
(2003) 08 SHI CK 0024
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 605 of 2003

R.K. Goel

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 19-08-2003

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20, 21, 21(1)
Constitution of India, 1950 — Article 226

Citation : (2004) 1 ShimLC 95

Hon'ble Judges : V.K. Gupta, C.J.; R.L. Khurana, J

Bench : Division Bench

Advocate : Rajiv Sharma and Rakesh Dhaulta, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Gupta, C.J.—The judgment of the H.P. Administrative Tribunal in O.A. No. 1539/1993 passed on 25th February, 2003 is under challenge in this petition filed by the Petitioner under Article 226 of the Constitution of India. The Tribunal has dismissed the Original Application filed by the Petitioner only on the ground of delay, limitation and lack of jurisdiction.

2. The Petitioner had been appointed as Demonstrator in Zoology in S.D.B. College, Shimla on 30th November, 1971. At the time of his appointment, S.D.B. College, Shimla was a pure private institution. On 1st September, 1977, the Petitioner was promoted to the higher post of Lecturer in Zoology and this promotion was to take effect from 13th August, 1977. The promotion order dated 1st September, 1977 was issued by the Principal of S.D.B. College, as even on 1st September, 1977 S.D.B. College was still a pure private institution. It was only on 15th September, 1977 that the S.D.B. College was taken over by the Government of Himachal Pradesh, as a consequence of which the services of the Petitioner alongwith Ors. were also taken over by the State Government. However, for ready reference we reproduce hereinbelow the text of the promotion order dated 1st September, 1977. It was thus :

As per decision of the Managing Committee, you are hereby promoted from Demonstrator in Zoology to Lecturer in Zoology in the Lecturer's grade 300-600 with effect from 13.8.1977. Your basic salary has been fixed at Rs. 325 in the lecturer's grade from 13.8.1977.

3. Without going into any unnecessary fact, apparently on 18th June, 1990 the Petitioner made a representation to the Government that he was entitled to be promoted as a Lecturer with effect from 1973, instead of 1977 and that since he had been taking some classes and teaching the students even while working as a Demonstrator between 1973 and 1977, apart from his right of being promoted as a Lecturer from 1973, instead of 1977, he was also entitled to receive remuneration for the period 1973-1977 because he had been teaching the students during this period. Vide communication dated 11th June, 1993, the State Government rejected the aforesaid representation of the Petitioner. It is this rejection order dated 11th June, 1993 which was challenged by the Petitioner before the Tribunal by filing Original Application No. 1539/1993 and as noticed at the outset, the Tribunal holding that the Original Application was time barred, dismissed the same vide judgment dated 25th February, 2003 under challenge in this petition.

4. Section 21 of the Administrative Tribunals Act, 1985 clearly lays down that a Tribunal shall not admit an Original Application (in a case where the Original Application challenges a final order), if the Application is filed beyond the limitation period of one year from the date of passing of the final order. Clause (a) of Sub-section (1) of Section 21, which is relevant for our purpose, reads thus :

(1) A Tribunal shall not admit an application:

(a) in a case where a final order such as is mentioned in clause (a) of Sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made.

5. Mr. Rajiv Sharma, learned Senior Counsel appearing for the Petitioner has submitted that the Tribunal erred in treating the Petitioner's Original Application as time barred and thus wrongly dismissed the same because the Petitioner had filed the Original Application in the month of August, 1993 against the impugned order passed on 11th June, 1993 and since the Original Application was filed within one year from the date of passing of impugned order, it could not be treated as time barred. He also submitted that Anr. order being Order No. Cha (1) 6/63-Edu. A dated 26th May, 1993 was also challenged before the tribunal in the same Original Application and since this was also done within one year, the Tribunal very wrongly and incorrectly dismissed the Original Application as time barred. In the order dated 26th May, 1993 the seniority position of the Petitioner (alongwith Ors.) was shown at serial number 23 treating him to have been appointed as a Lecturer on 13th August, 1977.

6. The point to be considered in this petition is whether, even if an Original Application is filed before the Tribunal against a particular final order and the same is within the limitation period of one year (as might be reckoned by the Petitioner from the date of passing of the said ?final order?) is the Tribunal justified in dismissing the same on the ground of laches. In the course of judgment dated 25th February, 2003 the Tribunal also made a reference to the arguments of the learned Additional Advocate General to the effect that the Petitioner had filed a representation with the Government more than twelve years after the accrual of cause of action, the claim of Petitioner being old and stale the Tribunal should dismissed the Original Application on that ground alone.

