
(2018) 04 UK CK 0077

In the Uttarakhand High Court

Case No : Special Appeal No. 206 of 2016

SMT DEVESHWARI DEVI

APPELLANT

Vs

STATE OF UTTARAKHAND AND ANOTHER

RESPONDENT

Date of Decision : 20-04-2018

Acts Referred:

Constitution of India, — Article 14

Citation : (2018) 04 UK CK 0077

Hon'ble Judges : K.M. JOSEPH, C.J, Lok Pal Singh, J

Bench : Division Bench

Advocate : Sudhir Kumar, J.C. Pandey

Final Decision : Allowed

Judgement

K.M. JOSEPH, C.J.Â Â Â Â Â Â

1. Appellant is the writ petitioner.Â She filed the writ petition seeking relief to quash order dated 31.03.2012 issued by the second respondent by

which her services as Assistant Anganbari Worker were terminated.Â A mandamus was also sought to reinstate the petitioner as Assistant

Anganbari Worker.Â Â

2. Briefly put, the case of the writ petitioner is as follows:

Petitioner was appointed as an Assistant Anganbari Worker on the basis of Annexure No. 1 Guidelines.Â By Annexure No. 2 order dated

31.03.2012, which is impugned in the writ petition, her services have been terminated.Â By the same order, the service of one Smt. Saroj Devi were

also terminated.Â Smt. Saroj Devi filed a writ petition as Writ Petition

(S/S) No. 1500 of 2012.Â It culminated in Annexure No. 3 judgment.Â Reference is made to Clause 9 of Government Order dated 24.02.2009,

which provides for the grounds for termination.Â Relying on Clause 9 and also the judgment rendered in the writ petition filed by Smt. Saroj Devi, the writ petitioner approached the Writ Court.Â Â

3. The learned Single Judge, by the impugned judgment, dismissed the writ petition.Â The dismissal is based on the ground of laches.Â The relevant portion of the judgment reads as follows:

â??3. After more than four years, the petitioner has filed the present writ petition before this Court. There is absolutely no explanation for inordinate

delay, as the impugned order was passed way back in the year 2012. As far as relief given to Smt. Saroj Devi (in WPSS No. 1500 of 2012) is

concerned, the same benefit cannot be given in favour of the present petitioner, as she (Saroj Devi) had promptly approached this Court and had

challenged her termination order dated 31.03.2012, whereas the present petitioner is a fence sitter, who was watching the proceedings before this

Court. The present petitioner sleeps over the matter for four years and who sleeps over his right is bound to suffer. Moreover, there is no proper

explanation of inordinate delay in filing the present writ petition before this Court. Even if this Court suo moto takes into consideration the fact that

social and economic milieu of the petitioner does not make her as conscious as it is expected from a normal litigant. This Court would still refrain from

interfering in the dispute at such a belated stage for it is not known whether a new incumbent has meanwhile joined the Centre, as in a normal case

another person must have been appointed by now. However, in case the post is still vacant let the proceedings be initiated to fill the post where the

petitioner shall also be allowed to participate, subject to her eligibility.â??

4. We have heard Mr. Sudhir Kumar, learned counsel for the appellant and Mr. J.C. Pandey, learned Brief Holder appearing for the State.

5. On an earlier occasion, we had asked the learned Brief Holder to get instructions as to whether the vacancy of Assistant Anganbari Worker, which

was being held by the writ petitioner, has been supplied.Â Even today, when the matter is taken-up, learned Brief Holder would submit that the

vacancy continues and not supplied yet.Â Â

6. The question, essentially, which we have to consider, is whether the judgment of the learned Single Judge, which is based not on a consideration of

merits of the case, but on the ground that the writ petitioner is guilty of laches,

is to be upheld or not.Â Â

7. Learned counsel for the writ petitioner drew our attention to a judgment of the Apex Court in the case of Ramchandra Shankar Deodhar & others

vs. State of Maharashtra & others, reported in (1974) 1 SCC 317.Â Therein, a Bench of five Judges, i.e. a Constitution Bench, had inter alia this to

say in regard to laches:

â??9. â?|.We do not think this contention should prevail with us.Â In the first place, it must be remembered that the rule which says that the Court

may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is

no inviolable rule that whenever there is delay, the court must necessarily refuse to entertain the petition.Â Each case must depend on its own

facts.Â The question, as pointed out by Hidayatullah, C.J., in Tillockchand Motichand v. H.B. Munshi, (1969) 2 SCR 824 is one discretion for this

Court to follow from case to case.Â There is no lower limit and there is no upper limit.Â. It will all depend on what the breach of the Fundamental

Right and the remedy claimed are and how the delay arose.Â. .

