

**(2011) 10 DEL CK 0018**

**Delhi High Court**

**Case No:** Writ Petition (Civil) No. 7362 of 2011 and CM No. 16691 of 2011

Jai Prakash

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision:** Oct. 5, 2011

**Acts Referred:**

- Administrative Tribunals Act, 1980 - Section 21

**Hon'ble Judges:** Sudershan Kumar Misra, J; Sanjiv Khanna, J

**Bench:** Division Bench

**Advocate:** Ashutosh Bhattacharjee, for the Appellant; Himanshu Bajaj, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Sanjiv Khanna, J. (Oral)

1. The present writ petition is directed against the order dated 8th November, 2007 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ("the Tribunal" for short) dismissing the O.A. No. 2053/2007 and M.A. No. 2056/2007 filed by the Petitioner, Jai Prakash, inter alia, on the ground that the application was delayed by 3365 days. The Petitioner was dismissed from service in the year 2000, and had approached the tribunal in 2007. It was held that the delay of 7 years was too long a period for a civil servant to agitate a cause, if any. It was further held that the Petitioner had failed to furnish satisfactory proof to show that he was sick so as to disable him to resort to legal remedies. The tribunal, looking at the nature of the allegations mentioned in the order of dismissal, recorded that the Petitioner might have been embarrassed because of his conduct but with passage of time, the Petitioner had emboldened himself to belatedly agitate his claim.

2. The order of dismissal of the Petitioner dated 2nd November, 2000 reads as under:

Whereas, Shri Jayaprakash TGT (Hindi) KV Donimalai has been prima facie found guilty of involving in homosexual activities with students of the Vidyalaya.

Whereas, the undersigned is satisfied from the summary inquiry that the said Shri Jayaprakash is guilty of Moral Turpitude involving sexual offence or exhibition of immoral sexual behaviour towards the students and that Shri Jayaprakash did not cooperate with the inquiry by staying on unauthorized leave.

and whereas, the undersigned is further satisfied that the procedure of CCS(CCA) Rules, 1965 to hold regular inquiry is not expedient in this case as the same may cause serious embarrassment to the students and their parents.

The evidence on record establishes the guilt of the teacher and hence the continuance of the teacher in an educational institution is prejudicial to the interest of the students as well as the institution.

Now, therefore, the undersigned, in the capacity of the Commissioner, KVS in exercise of the powers under Article 81(b) of the Education Code for KVs hereby terminates the service of Shri Jayaprakash TGT (Hindi), KV Donnimalai, with immediate effect.

Shri Jayaprakash, TGT (Hindi) will be paid pay and allowances for one or three months as the case may be as admissible under the rules.

3. Before the tribunal, the Petitioner filed an application for condonation of delay of 3365 days. The ground for condonation as stated in the application reads as under:

1. That Limitation period as per Section 21 of Administrative Tribunal Act 1980 has though expired due to the wrong Advice of Advocate of Allahabad (H.C) Advocate and also by the laches of Petitioner. Petitioner has moved the Chief Commissioner for person with disabilities, sarojini House 6, Bhagwan Das Road, New Delhi - 110001 for reinstatement of service and payment of arrears of salary, who has been replied vide letter dated 20.7.2006 and 9.8.2007 which is marked as Annexure P-2. Petitioner was also medically unfit to attend the Tribunal in time. But now Petitioner is medically fit in all respect to attend court and does his duty in the school. Hence the delay if any be condoned.

4. In the aforesaid grounds, the Petitioner did not give the name of the Advocate and/or file a copy of the legal advice furnished to him. However, in the pleadings in the present writ petition, the Petitioner has made several allegations against one Hasan Ahmad, Advocate, and has stated that the said Hasan Ahmad had informed him that he had filed O.A. No. 671/2001 before the Central Administrative Tribunal, Allahabad Bench at Allahabad and subsequently, he came to know that the said O.A. in fact was filed by one Om Prakash Yadav. These allegations made in the writ petition for the first time were absent and were not mentioned in the application for condonation of delay filed before the tribunal. As noticed above, what was stated in the application for condonation of delay was that a wrong advice was given by an

Advocate, which is different from stating that the Advocate had informed the Petitioner that he had filed a petition though no such petition had been filed before the Tribunal.

5. The present writ petition was filed on or about 10.07.2008 but was returned under office objections. The office objections have been removed after 931 days. It is stated in the application that the Petitioner had lost records and these could be reconstructed in the first week of August, 2011. It may be relevant to state that the Petitioner, in paragraph 3.15 of the petition, has stated that he has filed the entire records, which were filed before the tribunal. Thus, there is contradiction in the statement made by the Petitioner in the application for condonation of delay in refiling and the averments made in the writ petition itself.

6. Be that as it may, it is noticed that there has been a substantial delay at each point of time on the part of the Petitioner. The reasons given for condonation of delay are entirely vague and in fact contradictory. The tribunal has rightly recorded that the Petitioner, who was working as a teacher, might have been initially embarrassed to approach the court in view of the allegations, but after a gap of 7 years, he was emboldened to approach the tribunal. This aspect has not been adverted to and answered by the Petitioner in the pleadings or before this Court during the course of arguments. Rules of limitation are founded on public policy as evidence and material dissipates and this prevents a fair and just decision. Stale claims should not be allowed to be agitated and long lapse of 7 years is indicative that the Petitioner had accepted the order of dismissal. Facts stated above and the resultant delay and latches on the part of the Petitioner do not justify exercise of discretion in his favour.

7. We do not find any merit in the present writ petition and accordingly, the writ petition along with the application for condonation of delay, in refiling are dismissed.