
(1975) 09 DEL CK 0007

In the Delhi High Court

Case No : Civil Writ Appeal No. 214 of 1974

Ramesh Chandra and Others

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 16-09-1975

Acts Referred:

Citation : (1976) ILR Delhi 633

Hon'ble Judges : V.S. Deshpande, J;P.S. Safer, J

Bench : Division Bench

Advocate : G.D. Gupta, S. Pappu, C.N. Murthy and Harish Chandra, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) The preliminary ground on which the writ petition is opposed and which we have to consider at the threshold (on the facts and Law to be stated below) is whether the writ petition is liable to be dismissed on the sole ground of the laches and delay on the part of the petitioners in filing it.

(2) On 1st November 1961 the Indian Economic Service Rules were promulgated by the President of India under the proviso to Article 309 of the Constitution. The Service has 4 Grades. According to Rule 8(a)(ii). 25 per cent of the vacancies in Grade Iv were to be filled by selection from among officers serving in offices under the Government in Economic posts recognised for this purpose by the Controlling Authority who was to prepare a list of such posts in consultation with the Union Public Service Commission. The selection was to be made from amongst those who had completed at least 4 years of service in these posts on the basis of merit with due regard to seniority. The petitioners have been regularly appointed to Economic posts in Class If under the Government of India, in the Planning Commission, Ministry of Finance etc. Respondents 9 to 114 were Junior Field Officers and Investigators (Small Scale Industries Organisation). These posts were initially Class III. Therefore, the Junior Field Officers and

Investigators (Small Scale Industries Organisation) Recruitment Rules 1962 showed these posts as Class III. This was, however, contrary to the notification No. Gsr 220 of 1958 which had been issued by the Ministry of Home Affairs under sub-rule (1) of Rule 8 of the Central Civil Services (Classification, Control and Appeal) Rules. 1957. according to which Central Civil posts carrying a pay or a scale of pay with a maximum of not less than Rs. 500 but less than Rs. 850 were to be classified as Class Ii posts. The respondents 9 to 114 and their colleagues who held Economic posts in this scale of pay, Therefore, represented to the Government that the posts held by them should be classified as Class II. The Government agreed with their contention and proposed to the Union Public Service Commission that these posts should be upgraded to Class II-

(3) On 26th November 1966 as per Ex. P2 the Union Public Service Commission agreed to the upgradation of the posts held by respondents 9 to 114 from Class Iii to Class II. On 7th September 1968 the Junior Field Officers and Investigators (Small Scale Industries Organisation) Recruitment Rules 1962 were amended and the posts held by respondents 9 to 114 were upgraded from Class Iii to Class Ii retrospectively with effect from 18th September 1962 as per Ex. P3. Respondents 9 to 114 were thereupon appointed to these upgraded Class Ii posts with effect from the 18th of September 1962 in substantive capacity. The respondents 9 to 114 however, contended that they were already occupying these posts in substantive capacity from before 18th September 1962. According to them. the effect of 1968 amendment of the 1962 rules was to declare that respondents 9 to 114 had been functioning in these posts substantively from the dates of their original appointments as holding Class Ii posts retrospectively. In Civil Writ No. 216 of 1970 filed by them, this contention was accepted by Vyas Dev Misra. J. of this Court by judgment delivered on March 29, 1972. Effect was given to this judgment by the Government of India by letter dated 23rd November 1973 as per Ex. PI. The petitioners intend that the consent by the Union Public Service Commission to the upgradation of the posts of respondents 9 to 114 as per Ex. P2 dated 26th November 1966, 1968's amendment of the 1962 Rules on 7th September 1968 as per Ex- P3 and the letter of 23rd November 1973 implementing the judgment of this Court were illegal and wrong and pray that all the three of them be quashed. The respondents 9 to 114 have pertinently pointed out that the cause of action, if any, accrued to the petitioners on 7th September 1968 when the Rules of 1962 were amended and the amendment was notified in the official gazette. The writ petition filed on 18th February 1974 was, Therefore, highly delayed. In the writ petition the petitioners did not say a word of Explanation as to why the filing of the writ petition was delayed and why the delay should be condoned. Even in the rejoinder filed by the petitioners after the ground of delay was raised by respondents 9 to 114 all that was stated was that the cause of action for writ petition arose on 23rd November 1973 and that "the 1968 notification, even if deemed to be valid does not spell out that it is intended to take advantage of the formation of the IES/ISS feeder".

