(1974) 09 CAL CK 0025

Calcutta High Court

Case No: F.M.A. No. 293 of 74

Pratap Kumar Banerjee		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: Sept. 27, 1974

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 19(1)(f), 226, 226(1)

Citation: 79 CWN 176

Hon'ble Judges: S.K. Datta, J; B.C. Ray, J

Bench: Division Bench

Advocate: Asutosh Ganguly and Puspamoy Dasgupta, for the Appellant;S.C. Bose and Bhagwati Prosad Banerjee, for the Respondent

Final Decision: Dismissed

Judgement

Salil Kumar Dutt, J.
This is an appeal against the judgment and order of P.K. Banerjee, J. dated February 2, 1973 in C.R. No. 6032(W) of 1968 whereby the Rule was discharged. The facts, according to the petitioner/appellant, are as follows:

Since about may 16, 1944 the petitioner had been working as Sircar in Telegraph Workshops, Alipore and in course of his employment became involved in trade union activities. On May 23, 1960 he became the General Secretary of Posts and Telegraphs Industrial Workers Union. Because of trade union activities the petitioner incrurred the displeasure of the authorities and they were anxious to get rid of the petitioner. The petitioner as such Secretary issued a strike notice with effect from July 11, 1960 for realisation of the legitimate demands of the workers and the strike was actually held during 11th to 16th July, 1960. In the mtantime the Government of India promulgated Essential Services Maintenance Ordinance, 1960 declaring the strike illegal. Thereafter the authorities let loose the machineries of oppression on officials of the Union and the wrath of the administration mainly fell

on the petitioner as the Secretary of the Union. Chargesheets in continuous stream were issued against the petitioner-- on June 11, 18, July 7, 15, 19, 25 of 1960, alleging various acts of misconduct committed by the petitioner. The petitioner filed his satetements of defence on July 23 and August 1, 1960 denying the allegations. Enquiry was held by the Manager himself on 3rd August and 12th August, 1960 in absence of the petitioner as the petitioner could not attend the enquiry for his preoccupations with the trade union activities and his prayer for adjournment of the hearing after 15th September, 1960 was rejected. The Manager found the petitioner guilty of charges and on August 12, 1960 issued a second show cause notice proposing penalty of dismissal. The petitioner replied to the same reiterating his allegations made earlier and submitted that the proposed action if taken would be in violation of Article 311(2) of the Constitution. He further prayed that the Manager should not be influenced by fabricated and malicious cases of misconduct made up against him. By order dated August 27, 1960, the Manager, Telegraph Workshop dismissed the petitioner from service.

The petitioner filed an appeal under Clause 34 of the Certified Standing Orders for Telegraph Worksohps at Calcutta and other places, which admittedly applied to the petitioner. The Deputy General Manager, Posts and Telegraph Workshop, the appellate authority, on a consideration of the materials on record dismissed the appeal on January 7, 1961. The petitioner thereafter made various representations against his dismissal to the top departmental authorities, the Prime Minister and the Ministers of the Central Government as also to the President of India. All the representations were ultimately rejected and attempts to raise an industrial dispute thereafter were made by the petitioner and his Union. But the Central Government declined to refer the dispute for industrial adjudication. In this state of affairs the petitioner moved this Court on July 3, 1968 by an application under Article 226(1) of the Constitution for quashing orders dismissing him contending that the disciplinary proceeding and orders passed therein Were illegal, malafide, in violation of the principles of natural justice as also the provisions of Article 311(2) of the Constitution, as no opportunity was given to him to meet the allegations at the enquiry. Further the President''s action in not interfering with the order while granting reliefs to the other persons who were alleged to be similarly situated, Was discriminatory, hit by Articles 14 and 16 of the Constitution. On this application the instant Rule was issued.

2. The respondents filed an affidavit-in-opposition to the petition and its annexures, the petition being a voluminous (document of 479 pages, disputing the allegations and contentions made in the petition. It was contended that there was no illegality in the procedure of the enquiry in the disciplinary proceeding which was held in accordance with the rules and the principles of natural justice land no provision under Article 311(2) was: violated. The petitioner filed an affidavit-in-reply reiterating the allegations made in the petition.

3. The learned Judge by a short judgment held that the Rule failed for inordinate delay in moving the application. The propriety of this order has been challenged in this appeal.