7. What is manifestly and apparently clear in this case is that the Petitioner was appointed as Lecturer on promotion on 1st September, 1977 and the appointment took effect from 13th August, 1977. The Petitioner's contention that he deserved to be appointed as Lecturer from 1973, instead of 1977, was such which ought to have been agitated immediately and soon after his appointment as Lecturer. Similarly, the Petitioner's claim and contention that since he was made to teach the students between 1973 and 1977 even while working as a Demonstrator he was entitled to be paid remuneration for the same, was also such which ought to have been agitated in the year 1977 itself. The Petitioner kept quite for more than thirteen years since then. Apparently, he seems to have woken up only in the year 1989 or 1990 when he apparently made the aforesaid representation to the State Government. This is apart from his having filed a representation dated 18th October, 1977 addressed to the Principal of the Government Degree College wherein the only claim made by him was with respect to his remuneration. There was no murmur or whisper or even a mention in this representation of his so called claim of being entitled to promotion as a Lecturer from 1973, instead of 1977.

8. Even though in terms of Section 21 of the Administrative Tribunals Act, 1985 a Tribunal is precluded from admitting an Application if it is filed beyond the prescribed period of limitation of one year, it does not automatically mean that a Tribunal while considering an Original Application having been filed within the period of limitation, is also precluded from dismissing the same on the ground of laches. There may be situations and circumstances where a Petitioner, on the technical plea of limitation may succeed in maintaining his petition before the Tribunal as being within the period of limitation, such as in the present case, but on a closer scrutiny it might turn out that the claim of such a Petitioner is very very old and stale. The purpose and the legislative intent behind prescribing limitation period in Section 21 (supra) is to ensure that the Tribunals are not burdened with stale, old claims and that all such persons who feel aggrieved of any wrong being done to them approach the Tribunals within the reasonable time after the alleged wrong has been done to them and that they do not keep sleeping for years and years and at their sweet will (whenever they wake up from their deep slumber) they walk up to the Tribunal and present their old stale claims. Such an objective and legislative intent cannot be defeated and frustrated

by adopting a strategum whereby, even though the dispute forming subject matter of the claim has already become old and stale, say by ten years or fifteen years and one fine morning a representation is made to settle that old stale dispute of the vintage of ten years or fifteen years and on such a representation being rejected, to file the original application against such rejection and then claiming that the same is within the limitation period of one year. This cannot be allowed to happen. In the present case, for instance, what we find is that the cause of action insofar as the Petitioner's claim, both for remuneration for the period between 1973 and 1977 and his being entitled to promotion as a Lecturer from 1973, accrued to him in the year 1977 and treating this period as relevant period, looking to the fact that the Original Application was filed in the year 1993, by no stretch of imagination can the Original Application be treated and considered as having been filed within time. It was delayed by as much as almost sixteen years even though, on a pure technical plea that the Original Application was against the order dated 11th June, 1993, one may get a feeling that perhaps it was within time, but if one looks at the substance of the Original Application one would get a clear idea that the relief sought for by the Petitioner related to a period between 1973 to 1977.

9. The Tribunals constituted under the Administrative Tribunals Act, 1985, unlike Civil Courts entertaining suits for trial, have the judicial discretion to reject the claims which are stale and old and consequently to dismiss the Original Applications which are suffering from grave unexplained laches, even though such Original Applications, as explained above, may technically be within the limitation period of one year from the date of passing of the final order. Merely because an Original Application is filed within the limitation period as would be reckoned from the date of passing of the final order does not preclude the Tribunal from lifting the veil and going to the substance of the so called final order to find out whether the claim is stale and old and whether the Original Application suffers from grave explained laches. In fact, we can go as far as to even observe that a Tribunal would be well advised to discourage entertaining old stale claims by discouraging the filing of Original Applications which suffers from grave unexplained laches by dismissing them on that ground alone.

10. We are, therefore, of the clear view that even though Section 21 of the Administrative Tribunals Act, 1985 does operate as a clear bar in so far as a Tribunal entertaining a time barred application is concerned, it also does not preclude a Tribunal from dismissing an Application on the ground of laches even if technically speaking the application may be within the limitation period.

11. For the aforesaid reasons, we find no merit in this petition. The petition is dismissed.