(4) The question of delaying filing a writ petition, particularly in service matters,

arises frequently and deserves to be considered in all its aspects. Unlike suits, limitation for which is prescribed by the Limitation Act, no limitation is prescribed for filing of writ petitions. The first question was consideration, Therefore, is whether courts should impose any time limit at all on writ petitions filed under Articles 226 and 32 of the Constitution. The question was answered in the affirmative in the judgments of the majority Judges led by Hidayatullah, C.J. in *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*, . It was observed that :

"THE party aggrieved must move the Court at the earliest possible time and explain satisfactorily all semblance of delay."

THE reason is the same as underlies the policy of the Limitation Act. Law must insist that claimants should be diligent in putting forth their claims. If they sleep over them. they will not be allowed to wake up late and make State claims.

(5) The next question is what should be the standard or guideline to determine whether a claim is delayed or not. In the *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, The Constitution Bench laid down the following guideline at pages 273 and 274:

"IT appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable."

(6) In subsequent decisions the Supreme Court has observed that it is the duty of the petitioner to come to the Court as soon as possible and along before the expiry of the period of limitation fixed for a suit which could be filed on such a cause of action- As pointed out by Hidayatullah, C.J. in *Tilokchand's* case a statutory period of six months has now been prescribed in England as limitation for filing a petition to obtain an order in the nature of certiorari. In case it is thought that this period would be too short, Prof. S. A. de Smith points out that the period of limitation to obtain a writ of certiorari is comparable not to the period of limitation fixed for a suit but to one fixed for filing an appeal. On that basis six months would be too long and not too short a period (Judicial Review of Administrative Action. Third Edition, page 379 footnote 26). In *Kamini Kumar Das Choudhury Vs. State of West Bengal and Others*, , the Supreme Court made a distinction between two kinds of cases which are brought to the court under Article 226. A case involving a pure question of law may brook some delay in being filed in court but a case which involves a question of fact should be brought to the court at the earliest reasonable possible opportunity. The Court emphasised that the rule that delay defeats the rights of a party to seek redress, under Article 226 is not to be abrogated merely if the claim is brought during the

period of limitation fixed for a suit. In. P.S. Sadasivaswamy Vs. State of Tamil Nadu, the Supreme Court observed as follows :

"A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward State claims and try to unsettle settled matters. The petitioner's petition should, Therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court."

WITH respect these remarks fully apply to the present writ petition which has been brought long after 1966 and 1968 without a word of Explanation as to why the delay should be condoned.

(7) What is the starting point in calculating the period for filing a writ petition ? On the analogy of Limitation Act. the starting point should be the arising of the cause of action for the filing of the writ petitions. When did the cause of action arise for the filing of the present writ petition ? The condition precedent for the upgradation of the posts of respondents 9 to 114 was the consent of the U.P.S.C. given on 26th November, 1966. This consent was given after the Government had already decided to upgrade these posts and had approached the Commission for their concurrence. The petitioners have themselves recognised that after the proposal of the Government was agreed to by the U.P.S.C., the conferral of the benefit on respondents 9 to 114 became a foregone conclusion. The respondents were bound to be benefited by the decision of the Government and the concurrence of the U.P.S.C. Subsequent action was merely consequential and inevitable. The petitioners have. Therefore, rightly asked for the quashing of Ex. P2 dated 26th November, 1966. They cannot, therefore. deny that the cause of action for the writ petition arose on 26th November 1966. Sh. G. D. Gupta. learned counsel for the petitioners sought to argue that the letter of 26th November. 1966 might not have become known to the petitioners who could not, Therefore, be expected to file the writ petition soon after the issue of the said letter. This contention is untenable for the following reasons.

