
(2008) 04 MAD CK 0140

In the Madras High Court

Case No : W.A. No. 213 of 2008 and M.P. No's. 1 and 2 of 2008

The Director, Indian Institute of Technology

APPELLANT

Vs

K. Sekar

RESPONDENT

Date of Decision : 15-04-2008

Acts Referred:

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

Citation : (2008) 04 MAD CK 0140

Hon'ble Judges : P.K. Misra, J; K. Chandru, J

Bench : Division Bench

Advocate : Vijay Narayan, SC for R. Parthiban, for the Appellant; A. Shanmugam, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—Heard the arguments of Mr. Vijay Narayan, learned Senior Counsel leading Mr. R. Parthiban, learned Counsel appearing for the appellants and Mr. A. Shanmugam, learned Counsel appearing for the respondent and have perused the records.

2. The writ appeal is directed against the order of the learned single Judge dated 07.12.2006 in W.P. No. 46255 of 2002 insofar as allowing the case of the respondent and directing the appellant Indian Institute of Technology [for short, "IIT"] to pay him, his basic pay at the rate of Rs. 885/- with effect from 11.7.1984 and also to calculate his pension on the basis of the basic pay of Rs. 885/- together with interest at the rate of 6% per annum due to the alleged delay in making the payment.

3. The respondent joined the State Government service as a Lower Division Clerk (now Junior Assistant) on 01.9.1962. Subsequently, he was promoted as Upper Division Clerk (now Assistant) on 24.4.1965 and as Section Officer on 01.4.1977. Since the appellant IIT called for candidates for being appointed in the post of Assistant Registrar on deputation basis, the respondent volunteered to join the

said post and also attended an interview on 10.7.1984.

4. Subsequently, he joined duty as an Assistant Registrar in the IIT on 11.7.1984. His deputation was continued nearly for a period of four years and since further continuance was not accepted by the Government, the respondent's services were permanently absorbed by the appellant IIT. His pensionary benefits were also transferred from the State Government to the IIT and the respondent also got superannuated from the service of the IIT on 31.8.2000.

5. It is the case of the respondent that his last drawn basic pay was to be taken into account as Rs. 885/- and not Rs. 700/- as arrived at by the IIT. While he contended that the last drawn pay as found in Last Pay Certificate (LPC) should be taken into account, the IIT took the stand that the revised scale of pay of the respondent was done due to the IIIrd Pay Commission effective from 01.4.1978 and the Tamil Nadu Government revised the pay during October 1975 for the first time and during April 1978 for the second time and, therefore, in terms of FR 22(c), only the basic pay in the State scale after the first revision on the pattern of the second Pay Commission for the Central Government employees, can be taken into account and not on the basic pay after the second or subsequent revision made in the State scales. He was also informed by a letter dated 24.5.1995 by the appellant IIT that at the time of joining, proper pay protection was given to him and, therefore, no case is made out.

6. The respondent did not challenge the said order either immediately or any reasonable period thereafter. He, once again, sent another representation dated 14.7.1995 and kept quiet. When the respondent again sent a third representation dated 09.8.2000, it was replied by the IIT (by a reply dated 05.9.2002) informing him that they had already rejected his request as early as 24.5.1995 and that he should not send any representation. The respondent took this letter dated 05.9.2002 as the impugned order confirming the order dated 24.5.1995 and filed the writ petition in the year 2002 being W.P. No. 46255 of 2002.

7. In the present case, the cause of action projected by the respondent relates to the year 1984, the year in which he was taken into service by the IIT and he waited for eleven years to make a claim for pay fixation. Even when he was told on 24.5.1995 that his request cannot be considered, he did not move the Court thereafter and he waited for a further period of seven years to come before this Court. Though the IIT raised the objection of delay and laches, which was found noted in paragraph 6 of the order under appeal, the learned Judge rejected the same in paragraph 13, which reads as follows:

The petitioner is a retired employee. The claim of the petitioner is not considered by the respondents for years together and he is forced to approach this Court.

