent of the employee and does not differentiate whether he/she was born or not at that time. Hence, the petitioner would have been entitled for such appointment under the scheme had he submitted his application prior to 31.12.1975, which was the date falling after the date prescribed for finalization but he could not do so. He attained age of majority only on 30.9.1976.

15. It is a settled principle of law that moving a series of representations will not confer the benefit of extension of period of limitation and the person deserving to gain benefit has to approach the Courts within a reasonable period of time in case his representation is not decided by the authority. For these reasons discretionary and equitable jurisdiction may not be exercised in favour of those who approach the Court after a long lapse of time or latches. Delay and latches are relevant factors for exercising equitable jurisdiction. No ratio of law has been propounded by the High Court in the case of Santosh Kumar Gupta (supra), which is clearly distinguishable from the facts of this case being in personem only for Santosh Kumar Gupta and in not in rem. Hence, petitioners are not entitled to parity with the petitioner of that case.

16. According to the Railway Board letters dated 16.7.1976 and 28.1.1976, the applications by the petitioners ought to have been submitted so as to reach to their office prior to 31.12.1975 which has not been done by the petitioners in the instant case. Moreover, when the writ petition was filed, petitioner No. 1 was aged about 59 years, now he must have retired from service and petitioner No. 2 is aged about more than 38 years.

17. The judgment and order of the Tribunal appears to be a reasoned one as no illegality or infirmity in the impugned order and judgment of the Tribunal has been established by the petitioners. The O.A. aforesaid being highly barred by time by more than 32 years has rightly been dismissed by it on the ground of delay and latches. For all the reasons stated above, the writ petition is dismissed. No order as to costs.