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WP-30794-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 18th OF OCTOBER, 2024WRIT PETITION No. 30794 of 2024*SMT RAJKUMARI SONI**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Sanjay Roy - Advocate for petitioner.

Shri Yash Soni - Deputy Advocate General for State.

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ORDER

This petition has been filed seeking the following reliefs:-

"7.1 That, it is therefore, prayed that Hon'ble Court may kindly be pleased to issue a writ in the nature of Mandamus directing respondent no. 3 the claiming benefit of KRAMONNATI under the time bound promotion scheme 19.04.1999 in the light of the law laid down in the case of K.L. Asre (supra) to provide the petitioners, in the interest of justice.

7.2 That, the present case is also squarely covered and has also extended the similar benefit to the other petitioners also, if monetary are not paid within the specified period, then the interest @12% per annum also may be directed till the date of payment.

7.3 Any other relief deems fit may also be granted including cost of litigation."

The case of the petitioner is that the husband of the petitioner was joined in the service on 17.11.1973 as a Timekeeper/Sthal Sahayak and since then he was discharging the duty till date of superannuation on the same post. Since the tenure of service the petitioner's husband has never been considered for grant of benefit of Kramonnati under the time bound promotion scheme 19.04.1999. During the service tenure the petitioner's



husband has requested many times to their superior, but of no consequence. The husband of the petitioner has died on 12.02.2021. During the service period, the petitioner's husband requested to their superiors but they kept quiet. The petitioner has submitted representation on 16.05.2024 to the respondent No.3. Since, the petitioner approach to the authority concern/respondents and but they were sitting with deaf ears and not taking any action on the representations made by the petitioner.

It is argued that the husband of the petitioner was appointed on 17.11.1973 and he worked on the same post till the date of retirement, but his case has not been considered for the benefit of Kramonnati under the time bound promotion scheme 19.04.1999, therefore, the respondents are duty bound to consider the claim of the petitioner's husband. Due to negligence on the part of the respondents the claim of the husband of the petitioner has not been considered despite of the fact that the petitioner's husband served the department for long. Since the similar matters have already been considered by this Court wherein, directions have been issued to consider the case of the similarly situated persons, petition is claiming that same relief be extended to her. Hence, this petition.

Per contra, learned counsel for the respondents/State has opposed the contentions on the ground that the petition has been filed at a belated stage i.e. after almost 10 years from the date of retirement of the husband of the petitioner without there being any explanation of delay, therefore, he submits that this petition can be dismissed on the ground of delay and laches.

Heard learned counsel for the parties and perused the record.



From perusal of the record, it is seen that the husband of the petitioner has retired on 31.07.2010 and has died on 12.02.2021. No efforts have been made by the petitioner's husband at the relevant time to ask for time bound promotion in the matter. There is no document placed on record to shows the same. It is in the year 2024, for the first time the wife of the petitioner has filed this petition claiming the relief for extension of time bound promotion benefits to the petitioner's husband. Even today virtually no explanation has been given for keeping quite for a considerable period of more than one decade. The petitioner being a sleeping litigant cannot be granted any benefit.

The Hon'ble Supreme Court has considered the aspect of delay in approaching the Court in the case Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Ors. reported in (2013) 12 SCC 649 wherein the Hon'ble Supreme Court has held as under :-

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, nonpedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.



21.5. (v) *Lack of bonafides imputable to a party seeking condonation of delay is a significant and relevant fact.*

21.6. (vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

21.7. (vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8. (viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

21.9. (ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach.*

21.10. (x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

21.11. (xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

21.12. (xii) *The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

21.13. (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

22. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:-*

22.1. (a) *An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*



22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

The Hon'ble Supreme Court in the case of State of Orissa & Anr. vs. Mamata Mohanty, (2011) 3 SCC 436 has opined as under:-

"54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time."

In W.P. No.5409/2012 (Jageshwar Kurmi (Patel) vs. State of M.P. & Others) decided on 30.8.2017 and in W.P. No.10923/2019 (Dr. Sunil Surange vs. State of M.P. and others) decided on 10.3.2022, wherein, it is categorically held that a sleeping litigant is not entitled for any relief.

A Division Bench of this Court in Focus Energy Ltd. (M/s) vs Government of India, (DB) reported in I.L.R. (2011) M.P. 53; relying upon judgments of the Hon'ble Supreme Court has observed as under:-

"10. Thus, facts stated supra leads to irresistible conclusion that appellant is guilty of delay and laches.



Its conduct disentitles it to any relief. In New Delhi Municipal Council v. Pan Singh and Others, AIR 2007 SC 1365 the Supreme Court has held that delay and laches are relevant factors for exercise of equitable jurisdiction. In Municipal Council, Ahmednagar v. Shah Hyder Beig, (2000) 2 SCC 48 the Supreme Court has observed that discretionary relief can be provided to one who has not by his act or conduct given a go-bye to his rights. Equity favours a vigilant rather than an indolent litigant. In the State of Haryana v. Aravali Khanij Udyog, (2008) 1 SCC 663 it has been held that where third party rights are created, the High Court should not interfere. Similarly, in Shiba Shankar Mohapatra (supra) it has been held that the Court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallizes in the interregnum.”

The Hon'ble Supreme Court in the case of Karnataka Power Corpn. Ltd. vs K. Thangappan reported in (2006) 4 SCC 322 has held as follows:-

"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



[(1874) 5 PC 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.”

It is further held by the Hon'ble Supreme Court in the case of Ashok Kumar vs District Magistrate, Basti reported in (2012) 3 SCC 311 that :-

“10. ... It is time and again, stated that a party who has slept over his right since is not entitled to the discretionary relief of the High Court.”

Thus, the husband of the petitioner being a fence sitter has not made



any efforts to claim the legal rights at the relevant time and keeping quiet for a considerable period of more than a decade. By filing this petition an attempt is made to reopen the stale claim, which is not permissible. Therefore, no relief can be extended to the petitioner.

The writ petition *sans* merit and is accordingly dismissed. No order as to costs.

(VISHAL MISHRA)
JUDGE

THK