

Manoj Kumar vs State Of U.P. Thru. Commissioner , ... on 28 February, 2025

Bench: Rajan Roy, Rajnish Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LK0:12240-DB

Reserved

Court No. - 2

Case :- CIVIL MISC REVIEW APPLICATION DEFECTIVE No. - 258 of 2023

Applicant :- Manoj Kumar

Opposite Party :- State Of U.P. Thru. Commissioner , Village Development U.P. Lko. And 0

Counsel for Applicant :- Km. Vishwa Mohini,Rajesh Kumar,Vimal Kumar

Hon'ble Rajan Roy,J.

Hon'ble Rajnish Kumar,J.

(Per:- Rajnish Kumar,J.) (C.M. Application No.1 of 2023)

1. Heard, Ms. Vishwa Mohini and Shri Vimal Kumar, learned counsel for the applicant.

2. This is an application for condonation of delay in filing the review application. Office has reported a delay of 889 days in filing the review application. It has further been noted that in compliance of the Hon'ble Apex Court order dated 10.01.2022 in Suo Moto Writ Petition No.3/2020 in Misc. Application No.4/2022 limitation period from 15.03.2020 to 28.02.2022 i.e. 716 days has been excluded from counting of limitation.

3. The application has been filed on the ground that after passing of the order under review dated 30.05.2019 in Special Appeal, the applicant filed Writ-A No.4863 of 2022 claiming promotion to the post of Junior Clerk under 20% promotion quota, which was allowed by means of the order dated 14.07.2022 directing to consider deponents claim for promotion. In compliance thereof the claim was rejected by means of the order dated 13.10.2022 on the ground that since 1995 i.e. prior to the deponents promotion on 03.02.2004, there are only three posts of Junior Clerk in the cadre of Group-C to be filled by direct recruitment and promotion both. No post comes under 20% promotion quota. This order shakes foundation of judgment dated 02.04.2019 and 30.05.2019 as well as the letter of respondent no.2 dated 30.08.2003, by means of which respondent no.2 made promotion under 20% promotion quota alleging the same to be reserved for scheduled castes category. The applicant filed Writ-A No.8231 of 2022 challenging the order dated 13.10.2022, in which counter affidavit and rejoinder affidavit have been exchanged. Thereafter on consultation with the counsel for the applicant on 28.10.2023 as the litigation in the matter was not appearing to be fruitful and discovery of new material fact on 13.10.2022, he was advised to prefer review petition on the basis of discovery of new fact and error apparent on the face of record. Consequently, after obtaining the certified copy of the order passed by the writ court and the appellate court the review petition is being filed alongwith this application for condonation of delay. Thus, the delay in filing the review petition has occurred due to bona fide pursuing legal remedies. However on account of misconception of fact and law in passing the judgment under review, the deponent's service career has been spoiled.

4. The order under review has been passed in an intra court Special Appeal, which is in continuation of proceedings under article 226 of the Constitution of India. It is settled law that no period has been prescribed for filing the writ petition under Article 226 of the Constitution of India. However if there is inordinate delay in approaching the court, the laches are required to be explained and if the explanation is found sufficient it can be entertained. Thus in every case, in which there are delay and laches, it would have to be decided on the facts and circumstances of the case as to whether the petitioner is guilty of laches and if it is found that he is not guilty of laches, it can be entertained. Similarly since review and period of limitation for filing it has not been prescribed in the Allahabad High Court Rules, 1952 in proceedings under Article 226 of Constitution of India but the inherent power of Court to review can be exercised as a provision has been made for presentation of review in Rule-12 of Chapter-5 of Part-1, which is titled "Jurisdiction of Judges Sitting Alone or in Division Courts".

5. In view of above, this court has to see as to whether the petitioner is guilty of delay and laches in filing review of the judgment passed under the proceedings under Article 226 of the Constitution of India in intra court appeal or not and as to whether the same have been sufficiently explained. The sufficiency of the explanation would depend upon facts and circumstances of the case.

6. This Court, in the case of Mohd. Jahan Begum and Another Vs. Boad of Revenue and Others; 2016 SCC OnLine All 3678 passed by one of use (Mr. Justice Rajan Roy), has held that Article 124 of Limitation Act, 1963 is not attracted to a Review Petition seeking review of a judgment rendered under Article 226 of the Constitution of India. However, the Court can not be unmindful of the legal position that whenever no such limitation is prescribed the action should be taken within a

reasonable period and the reasonableness of a period would depend upon the facts and circumstances of each case. The relevant paragraph-11 is extracted here-in-below:-

"11. As has already been stated herein above, the power to review its judgment inheres in this Court as it exercises plenary jurisdiction to do complete justice and prevent its miscarriage. As there is no limitation prescribed for exercise of inherent power, therefore, it would be wrong to hold that limitation prescribed under Article 124 of the Schedule to the Limitation Act would govern the proceedings in question. Thus Article 124 of Limitation Act, 1963 is not attracted to a Review Petition seeking review of a judgment rendered under Article 226 of the Constitution of India. Having said so, the Court can not be unmindful of the legal position that whenever no such limitation is prescribed the action should be taken within a reasonable period. The reasonableness of a period would depend upon the facts and circumstances of each case and no hard and fast Rule can be laid down in this regard."