8. We find that the sympathy shown by the learned single Judge is not based upon any justifiable grounds. As rightly contended by the learned Senior Counsel

appearing for the IIT, the respondent was guilty of delay and laches in approaching this Court. He cannot wait to renew a cause of action which arose in the year 1984 and to move this Court after 18 years. Even if the IIT informing the respondent on 24.5.1995 that his request cannot be considered, was taken into account as starting point of limitation, still the respondent had approached this Court only after a period of seven years. He also submitted that by repeatedly sending petitions, one cannot save himself from the charge of delay and laches. The learned Senior Counsel also submitted that in the counter affidavit filed before the learned single Judge, apart from delay, there was also no case on merits in the case of the respondent and, therefore, the finding in paragraph 8 of the learned Judge's order that nothing was highlighted in the counter apart from ground of delay, may not be correct. He also stated that the respondent was not a layman and was functioning as an Assistant Registrar and was well aware of his rights. He cannot wait for his retirement and thereafter to move the Court over an issue which arose at the time of his appointment.

9. Mr. A. Shanmugam, learned Counsel appearing for the respondent submitted that the order of the learned Judge does not suffer from any infirmity and thus, does not call for any interference. He also submitted that he bona fide waited for the further reply and no sooner the second reply was given to him on 05.9.2002, he had moved this Court.

10. In the light of the above, it is first necessary to deal with the question as to whether the delay and laches in moving the Court will disentitle a person from getting relief.

11. While dealing with the question of delay and laches vide the decision of the Supreme Court in Karnataka Power Corporation Limited through its Chairman and Managing Director and Another Vs. K. Thangappan and Another, , speaking for the Bench, Arijit Pasayat, J. in paragraphs 6 to 11 had observed as follows:

Para 6: "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 under Article 226 of the Constitution. 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. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad v. Chief Controller of Imports and Exports. Of course, the discretion has to be exercised judicially and reasonably.

Para 7: What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd was approved by this Court in Moon Mills Ltd. v. M.R. Meher and Maharashtra SRTC v. Shri Balwant Regular Motor Service. Sir Barnes had stated:

Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because

the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.

Para 8: It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in *Rabindranath Bose v. Union of India* that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

Para 9: It was stated in *State of M.P. v. Nandlal Jaiswal* 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 satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and 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. It was pointed out that 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.

Para 10: It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in *K.V. Rajalakshmiah Setty v. State of Mysore*. This was reiterated in *Rabindranath Bose* case by stating that there is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In *State of Orissa v. Pyarimohan Samantaray* making of repeated representations was not regarded

as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. (See State of Orissa v. Arun Kumar Patnaik also.)

12. The Supreme Court, further, in the judgment relating to the State of Tamil Nadu v. Seshachalam 2007 AIR SCW 7750 held that law leans in favour of those who are alert and vigilant. Speaking for the Bench, S.B. Sinha, J. in paragraph 11 had observed as follows:

Para 11: "Some of the respondents might have filed representations but filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and / or laches on the part of a Government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant."

13. Therefore, the finding of the learned Judge that the respondent was not guilty of delay and laches must necessarily be rejected. Inasmuch as the respondent had moved this Court after eighteen years from the date of the initial cause of action and he is certainly guilty of delay and laches, which disentitles him from receiving any relief from this Court, the writ petition is liable to be rejected on this ground.

14. Even on merits, it must be stated that the prayer of the respondent seeking for fixation of pay commensurate with his last drawn pay, is neither based on any legal right nor based upon the factual matrix of the present case.

15. By G.O. Ms. No. 876 CTRE Department dated 03.10.1985, the respondent was sent on deputation and paragraph 2.1 dealt with pay option given to him which is as follows:

2.1. Pay option to draw Pay:- The Deputationist shall have the option to draw pay either in the scale of pay attached to the deputation post, in which case, there shall be no deputation allowance or his grade pay in the parent department from time to time plus the deputation allowance as per the rates applicable. The option once exercised shall be final till the deputationist gets a change in his pay through promotion or reversion or revision of pay scales either in the parent department or in the deputation post.

16. Therefore, at the time of his regular absorption, the respondent was well aware of the pay scale in which he was placed and he is bound by the same. Further, this is not a case of promotion from a lower post to higher post in the same service but it is a case of deputation to a foreign service and the subsequent absorption by the borrowing authority. Therefore, the finding of the learned Judge in directing the IIT to fix his scale at Rs. 885/- from the year 1984 with consequential refixation and interest payment followed by revised pension and a cost of Rs. 5000/-, is clearly impermissible.

17. In view of the above, the writ appeal will stand allowed. However, there will be no order as to costs. Connected Miscellaneous Petitions are closed.