

(1957) 04 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Application No. 276 of 1956

Surrendra Nath

APPELLANT

Vs

The Chief Conservator of Forests, Punjab, Simla and Another

RESPONDENT

Date of Decision : 11-04-1957

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : AIR 1958 P&H 16

Hon'ble Judges : Bishan Narain, J

Bench : Single Bench

Advocate : H.L. Sibal, for the Appellant; S.M. Sikri, General, for the Respondent

Final Decision : Dismissed

Judgement

Bishan Narain, J.—The petitioner Surrendra Nath was working as a Forest Ranger in the Forest Department, Punjab, when in 1960 he was served with a charge-sheet. An enquiry was held into the charges and the petitioner was dismissed on the 2nd of February, 1951, but this order of dismissal was set aside on 18th June, 1951, and the next day a show-cause notice was served on him. He was again dismissed on 24th of October, 1951. The petitioner appealed to the Punjab Government, but this appeal was dismissed on 22nd of October, 1952. He then preferred a revision to the Punjab Government, which was also dismissed on 22nd of September, 1953. Thereafter it appears that the petitioner made representations to the Government and asked for copies of documents and statements of witnesses, and to the last latter that was received by him is of 3rd December, 1954, by which this request was rejected. The present petition under Article 226 of the Constitution was filed in this Court by the petitioner on 27th of June, 1956, to get the order of his dismissal quashed mainly on the ground that he was not given adequate opportunity to show cause against his proposed dismissal.

2. This petition is hopelessly belated and on this short ground it must be dismissed. The order of dismissal was passed on 24th of October, 1951. The

petitioner's appeal was dismissed on 22nd of October, 1952. If he was anxious to pursue his remedy he should have immediately come to this Court under Article 226. He, however, did not do so. He filed a petition for revision to the Punjab Government and no provision of law has been brought to my notice under which such a petition for revision is competent. The time taken by an aggrieved party in making representations to the Government, which are not allowed under any law or rules applicable to the petitioner's case, cannot be taken into consideration when the question of undue delay is being considered. It is therefore, clear that after the final order had been made on 22nd of October, 1952, the petitioner could have availed of his remedy under Article 226 of the Constitution. He waited for about three and a half years before he approached this Court.

3. It is argued on behalf of the petitioner that delay is only a relevant consideration to guide the exercise of discretion in a given case and that the petitioner's dismissal is so patently illegal that this Court may overlook the delay and decide the case on merits to do justice to him.

4. Article 226 does not prescribe any period of limitation, within which an aggrieved party should apply to this Court for redress. It appears to me that this matter should be considered in conjunction with the nature of the relief claimed and the grounds on which it is so claimed. The availability of an alternative remedy and the extent of delay are important matters that require consideration. In some cases delay may be such as to lead to inference of acquiescence in the order, which is challenged in the petition, or to inference of waiver against the illegality. In other cases the parties interested or the Government may be placed in such a situation on account of delay that it would not be just to consider the matter on merits and to interfere with the impugned order. No hard and fast rule can be laid down in this connection and it must be decided in the circumstances of each case.

5. In a case where the petitioner alleges that he has been wrongly dismissed, it appears to me that undue or unexplained delay should by itself be sufficient to deprive him of the relief claimed. After dismissal the employee does not do any work of the employer and if the dismissal is wrongful then the order of dismissal should be promptly got set aside as otherwise by merely waiting for a long time the dismissed employee can earn considerable salary by his own laches without doing any work. Moreover, in such cases, in the meanwhile the employer has got that work done through another employee who has been separately paid. Their Lordships of the Supreme Court of the United States of America in *United States Ex Rel. Arant v. Lane* (1919) 63 Law Ed 650 have stated the position in these words:--

"When a public official is unlawfully removed from office, whether from disregard of the law by his superior or from mistake as to the facts of his case, obvious considerations of public policy make it of first importance that he should promptly take the action requisite to effectively assert his rights, to the end that

if his contention be justified, the government service may be disturbed as little as possible, and that two salaries shall not be paid for a single service.

Under circumstances which rendered his return to the service impossible, except under the order of a court, the relator did nothing to effectively assert his claim for reinstatement to office for almost two years. Such a long delay must necessarily result in changes in the branch of the service to which he was attached, and in such an accumulation of unearned salary that, when unexplained the manifest inequity which would re-suit from reinstating him renders the application of the doctrine of laches to his case peculiarly appropriate in the interests of justice and sound public policy."

I am in respectful agreement with the statement of the position. In that case their Lordships did not condone the delay of twenty months. In the present case there is an unexplained delay of three and a half years. This delay is obviously culpable delay and by itself disentitles the petitioner to the relief claimed by him. I have, therefore, not considered the present case on merits, particularly when it is open to the petitioner to get the required relief from civil courts, if so advised.

6. Accordingly I dismiss this petition on the ground of unexplained and culpable delay but make no order as to costs.