(8) Firstly, it was the duty of the petitioners to aver when they came to know of the decision of the Government and the concurrence of the U.P.S.C. When a writ petition is filed late, it is the duty of the petitioner to state the facts which will explain the delay. The position of the petitioners is analogous to that of the plaintiff or appellant who seeks condensation of delay on the ground of "sufficient cause". In Union of India (UOI) Vs. Ram Charan and Others, the Supreme Court was considering as to whether the plaintiff was prevented by sufficient cause

from continuing the suit and whether the abatement of the suit should be set aside for that reason under Order Xxii Rule 9 Code of Civil Procedure. Generally in such cases the plaintiff-applicant merely says that he made the application for setting aside the abatement as soon as he came to know of the death of the opposite party. The Court held that this was not sufficient and observed, as follows :

" THE mere allegation about his not coming to know of the death of the opposite party is not sufficient. He had to state reasons which according to him, led to his not knowing of the death of the defendant within reasonable lime and to establish those reasons to the satisfaction of the Court, specially when the correctness of those reasons is challenged".

IT was necessary Therefore, for the petitioners to aver that they did not know the Government's decision and the consent given by the U.P.S.C. in 1966 and also to state the reasons why they came to now about it so much later. The petitioners have neither averred that they did not know of the decision, nor have they stated any reason why they came to know of it so much later.

(9) Secondly, in paragraph 45 of the writ petition, the petitioners have stated that even before the issue of the letter of 26th November. 1966. the respondents were trying to get their posts upgraded. This attempt was resisted by the All India Economic and Statistical Investigators Grade-I Association and Class Ii Officers Association at the very initial stage of the compilation of the feeder list when the said association understood that the respondents had started clamoring turn the upgradation of their posts to get the benefit of inclusion in the feeder list. The association objected to the inclusion of the respondents in the feeder list. They took up the matter with the Ministry of Home Affairs at that time and the said Ministry referred it to the U.P.S.C- and the U.P.S.C. upheld the contention of the association. Nevertheless, the posts were upgraded by the Government. In para 4 of the writ petition. it is stated that the petitioners are holding on a regular basis Class Ii posts of Economic Investigators. The petitioners must have belonged to the said association. In the stay application they referred to a representation dated 22nd December 1973 filed by one of the associations of the petitioners. Annexure 20 to the writ petition is the said representation from the Economic Investigators Grade 1 Association. It would appear, Therefore, that the association of the petitioners was resisting the upgradation of the posts of the respondents from before 26th November 1966. They had. Therefore, the knowledge of The Government decision and the consent of the U.P.S.C. resulting in Ex. P2 dated 26th November 1966. Thirdly, if at all, the petitioners really discovered the decision of 26th November 1966 much later then in the words of the Supreme Court in State of Madhya Pradesh v. Bhailal Bhai(2) at 274 of the report "this would be a controversial fact which cannot conveniently be decided in writ proceedings,"

(10) The second starting point or cause of action is Ex. P3 dated 7th September 1968. This was a statutory amendment published in the official gazette. As

observed by Hidayatullah, C.J. in Tilokehand's case referred to above "everybody is presumed to know the law", the learned counsel for the petitioners could not explain the delay in filing the writ petition after 7th September 1968.

