Shiv Dass vs Union Of India And Ors on 18 January, 2007

Equivalent citations: AIR 2007 SUPREME COURT 1330, 2007 (9) SCC 274, 2007 AIR SCW 1487, 2007 (4) ALL LJ DOC 130, (2008) 3 LAB LN 140, (2007) 3 ALLMR 820 (SC), (2007) 2 JCR 123 (SC), 2007 (2) SCALE 325, 2007 (3) ALL MR 820, (2007) 1 ESC 57, (2007) 1 UPLBEC 562, (2007) 1 SUPREME 455, (2007) 2 SCT 72, (2007) 2 SCALE 325, (2007) 112 FACLR 877, (2007) 3 SERVLR 444

Author: Arijit Pasayat

Bench: Arijit Pasayat, S.H. Kapadia

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           CASE NO.:
Appeal (civil)  274 of 2007

PETITIONER:
Shiv Dass

RESPONDENT:
Union of India and Ors

DATE OF JUDGMENT: 18/01/2007

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
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J U D G M E N T (Arising out of S.L.P. (C) No. 881 of 2006) Dr. ARIJIT PASAYAT, J.

Leave granted.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Punjab and Haryana High Court dismissing the Writ Petition filed by the appellant on the ground that it was highly belated. It was noted that appellant was out of service in the year 1983 and the writ petition was filed in 2005.

Appellant's case in a nutshell is as follows:

> Appellant was enrolled in Army Medical Corps, Lucknow in September, 1965. In 1982 he suffered from medical problem of weak eyesight and he became almost 80% disabled, despite being getting the treatment. Therefore, he was placed under low medical category by the Medical Board. He was relieved from the service being invalidated out of service. In 1983 appellant claimed disability pension for the 80% disability. It was rejected by the Chief Controller of Defence Accounts (Pension),

Allahabad. Appellant claims that he had filed appeal before the appellate authority but there no reply was given. Since there was no intimation regarding any order in the appeal, he filed the writ petition in 2005. His prayer was for grant of disability pension. The High Court dismissed the writ petition.

In support of the appeal, learned counsel for the appellant submitted that the High Court should have noted that the claim for pension provides for continuing cause of action. As the appellant had not received any intimation regarding the result of the appeal, he ultimately filed the writ petition.

Learned counsel for the respondents on the other hand submitted that the writ petition was highly belated. In fact, the original order itself indicated the reason for dishonouring the claim. The appeal was dismissed in August 1985 and due intimation was given to the appellant about rejection of his appeal. He cannot take advantage of his own lapses and laches.

Normally, in the case of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India, 1950 (in short 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 and Ors. (AIR 1970 SC 769). Of course, the discretion has to be exercised judicially and reasonably.

What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Company v. Prosper Armstrong Hurd etc., (1874) 5 P.C. 221 at page 239 was approved by this Court in The Moon Mills Ltd. v. M.R. Meher, President, Industrial Court, Bombay and Ors. (AIR 1967 SC 1450) and Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and Ors. (AIR 1969 SC 329), Sir Barnes had stated:

"Now the doctrine of laches in Courts of Equity is not an arbitrary or 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, if 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 relates to the remedy."

It was stated in State of M.P. v. Nandlal Jaiswal and Ors. (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.

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. Raja Lakshmiah v. State of Mysore (AIR 1967 SC

993). 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. Sri Pyarimohan Samantaray, (AIR 1976 SC 2617) 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 (AIR 1976 SC 1639 also).

In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.

In the peculiar circumstances, we remit the matter to the High Court to hear the writ petition on merits. If it is found that the claim for disability pension is sustainable in law, then it would mould the relief but in no event grant any relief for a period exceeding three years from the date of presentation of the writ petition. We make it clear that we have not expressed any opinion on the merits as to whether appellant's claim for disability pension is maintainable or not. If it is sans merit, the High Court naturally would dismiss the writ petition.

The appeal is disposed of accordingly without any order as to costs.