

(2016) 03 DEL CK 0217
In the Delhi High Court
Case No : W.P. (C) No. 2056 of 2016

Union of India

APPELLANT

Vs

Irshad Husain

RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:

Citation : (2016) 231 DLT 24

Hon'ble Judges : Mr. Sanjiv Khanna and Mr. Ashutosh Kumar, JJ.

Bench : Division Bench

Advocate : Ms. Monika Arora, Advocate, for the Appellant; Ms. Shobha, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

CM No. 8833/2016

Exemption application is allowed, subject to all just exceptions.

W.P.(C) No. 2056/2016 & CM Nos. 8834/2016 & 8832/2016

1. The respondent, a Presiding Officer of the Debt Recovery Tribunal, was served the letter dated 11th April, 2014, a few days before he was to demit office on 14th April, 2014, informing that all pensionary benefits, including encashment of leave, etc., admissible shall be withheld and not disbursed till the completion and outcome of an enquiry. For the sake of completeness, we would like to reproduce the said letter dated 11th April, 2014, which reads as under:-

"Whereas the tenure of Shri Irshad Hussain, Presiding Office of Debts Recovery Tribunal, Nagpur is up to 14th April, 2014 and that 12th ,13th and 14th April, 2014 being holidays, Shri Irshad Hussain, Presiding Officer of Debits Recovery Tribunal, Nagpur is demitting office on 11th April, 2014 on completion of his tenure;

And Whereas the Central Government, in exercise of the powers conferred under Section 15(2) of the Recovery of Debts Due to Banks and Financial Institutions

Act, 1993 read with Rule 5 of The Debts Recovery Tribunal (Procedure for Investigation of Misbehaviour or Incapacity of Presiding Officer) Rules 2010 has decided to conduct an inquiry into the imputation of misbehaviour or incapacity of Shri Irshad Hussain, Presiding Officer of Debts Recovery Tribunal, Nagpur;

Now, therefore, it has been decided that all pensionary benefits including encashment of leave etc. admissible to Shri Irshad Hussain, Presiding Officer Debts Recovery Tribunal, Nagpur shall be withheld and shall not be disbursed to Shri Hussain till completion and outcome of such inquiry."

2. The charges, as alleged against the respondent, read as under:-

"i. That Shri Irshad Hussain, PO, DRT, Nagpur passed an order dated 04.02.2011 for absorption of Shri Modh. Yaqoob, Court Master retrospectively w.e.f. 21.09.2004 without any provision in Rules and despite clear instruction issued by this department on 01.10.2008 not to absorb Shri Yaqoob.

ii. That Shri Irshad Hussain, PO, DRT, Nagpur passed order dated 27.01.2012 absorbing Shri M.M. Uike as UDC w.e.f. 29.01.2008 without any provision in Rules.

iii. That Shri Irshad Hussain, PO, DRT, Nagpur passed orders and signed the note dated 26.04.2012 absorbing Shri P.J. Mehar as Multi Skilled Worker in DRT w.e.f. 10.05.2012, which is clear violation of Government orders/instructions.

iv. That Shri Irshad Hussain, PO, DRT, Nagpur compelled the subordinate officer to prepare notes and files in violation of the rules and regulations and the memorandums of the Central Government so as to enable him to pass illegal orders."

3. The respondent had challenged the aforesaid charge sheet before the Central Administrative Tribunal in OA No. 1888/2014. The said OA has been allowed and the charge sheet has been quashed for detailed reasons set out in the impugned order dated 23rd September, 2014. The impugned order refers to several aspects and contentions and also the contents of the charge sheet.

4. What has perturbed and disturbed us is the delay and laches on the part of the petitioner in challenging the impugned order, which was passed on 23rd September, 2014. The present writ petition was filed on 6th March, 2016, after a delay of nearly eighteen months. The petitioner-Union of India for some unexplained reason has filed an application under Section 5 of the Limitation Act, notwithstanding the fact that the said provision would not be applicable. The said application is bereft of necessary details, but refers to legal opinions sought and given to the Ministry of Finance from time to time from different counsel/standing counsel and conferences or sittings with the Counsel and further approvals. It records and accepts delay of 438 days in impugning the order passed by the tribunal.

5. This is a case of a retired employee whose pensionary and retiral benefits

stand withheld and have not been paid pursuant to letter dated 11th April, 2014, for the last two years. It is obvious and apparent that this pause and procrastination has adversely affected the rights of the respondent for the due pension and retirement benefits have not been paid. In such cases, proclivity and a lackadaisical approach is unacceptable and has to be checked. Delay in payment of pension and retirement dues itself constitutes punishment and has adverse consequences. Principle and standard of good governance should be applied and made the benchmark.

6. Delay and laches is one of the factors to be borne in mind by the High Courts, when they exercise discretionary powers under Article 226 of the Constitution. High Courts can refuse to invoke this extraordinary power when there is negligence or omission on the part of a party, in approaching the Court. In *Shankara Cooperative Housing Society Limited v. M. Prabhakar and Others*, (2011) 5 SCC 607, the Supreme Court referred to an earlier decision of the Privy Council in *Lindsay Petroleum Company v. Hurd*, (1874) LR 5 PC 221 and decisions in *Moon Mills Limited v. Industrial Court*, AIR 1967 SC 1450 and *Maharashtra SRTC v. Balwant Regular Motor Service*, AIR 1969 SC 329 to observe that the doctrine of laches is a doctrine of equity and not an arbitrary or technical doctrine. Where a party has been negligent, it would not be reasonable to grant him relief when lapse of time and delay are material. The length of delay, and the nature of acts done during the interval, which might affect either party or materially affect the balance of justice or injustice in taking one course or the other, would affect the remedy. Inordinate and unexplained delay certainly jeopardises a claim, as it may become inequitable. In *Chennai Metropolitan Water Supply and Sewerage Board and Others v. T.T. Murali Babu*, (2014) 4 SCC 108, the Supreme Court had once again examined the question of delay and laches, and has propounded that the said doctrine cannot be slightly brushed aside and the Writ Court is required to weigh the explanation offered and the acceptability of the same. As a constitutional Court, High Courts have the duty to protect rights of citizens, but simultaneously, they are to keep themselves alive to the primary principle that when an aggrieved person, without adequate reason, approaches the Court at leisure and pleasure, the Court would be under a legal obligation to scrutinise whether the belated claim should be entertained or not. This would depend upon circumstances, but in some cases, inordinate delay, which reflects inactivity and inaction, would merit dismissal.

7. When we look at the facts of the present case, including the charges levelled and the letter dated 11th April, 2014, it is crystal clear that the respondent has been denied all pensionary benefits, including encashment of leave, which have been withheld and not disbursed. For a retired man, denial of pensionary and retiral benefits has grave and serious consequences. The adverse effect and consequences is easy to visualise and understand. The urgency and promptitude required in a case like the present one, is conspicuously missing and absent. Looking at the long delay in approaching the High Court of 18 months after the impugned order was passed, we are not inclined to entertain the present writ

petition. The writ petition is dismissed on the ground of delay and laches.