(11) He however, argued that the cause of action really arose on 23rd November 1973 as per Ex. Pi when the judgment of V. D. Misra, J. was implemented by the Government. His argument was that till then the petitioners could not know that the amendment of 1968 would be so construed. This contention also is untenable. Firstly, the judgment of V. D. Misra, J. does not propound any new proposition. It merely points out the inevitable effect of the amendment of 1968 which was retrospective in its operation. Secondly, even if the effect of the amendment was capable of more than one interpretation, the petitioners were presumed to be aware of the true meaning of the amendment. In Tilokchand's case cited above, the delay in filing the writ petition was explained on a similar ground. The petitioner in that case did not know that the statute under which Sales Tax had been recovered from him was unconstitutional. When the Supreme Court held the said statute to be unconstitutional, the petitioner hastened to file the writ petition. The said petition was filed soon after the decision of the Supreme Court, but many years after the Sales Tax had been recovered from the petitioner. The Supreme Court rejected the Explanation and held that the delay in filing the writ petition could not be justified as being due to a mistake of law. The true meaning of law is presumed to be known to a petitioner from the time the law was made. An interpretation of the law does not give a new cause of action to the petitioner.

(12) It is true that it is always open to the petitioners to explain the delay and ask the court to condone it. For instance in Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, , the petitioners were aggrieved by a similar decision of the State Government taken in 1959. When the writ petition was filed in 1969, it was opposed on the ground of delay. The delay was, however, explained. The petitioners had made a representation to the Government and were informed by the Commissioner Aurangabad Division and thereafter by the Secretary to the Government that the rules of recruitment to the posts had not yet been unified and the petitioners continue to be governed by their own separate rules and the rules of 1959 had no application to them. The petitioners were, Therefore, justified in proceeding on the assumption that the decision of the Government was only provisional. It was only when in a later litigation with one Kapur the Government took the stand that the rules had been unified and the decision was final that the petitioners became aware of the cause of action.

(13) As contrasted with the facts which were before the Supreme Court in Deodhar's case, the representations made by the associations. of the petitioners were apparently rejected by the U.P.S.C. and the Government when the impugned letter of 26th November, 1966 and the statutory rules of 7th September 1968 were issued as per Ex. P2 and P3. There was no justification for

the petitioners, Therefore, to delay the filing of the writ petition.

(14) It was then argued that the petitioners were not bound to come- to the court unless and until their interests were actually harmed. The question is how to determine the point of time at which the interests of the petitioners were prejudiced by the action of the Government. In considering this question, it is useful to remember the distinction made by the Supreme Court in *Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others*, . It was argued there for the Government that a writ petition could not be filed merely on the passing of the impugned legislation until and unless some action was taken under the legislation infringing the rights of the petitioners. The Supreme Court pointed out that statutes could be of two kinds. One the one hand there could be a statute which requires some action to be taken there under such as the issue of notification etc., to deprive the petitioners of their rights to hold property etc. The Court did not say that a writ petition could not be filed immediately after the passing: of the such legislation. The Court only said that a writ petition could be filed to challenge the action taken under such legislation, it was pointed out by the Court, however, that a different kind of statute may immediately take away the rights of the petitioners as soon as it comes into force without any further act being done. The impugned Act in that case was held to be such a statute. As we have pointed out above the decision of the Government approved by the U.P.S.C to upgrade the posts of the respondents in 1966 and the amendment of the Rules in 1968 were sufficient to prejudice the interests of the petitioners. The promotion to the Grade Iv of the Indian Economic Service (and also of the Indian Statistical Service) was to be made from Economic posts of Class Ii which may be held under the Government by persons working in different departments. The interests of such persons are in competition with each other. Therefore, as soon as the respondents became eligible to compete with the petitioners for such promotions, the interests of the petitioners were affected. The eligibility of the respondents in based on Exs. P2 and P3. It did not arise from the consequential action taken in Ex. PI. It is the basis of the eligibility which had to be challenged and which has been challenged by the petitioners who pray that E.s P2and P3 be quashed. Once that is done, it is not necessary for them to pray that Ex. Pi be quashed. Ex. Pi does not stand on its own legs but is merely a consequence following from Exs. P2 and P3.