4. Mr. Asuthosh Ganguly, learned Advocate for the appellant/petitioner submitted that the learned Judge was wrong in dismissing the application on the ground of delay. It was submitted relying on authorities that mere delay will not defeat an application if the delay is properly explained and no other interest or right accrue or vest in the meantime for which there was no occasion in the case before us. In this case the delay was due to the representations made by the petitioner and the time taken by the authoritirs to reply to the same. After the rejection of the representation there was no further delay on the part of the petitioner. All these facts and contentions were not at all considered by the learned Judge. Mr. Ganguly also wanted to argue on merits, but we did not allow him to do so at that stage unless he could cross the hardle of delay. Mr. S.C. Bose, learned Advocate for the respondents, referred us to the various decisions of the Superme Court as also of this Court and submitted that it has been laid down that unless the delay is explained by the aggrieved party, the application should not be entertained at the belated stage and there was no explanation given by the petitioner acceptable to Court. We shall now consider the various decisions which have been cited at the bar.

5. In Patit Paban Bose Vs. The Commissioners for the Port of Calcutta, , the petitioner was dismissed from service on March 19, 1951. He moved the Court on March 17, 1954 alleging that the time was taken for the representations made by him and his association for reinstatement. The Court held that the petitioner had no good cause for not coming to this Court after a reasonable time of the submission of his representations, and there was no justification for Waiting indefinitely. A party desiring to invoke the assistance of this Court by Way of Writ cannot be allowed to carry on a private negotiation for the reversal of the order complained of for years and years and then when such negotiations fail, come up to this Court at long last with an application under Article 226 of the Constitution.

6. In the State of Madhya Pradesh Vs. Bhailal Bhai and Others, , it was observed :

... the provisions of the Limitation Act do not as such apply to the granting of relief under Art 226. It appears to us however that the maximum period fixed by the Legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable.

7. In this case the Court was considering the competency of a Writ Court for directing refund of sales tax which was declared by the High Court in another case

to be invalid in law, contravening Art. 301 of the Constitution. The Supreme Court upheld the orders of the High Court in respect of the applications made within three years from the decision of the High Court declaring the relevant tax provisions Void which was accepted as the date of realisation of mistake. In respect of the applications made after three years eight months from the said date, the claims were refused leaving the petitioners to seek their remedy in Civil Court to establish the date of realisation of mistake later as Contended since it raised disputed questions of fact.

8. In Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, it appears that the Sales Tax Officer by order dated March 17, 1958 forfeited a sum of Rs. 26,500/- u/s 21(4) of the Bombay Sales Tax Act, 1953. The petitioners'' challenge to the said order failed and the amount was paid on August 8, 1960. Long thereafter the Supreme Court on September 29, 1967 in Kanti Lal Babulal Vs. H.C. Patel, struck down similar provisions as infringing Art. 19(1) (f). Thereafter on February 9, 1968 the petitioners filed an application under Article 32 for quashing the order of forfeiture of March 17, 1958 and consequential orders. By a majority decision the Supreme Court dismissed the application and in this case it was observed by Hidaytulla, J. (as his Lordship then was) that utmost expedition is the sine qua non for such claims, though the Limitation Act does not apply. The party must move at the earliest possible opportunity and explain all semblance of delay though there is no upper or lower limit and further the party must also come before the rights of others came into exsistence. It was observed by Sikri, J. (as his Lordship then was) that even if the claim is not barred by limitation, it may be held barred if there is unreasonable delay. Further, if the claim is barred by limitation it is a stale claim unless there are exceptional circumstances. Bachawat and Mitter, JJ., however, were of the view that the period of limitation fixed by the Limitation Act should apply to applications under Article 32. Hegde, J., However, was of opinion, that since Article 32 is itself a fundamental right and is not merely a discretionary power and cannot be refused on the ground of laches; but even so such prayer must relate to existing right which could only be enforced although the remady may be barred under the law.

9. In Kamini Kumar Das Choudhury Vs. State of West Bengal and Others, it was held on appeal in a proceeding under Article 226 that if the petitioner wants to invoke the extra-ordinary remedies under the said Article he should come to Court at the earliest possible opportunity. If there is delay in getting an adjudication, a suit for damages actually sustained by wrongful dismissal may become the more or even the only appropriate means of redress. But every case depends upon on its own facts and laches are well established grounds for refusal to exercise discretion. The Court further quoted with approval the observations of this Court that promptness in such matters is essential so that in public interest or public policy the State is not called upon to pay unnecessarily for the period for which the dismissed servant is not employed by it and the delay makes motive of the dismissed srevant, who may

have a technical ground to urge against dismissal, suspect.

