

(2009) 09 CHH CK 0008
In the Chhattisgarh High Court

Suresh Yadav

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-09-2009

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 226, 227, 32

Citation : (2009) 09 CHH CK 0008

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioner seeks a direction to the respondents to issue appointment order to the petitioner on compassionate basis.

2. The facts, in nutshell, are that the father of the petitioner, who was working in the office of respondent No. 5, died on 24.10.1997 (Annexure P/1), in harness. The petitioner, being the son of the deceased employee, applied for compassionate appointment on 06.12.1997 (Annexure P/2). On 16.1.1998 (Annexure P/4), the petitioner was informed to submit proper application. On 22.7.1998 (Annexure P/5), the respondent No. 5 called the petitioner for interview for the purpose of appointing him on compassionate basis. No appointment could be made. Thus, the petitioner filed several representations before the respondents and also sent legal notice for giving him compassionate appointment. Till date, the petitioner has not been given compassionate appointment. Hence, this petition.

3. I have heard learned Counsel appearing for the petitioner, perused the pleadings and documents appended thereto.

4. On bare perusal of the documents, it is evident that the petitioner has made an application for grant of compassionate appointment for the first time on 06.12.1997. Thereafter, he made several representations and also sent legal notice to the respondents for granting him compassionate appointment. Filing of

several representations does not arrest limitation. The petitioner ought to have approached this Court within the reasonable time for redressal of his grievances.

5. It is well-settled that compassionate appointment is not in accordance with the constitutional scheme of employment and is a back-door entry. Moreover, it is now well-settled that appointment on compassionate ground cannot be claimed as a matter of right. The grant of compassionate appointment is to provide succor and relief to the dependent members who had become penurious on the death of the bread earner of the family.

6. The Hon"ble Supreme Court in *State of J&K and Ors. v. Sajad Ahmed Mir* in para 11 regarding delay in seeking compassionate appointment held as under:

Once it is proved that inspite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "good-bye" to the normal rule of appointment and to show favour to one at the cost of the interest of several others ignoring the mandate of Article 14 of the Constitution.

7. The ratio laid down by the Supreme Court in *State of J. & K and Ors. (supra)* has been reiterated in *Commissioner of Public Instructions and Ors. v. K.R. Vishwanath*.

8. Further, the petitioner has not offered any explanation for inordinate delay in filing the present petition. It is well settled principle of law that more than one representation cannot arrest the limitation as even if representation is not considered and order is not passed within a reasonable period of six months, the petitioner ought to have approached the High Court for redressal of his grievance. {See *S.S. Rathore v. State of Madhya Pradesh* }. The petitioner has not done the needful and waited for about 18 years to come to this Court at this belated stage. Thus, this petition cannot be entertained and the same deserves to be dismissed on the ground of unexplained inordinate delay and laches.

9. The law on the principle of waiver and acquiescence is well settled that, if the person sleeps over his rights and is not vigilant of his rights and acquiesces with the situation, he may not be entitled to the same relief as was granted to other vigilant persons.

10. A Constitution Bench of the Supreme Court in *Chandra Bhushan and Anr. v. The Deputy Director of Consolidation, Uttar Pradesh (Regional) Lucknow and Ors.* observed that "normally the question whether a petition under Article 226 of the Constitution for the issue of a writ of certiorari had been presented without undue delay or laches is a question for the High Court to decide and this Court would not interfere with the exercise of the discretion of the High Court."

11. Further, other Constitution Bench of the Supreme Court in *Rabindranath Bose and Ors. v. The Union of India and Ors.* observed as under:

31. But in so far as the attack is based on the 1952 Seniority Rules, it must fail on another ground. The ground being that this petition under Article 32 of the

Constitution has been brought about fifteen years after the 1952 Rules were promulgated and effect given to them in the Seniority List prepared on August 1, 1953. Learned counsel for the petitioners says that this Court has no discretion and cannot dismiss the petition under Article 32 on the ground that it has been brought after inordinate delay. We are unable to accept this contention....

32. The learned counsel for the petitioners strongly urges that the decision of this Court in *M/s. Tilokchand Motichand's case* (supra) needs review. But after carefully considering the matter, we are of the view that no relief should be given to petitioners who, without any reasonable explanation, approach this Court under Article 32 of the Constitution after inordinate delay. The highest Court in this land has been given original jurisdiction to entertain petitions under Article 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years. It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay.

12. Later, a Constitution Bench of the Supreme Court in *Ramchandra Shankar Deodhar and Ors. v. The State of Maharashtra and Ors.* (Bhagwati, J. in para 10) observed as under:

10..It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches and delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. This principle was stated in the following terms by Hidayatullah, C.J. in *Tilok Chand v. H.B. Munshi* (supra):

The party claiming Fundamental Rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court.

13. In *State of M.P. v. Nandlal* it was observed that that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactory explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was also observed that if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

14. The Supreme Court in *U.P. Jal Nigam and another v. Jashwant Singh and Anr.* observed as under:

The question of delay and laches has been examined by this Court in a series of decisions and laches has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution.

15. On laches and delay in agitating the grievances before the Court, the Hon''ble Supreme Court in *State of Punjab and Anr. v. Balkaran Singh* observed as under:

22. According to us, the suit is also barred by acquiescence and estoppel. No one in a service can sleep over the question of seniority for more than 12 years and then come to court seeking a relief which will upset the seniority of a number of persons who had been shown as seniors in the respective seniority lists. Therefore, on the face of it, a declaratory relief that will have the effect of altering a twelve-year-old and a nine-year-old seniority list could not have been granted by the courts below.

16. In *Yunus (Babooobhai) A Hamid Padvekar v. State of Maharashtra* the Supreme Court observed as under:

Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party.

17. The Supreme Court in *Tridip Kumar Dingal and Ors. v. State of West Bengal and Ors.* where the appellants took 559 days in approaching the Court, causing unexplained and inordinate delay, observed as under:

We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhumate matters which have been disposed of or settled or where the rights of third parties have accrued in the meantime (vide *State of M.P. v. Bhailal Bhai*; *Moon Mills Ltd. v. Industrial Court and Bhoop Singh v. Union of India*). This principle applies even in case of an infringement of fundamental right (vide *Tilokchand Motichand v. H.B. Munshi*; *Durga Prasad v. Chief Controller of Imports & Exports and Rabindranath Bose v. Union of India*).

Further,

There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose.

18. This Court in Smt. Shashibala Gandhrala v. State of Chhattisgarh and Ors. on 3-1-2007 observed that "the cause of action arose on 6-6-1995, when the communication was sent by the State Government to the authorities for grant of revised pay-scale. The petitioner has not taken any steps ever since till these petitions were filed in December, 2006 and remained tardy and indolent. This belated approach would certainly cause hardship and inconvenience to other side."

19. Applying well settled principles of law to the facts of the case on hand, the petitioner has not offered any explanation at all for condonation of inordinate delay and laches. The petitioner for about 11 years kept quiet and has not taken any steps for redressal of the grievance sought for in this petition, except filing of the representations before the respondent authorities.

20. For the reasons stated hereinabove, this petition deserves to be and is accordingly dismissed. No order as to costs.