(15) The learned counsel for the petitioners then argued that it is not the arising of the cause of action but the knowledge of it which would be the starting point of the period during which the writ petition should have been filed. This argument does not really arise in the present case. For, the petitioners had the knowledge of the decision of 1966 and of the statutory amendment of 1968. Secondly, the decisions cited by the petitioners in support of this argument have no application to the delay involved in filing a writ petition. These decisions relate to the construction of the proviso to Section 18 of the Land Acquisition Act, 1894 which is as follows : "Provided that every such application shall be made.

(A)if the persons making it was present or represented before the Collectorate at the time when he made his award, within six weeks from the date of the Collector's award;

(B)in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

(16) Three kinds of starting point of the limitation are envisaged in the proviso to section 18. Firstly, if the award is made in the presence of the petitioner, then he knows not only that the award is given but also what the award was. Secondly if a notice is sent to the petitioner by the Collector u/s 12(2) of the Act then also the petitioner knows what the award was. It is in the context of these two starting points that the Supreme Court construed the third starting point, namely, "from the date of the Collector's award". Ordinarily, these words would have meant that the period of limitation begins to run from the date of the delivery of the award. But these words have come after the first two kinds of starting points in which the knowledge of the petitioner was not only if the delivery of the award but also of the award itself. Therefore, the Supreme Court in *State of Punjab Vs. Mst. Qaisar Jehan Begum and Another*, observed as follows:

" HAVING regard to the scheme of the Act we think that knowledge of the award must mean knowledge of the essential contents of the award."

(17) This was why the words "date of the award" were construed to mean the date of the knowledge of the contents of the award. This construction was not an ordinary one but was based on the peculiar context of the words in the proviso to section 18. In *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, the Supreme Court observed that the award was not a decision but only an offer and, Therefore, unless and until it was actually or constructively communicated or made known to the petitioner, the time did not run against the petitioner. The analogy to proviso to section 18 has no application to the period during which a writ petition has to be filed after its cause of action has arisen. These decisions are not, Therefore, relevant. Sh. Gupta then relied upon *Narendrajit Singh and Another Vs. The State of U.P. and Another*, . In that case the notification u/s 4 of the Land Acquisition Act was defective. The notification was defective inasmuch as the locality in which the lands were needed was not specified. The petitioner could not, Therefore, have known that his land was intended to be acquired. The land of the petitioner was however, specified in the notification u/s 6. The writ petition was filed soon after the section 6 notification. The argument for the State was that the section 4 notification was in terms of the language of that section 6 and that the petitioners could not complain inasmuch as the defect therein was remedied by the notification u/s 6. This argument was rejected by the Supreme Court at page 283 of the report in the following words :

" IN our view the defect in a notification u/s 4(1) cannot be cured by giving full

particulars in the notification u/s 6(1). In this case it is apparent that even before the issue of the first notification Government had made up its mind to acquire the lands of the petitioners inasmuch as there was no enquiry in between the two notifications and no valid reason has been put forward to explain why the details specified in the notification u/s 6(1) could not be given in the one u/s 4(1). The fact that the petitioners did not go to court immediately after the publication of the first notification is not a matter of any moment. The defects were not cured and cannot be glossed over by reason of the fact that the petitioners went to court after the issue of the notification u/s 6(1)."

(18) An impression was sought to be created that the delay in challenging the notification u/s 4 would be excused if the notification u/s 6 is challenged expeditiously. Such an impression would be wrong. The notification u/s 6 was issued within a fortnight after the section 4 notification. No argument was made before the Court as to the delay in filing the writ petition. The argument was that section 4 notification was being challenged after the issue of the section 6 notification. That argument has no relevancy or analogy to the question of delay which faces the petitioners in the present case.

(19) We are of the view, Therefore, that the writ petition has been filed after inordinate delay without any Explanation whatever for it. It was, Therefore, liable to be dismissed in liming. In view of this reason we do not consider it necessary or proper to go into the merits of the case. The writ petition is dismissed solely on the ground of delay without any order as to costs.