

(2013) 09 GAU CK 0009

In the Gauhati High Court

Case No : Writ Petition (C) No. 152 (K) of 2012

Tekatemjenao

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Citation : (2013) 5 GLT 725 : (2014) LabIC 982

Hon'ble Judges : Indira Shah, J

Bench : Single Bench

Advocate : Imti Longchar, for the Appellant; S. Mere, GA and Mr. Yangerwati, CGC, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Indira Shah, J.—Heard Mr. Imti Longchar, learned counsel appearing for the petitioner as well as Mr. S. Mere, learned Government Advocate, appearing for the State-respondents. The petitioner, who was a member of Federal Government of Nagaland (FGN, in short) and underground set up surrendered before the Deputy Commissioner, Mokokchung, Nagaland on 05.08.1975 as per Shillong Accord in 1975, the surrendered undergrounds were rehabilitated by giving them service and other incentives. Accordingly, the petitioner was appointed as Work-Charged Khalasi (Jugali) under the establishment of Executive Engineer, Public Health Engineering Department (PHED, in short), Division-I, Mokokchung, Nagaland in the scale of pay of Rs. 190-3-226-4-250/- per month plus all other allowances vide order dated 28.02.1976.

2. The petitioner was promoted to work-charged Fitter, Grade-II vide order dated 19.04.1982 passed by Executive Engineer, (PHED), Mokokchung Division, Nagaland, Kohima. Thereafter, petitioner was again promoted to Mechanic Grade-I (Sic Fitter Grade-I) vide order dated 23.10.1987, passed by the Addl. Chief Engineer (PHED), Nagaland, Kohima. The petitioner's service book was maintained showing his joining w.e.f. 01.03.1976. After, his service of 19 years without any break, he was released on superannuation w.e.f. 01.04.1995. The

grievance of the petitioner is that he was not paid any pension and retirement benefits as per the Central Civil Services (Pension) Rules, 1972.

3. By filing this writ petition, the petitioner has sought for direction to the respondent authorities to regularize his service w.e.f. 20.08.1976 to 31.03.1995 with all the service benefits, pay and the pension of the petitioner as per rules along with other allowances per annum till payment of the arrears with exemplary cost of the proceeding.

4. The respondents in their affidavit-in-opposition have averred that the petitioner was released from service as Work-Charged employee and as such, he is not entitled for pension and other retirement benefits at par with those of regular employee. The Work-Charged employees under Nagaland Work-Charged Regularization Act means an employee engaged without sanction post under Work-Charged Establishment. The petitioner has claimed pension and retirement benefits after a lapse of about 17 years and therefore, his petition is liable to be dismissed on the principle of delay and laches. According to respondents, the state has enacted Work-Charged Regularization Act, 2001 and Work-Charged employees are regularized as per the scheme formulated under the provisions of the said Act.

5. Mr. Yangerwati, learned counsel appearing for the Accountant General (respondent No. 8) of Nagaland has submitted that the petitioner has claimed a relief from the State of Nagaland. The Accountant General has no authority to grant the relief sought for by the petitioner and therefore, the name of respondent No. 8 i.e. Accountant General, Government of Nagaland may be deleted. The appointment of a Government Servant whether regular or temporary or their regularization is the domain of the concerned department and the State Government.

6. Mr. Imti Longchar, learned counsel for the petitioner has submitted that the case of the petitioner is well-covered by the judgment by this Court in WPC No. 72 (K) 2012.

7. In the cited case, the husband of the petitioner served the department for about 21 years and during his life time, his service was not regularized. After his death, the petitioner submitted representation in the year 2008 praying for regularization of service of her Lt. husband and for family pension as well as pensionary benefits etc. This Court relying on the decisions rendered by apex Court. In the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and the case of State of Karnataka & Ors. Vs. M.L. Kesari & Ors. passed in Civil Appeal No. 6208 of 2010 reported in State of Karnataka and Others Vs. M.L. Kesari and Others, directed the State respondent to consider the prayer made by the petitioner for regularization of services of her husband so as to enable the petitioner to get pension/pensionary benefits etc.

8. In the case cited by the learned counsel for the petitioner i.e. Kabiram Rajbangshi Vs. State of Assam & Ors. 1997 (1) GLT 589, the service of the

petitioner was regularized but as per the condition laid in the rule, he did not complete the qualifying period as required under the rule. It was observed as under:-

In course of transformation of Society from feudal to welfare and as sociable thinking acquired respectability, State obligation to provide security in old age, an escape from underserved want was recognized and as a first step pension was treated not only as a reward for past service but with a view to helping the employee to avoid destitution in old age. The quid pro-quo was that when the employee was physically and mentally alert, he rendered unto the master the best, expecting him to look after him in the fall of life. A retirement system therefore exists solely for the purpose of providing benefits. In most of the plans of retirement benefits, everyone who qualifies for normal retirement receives the same amount.

9. Per contra, learned counsel for the State Respondent has cited the case of S.S. Balu and Another Vs. State of Kerala and Others, it was observed as under:-

17 It is also well-settled principle of law that "delay defeats equity". The Government order was issued on 15.01.2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal there against, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage.

10. In another cited case of State of M.P. and Others Vs. Nandlal Jaiswal and Others, it was held as under:-

24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the constitution is discretionary and the High Court in the 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 in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction because it is exercised on writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained

delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction.

11. Another case of Hongam Vs. State of Manipur and Others, this Court relying on the case of Ratan Chandra Sammanta and others Vs. Union of India and others, observed,

Delay itself deprives person of his available in law and if the claim of the petitioners is entertained after 15 years, same would amount to depriving a host of others who in the meantime had become eligible and are entitled to claim to be employed.

12. In the case of Lalthangvunga Vs. State of Mizoram and Others, the petitioner was appointed as lecturer on ad hoc capacity, his service was terminated on expiry of his tenure of ad hoc appointment. The writ petition was preferred after 9(nine) years of the expiry of the tenure of ad hoc appointment seeking regularization of service. It was observed that the ad hoc appointment given to the petitioner expired on 13.12.1985, he did not prefer any appeal under the CCS rules. It was observed that the factum of delay of 9 years in preferring the writ petition waiting for a decision of 2 representations for a period of 9 years would have been a sufficient ground for outright rejection of earlier writ petition. The petitioner was not able to give explanation for this long delay, it was held that it would, therefore, be completely unjust to interfere with the decision of 15 years back.

13. Admittedly, in this case, the petitioner was appointed as Work-Charged employee. His appointment was not against any sanction post. His service was never regularized and he never filed any representation for regularization of his service. He was released from service on 24.04.1995. After a lapse of 17 years of his termination, he has prayed for regularization of his service and others pensionary benefits.

14. In the case of State of Maharashtra Vs. Digambar, , it was observed as under:-

Where the relief sought under Article 226 of the Constitution by a person against the Welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to, laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blame-worthy conduct, such as laches or under delay, acquiesce or waiver, the relief so granted becomes unsustainable even if the relief was granted on respect

of alleged deprivation of his legal right by the State.

In view of the above, the writ petition filed by the petitioner fails on the ground of delay and laches, on the part of the petitioner and the writ petition stands dismissed without any cost.