10. The last decision cited was in the case of Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, , where the challenge was made on July 14, 1969 against resolutions of Government dated November 1, 1956 which were in opreation since 1961 and some ever earlier from 1959. It was held that the rule that the Court must not inquire into the belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion There is no inviolable rule that whenever there is a delay the Court must necessarily refuse to entertain the petition. It will depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose. It was further held following the earlier decision in Tilokchand''s case that even where the petitioner claimed the breach of the fundamental rights, he must move the Court before other rights came into existence and it would be unjust to deprive the respondents of the right which accrued to them in the meantime.

11. The ratio of the decisions appears to be that there is no inviolable rule that whenever there is delay even under the statutory period of new Limitation Act, the Court must necessarily refuse to entertain it. The rule which says that the Court should not interfere for the belated and stale claims is merely a rule of practice and all will depend on what the breach of the fundamental right and remedy claimed are and how the delay arose, there being no lower or upper limit. The Court, however, will refuse relief if for laches or delay in filing the application the rights of others have (sic) which should not be allowed to be disturbed unless there is reasonable explanation for delay. Even so utmost expedition is the sine qua non for such claim and the party must move at the earliest possible opportunity and explain all semblance of delay.

12. The above principles by and large apply to applications under Article 226 of the Constitution. In regard to recovery of money paid as taxes under a law subsequently declared to be void, the maximum period provided in law for a suit in Court is ordinarily taken as the standard for measurement of the delay in filing the application under Article 226. Even then as a party is required to move such application with utmost expedition, the Court may consider the delay unreasonable even if moved within the period of limitation. But if the delay is beyond the period of limitation it will be proper for the Court to hold that the delay is unreasonable.

13. In service matters where the order of dismissal is under challenge the Court has taken a harder line and accordingly has been down further restrictions on the time limit for moving such application. As the utmost the High Court could do is to quash the order of (dismissal of a public servant leaving the authorities free to take proceeding afresh against the public servant, as has been observed by the Supreme Court, he would get another long period in front of him to go on contesting the validity of the proceedings against him until he had gone past the age of retirement. Further in public interest or public policy the State should not be called up to pay

unnecessarily for the period for which the dismissed servant is not employed by it. Accordingly utmost expedition on the part of the public servant is essential for invoking the writ jurisdiction of this Court and there must be a reasonable explanation for the delay acceptable to Court.

14. It may further be noted that representations not based under the relevant rules made even after the final decision of the authority will not explain the delay or laches on the part of the public servant. Further after such representations are rejected further representations thereon or belated and unsuccessful attempts to raise an industrial dispute over the dismissal all such and kindered actions will not make the dismissal a live matter nor explain the laches or delay on the part of the aggrieved party in moving the application.

15. A scrutiny of the representations in this case would indicate that after the appeallate order of January 7, 1961 confirming the dismissal order of August 27, 1960 the petitioner made several representations to high authorities during May 22, 1963 till about November 6, 1965. Reply was given on January 6, 1966 by the Assistant Director General, Posts and Telegraphs informing that with reference to the representations to the President the case was carefully considered by the Central Government, but it was not possible to accede to the request obviously for reinstement which was prayed for. The Union was informed on 28th June, 1967 by the Chairman, Post and Telegraph Board about the Government''s inability to order reinstatement of a Government servant who has been dismissed from service. An attempt was made by the Union to raise an industrial dispute in August 1967 and conciliation proceedings were held. By its letter dated January 18, 1968 the Central Government informed the Union that the dispute was not considered fit to be referred to the Industrial Tribunal for adjudication. On a reviw of the relevant facts it would appear that there is no explanation for the delay for over two years and few months from 1961 to 1963. Further, after the rejection of the representation to the President in January, 1966 the petitioner moved with further representations, but they do not certainly explain the delay or laches which were caused thereby in moving this application in this Court, and as it appears that the order of dismissal was confirmed in January 7, 1961, while the petitioner moved this Court in July 3, 1968. On the authorities of the above decisions there is no escape from the conclusion that the petitioner has been guilty of gross and inordinate delay and there is no acceptable explanation to cover the said period. The learned Judge accordingly was justified in holding that the petition failed on account of inordinate delay.

In the view we have taken it is not necessary to enter into the merits of the case before us.

The appeal is accordingly dismissed.

There will be no order as to costs.

Bankim Chandra Ray, J.

I agree.