â?|.Moreover, it may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Art. 16 is itself a fundamental

right guaranteed under Article 32 and this Court which has been assigned that role of a sentinel on the qui vive for protection of the fundamental rights

cannot easily allow itself to be persuaded to refuse relief solely of the jujune ground of laches, delay or the like.â??

8. On the other hand, Mr. J.C. Pandey, learned Brief Holder would draw our attention to a recent judgment of the Apex Court in the case of State of

Uttar Pradesh & others vs. Arvind Kumar Srivastava and others, reported in (2015) 1 SCC 347.Â The following are the principles, which have been

laid down by the Apex Court in the judgment:

â??22.1 Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated

alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This

principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that

all similarly situated persons should be treated similarly. Therefore, the normal

rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2 However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did

not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their

counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the

judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or

the acquiescence, would be a valid ground to dismiss their claim.Â

22.3 However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give

benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the

authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision

touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if

the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention

is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of

the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

9. It is true that, as far as Smt. Saroj Devi is concerned, following the order terminating her services on 31.03.2012, she filed a writ petition in the very

same year being Writ Petition (S/S) No. 1500 of 2012; whereas, challenging the very same order, appellant in this case has filed the writ petition only

in June, 2016.Â The writ petition by the writ petitioner is filed after a gap of 4 years and 3 months.Â Â

10. Learned counsel for the appellant would, however, point out that there is a common order terminating the services of the appellant and also Smt.

Saroj Devi.Â The said order has been quashed by the learned Single Judge in Writ Petition (S/S) No. 1500 of 2012.Â The said writ petition was

allowed on the ground of violation of principles of natural justice.Â In fact, the allegation against the appellant would appear to have been that she participated in some demonstration against industries, which, according to her, were polluting the environment.Â As far as the order is concerned, the said order has been set aside as such without expressly confining it to the petitioner in the earlier writ petition.Â It is true, however, that the learned Single Judge has made it clear that the petitioner therein was to be reinstated.Â Â

11. As we have noticed, even in the recent judgment cited by the learned Brief Holder, the Court has held in paragraph 22.1 that normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit and not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India.Â It is specifically laid down that this principle has to be applied in service matters more emphatically as the service jurisprudence evolved by the court from time to time postulates that all similarly situated persons should be treated similarly and, therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.Â On this principle, the writ petition filed by the writ petitioner is, on merits, to be allowed as the writ petitioner also was not heard before the impugned order was passed.Â Coming to paragraph 22.2, it is true that the Apex Court has enunciated the doctrine of laches and acquiescence in respect of persons, who do not approach the court even when they seek similar relief.Â It is true that they would be treated as fence sitters and laches would be a valid ground to dismiss their petition.Â This is also subject to the doctrine that the judgment pronounced in rem would furnish a ground for them to approach belatedly. It is, no doubt, true also that the judgment rendered by the learned Single Judge in Writ Petition (S/S) No. 1500 of 2012 is not a judgment in rem.Â Â

12. Therefore, we have to, now, examine whether, on the ground of laches, appellant should be told off the gates, though she is, otherwise, entitled to the relief, as was granted to the petitioner in Writ Petition (S/S) No. 1500 of 2012.Â As far as laches is concerned, as held by the Constitution Bench, cases have been entertained even after expiry of several years.Â The principle of laches will have to be determined on a case-to-case basis.Â

Delay of a day can be fatal; whereas, delay of several years need not result in non-suiting a writ applicant.Â One of the most important

considerations in determining whether there is laches is, by the delay of the petitioner in approaching the court, third party rights have been created.Â

In fact, the learned Single Judge also rightly refers to this; but the learned Single Judge did not consider whether, actually, the vacancy had been

supplied or not.Â In appeal, even as of today, the position remains that the vacancy, which was occupied by the appellant, has not been supplied.

Â Considering the nature of the work and also considering suo motu, as was done by the learned Single Judge, the condition of the appellant having

regard to the nature of the job, which, we are told, would fetch the appellant an honourarium, which appears to be less than Rs. 10,000/- per month,

we would think that, in this case, noting that the vacancy has not been supplied and that the ground for challenging the order is similar to the ground,

which found favour with the learned Single Judge in Writ Petition (S/S) No. 1500 of 2012, the appeal should be allowed and the order as against the

appellant should be quashed.Â Â

13. Accordingly, we allow the appeal; set aside the judgment passed by the learned Single Judge; allow the writ petition; quash the impugned order

dated 31.03.2012 as against the appellant; and direct that she be reinstated.Â But, we make it clear that she will not be entitled to any back wages.Â

No order as to costs.Â

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