7. Adverting to the facts of the present case, the only ground taken by the review petitioner for condonation of delay is that due to bona fide pursuing the legal remedies available to him and plea has been taken that the writ petition has been filed challenging the order dated 14.07.2022 passed by the authority concerned, on account of which the applicant thinks that the order has been passed by this Court under misconception of facts and law and he was pursuing the other legal remedies and the matter was not appearing to be fruitful. It can not be the ground for ignoring the laches of the aforesaid huge delay. That too merely because it is not appearing fruitful to the applicant at some point of time. Even otherwise there is no explanation for the delay w.e.f. 14.07.2022 to 18.10.2023 i.e. for more than one year and three months. Therefore, there is no reasonable ground for the inordinate delay and laches in filing review petition.

8. The Hon'ble Supreme Court, in the case of Mrinmoy Maity Vs. Chhanda Koley and Others; 2024 SCC OnLine SC 551, has held that delay defeats equity and when the extraordinary jurisdiction is invoked, it has to be seen that whether within a reasonable time same has been invoked. The relevant paragraphs 10 to 13 are extracted below:-

"10. The discretion to be exercised would be with care and caution. If the delay which has occasioned in approaching the writ court is explained which would appeal to the conscience of the court, in such circumstances it cannot be gainsaid by the contesting party that for all times to come the delay is not to be condoned. There may be myriad circumstances which gives rise to the invoking of the extraordinary jurisdiction and it all depends on facts and circumstances of each case, same cannot be described in a straight jacket formula with mathematical precision. The ultimate discretion to be exercised by the writ court depends upon the facts that it has to travel or the terrain in which the facts have travelled.

11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and

even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court. This Court in the case of *Tridip Kumar Dingal v. State of W.B.*, (2009) 1 SCC 768 has held to the following effect:

"56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide *State of M.P. v. Bhailal Bhai*, [AIR 1964 SC 1006 : (1964) 6 SCR 261], *Moon Mills Ltd. v. Industrial Court*, [AIR 1967 SC 1450] and *Bhoop Singh v. Union of India*, [(1992) 3 SCC 136 : (1992) 21 ATC 675 : (1992) 2 SCR 969]). This principle applies even in case of an infringement of fundamental right (vide *Tilokchand Motichand v. H.B. Munshi*, [(1969) 1 SCC 110], *Durga Prashad v. Chief Controller of Imports & Exports*, [(1969) 1 SCC 185] and *Rabindranath Bose v. Union of India*, [(1970) 1 SCC 84]).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose."

12. It is apposite to take note of the dicta laid down by this Court in *Karnataka Power Corporation Ltd. v. K. Thangappan*, (2006) 4 SCC 322 whereunder it has been held that the High Court may refuse to exercise extraordinary jurisdiction if there is negligence or omissions on the part of the applicant to assert his right. It has been further held thereunder:

"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 Prashad v. Chief Controller of Imports and Exports*, [(1969) 1 SCC 185 : AIR 1970 SC 769]. Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd*, [[L.R.] 5 P.C. 221 : 22 WR 492] (PC at p. 239) was approved by this Court in *Moon Mills Ltd. v. M.R. Meher*, [AIR 1967 SC 1450] and *Maharashtra SRTC v. Shri Balwant Regular Motor Service*, [(1969) 1 SCR 808 : AIR 1969 SC 329]. 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."

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*, [(1970) 1 SCC 84 : AIR 1970 SC 470] 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.

9. It was stated in *State of M.P. v. Nandlal Jaiswal*, [(1986) 4 SCC 566 : AIR 1987 SC 251] 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."

13. Reiterating the aspect of delay and laches would disentitle the discretionary relief being granted, this Court in the case of Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu, (2014) 4 SCC 108 has held:

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant -- a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."

9. In view of above, this court is of the view that the application is misconceived and lacks merit and it is liable to be dismissed.

10. The application is, accordingly, dismissed. Consequently, the review petition stands dismissed.

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...(Rajnish Kumar, J.) (Rajan Roy, J.)

Order Date :- 28.02.2025

Haseen U.

