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**SooperKanoon Citation : [sooperkanoon.com/862386](http://sooperkanoon.com/862386)**

**Court : Kolkata**

**Decided On : Jan-19-2001**

**Reported in : (2001)2CALLT270(HC)**

**Judge : Ashim Kumar Banerjee, J.**

**Acts : [Constitution of India](#) - Articles 14, 16, 19, 21 and 226;; [Limitation Act, 1963](#) - section 5**

**Appeal No. : Matter No. 1833 of 1991**

**Appellant : Subimal Mukherjee and ors.**

**Respondent : Union of India and ors.**

**Advocate for Def. : Mr. Gupta, Mr. Samarjit Gupta**

**Disposition : Petition dismissed**

**Judgement :**

1. Six writ petitioners by this writ petition filed in the year 1991 challenged supersession by junior cadre being the respondent No. 6 firstly in the year 1965, secondly in the year 1982 and thirdly in 1987. As there is no service condition and/or Rules framed by the Company the Central Government Rules pertaining to the Government Employees have been made applicable in the case of the employees working under the respondent's Corporation. From the affidavit-in-

opposition it appears that the said Corporation gave promotion to the respondent No. 6 in supersession of the petitioners on the basis of 'merit-cum-qualification' as explained in paragraph 5(a) of the said affidavit. Mr. Bose appearing for the writ petitioners has submitted that there has been representation made by the writ petitioners from time to time coupled with assurance given by the Corporation that their case would be considered in due time and as such the writ petitioners did not approach this Court earlier. According to Mr. Bose the delay in coming to Court has been explained sufficiently in paragraphs 26 and 27 of the writ petition which are set out here-under:

'26. Against the aforesaid arbitrary and illegal supersession of the petitioners by the respondent No. 6 the petitioner times without number made representations to the respondents authorities both verbally as well as by writing.

Copies of three such representations in writing dated 10.3.1987, 8.6.1990 and 13.5.1991 are annexed hereto and collectively marked with the letter 'H'.

'27. Although the respondent authorities gave assurance to the petitioners that their aforesaid legitimate grievance would be sympathetically considered and taken care of in due time up till now no positive steps have been taken by the respondent authorities in this regard.'

2. Mr. Bose has further contended that there has been similar injustice done to other set of employees of the said Corporation. However, their cases were considered subsequently and re-fixation has been done by the Corporation as would appear from the several orders appearing at pages 42, 43, 44 and 45 of the writ petition. Mr. Bose in support of his contention has cited the following decisions:

1) : (1998)8SCC685 : 2) : (1999)4SCC450 :3) : AIR 1999 SC3306 ; and 4) (1998) 8 Supreme Court Cases 652.

3. The first two decisions cited by Mr. Bose relate to the delay in approaching to this Court. Paragraph 2 of the first decision : (1998)8SCC685 (supra)] is relevant herein and is quoted below:

'2. In our opinion the approach of the High Court is not justified. There is no time-limit for filing the writ petition. All that the Court has to see is whether the laches on the part of the petitioner are such as to disentitle him to the relief claimed by him. But the High Court appears to have examined the matter as if it was a case under section 5 of the Limitation Act, 1963. Apart from the above, we do not think that the proceedings should be prolonged any further. Even if the Tribunal is right in its opinion, the only result would be that the disciplinary authority would be now required to pass final order in the disciplinary proceedings. Having regard to the nature of the charge and having regard to the fact that the respondent was only a temporary employee, we think that the following order would be an appropriate one in the circumstances of this case. Instead of reinstatement, pursuant to the order of the Tribunal, the respondent shall be entitled to a consolidated sum of Rs. 30,000/-. The respondent shall not be entitled to any other claim. The said amount shall be paid by way of Government cheque to the respondent within three months from today.'

4. In the second case cited by Mr. Bose reported in (1999) 4 Supreme Court Cases 45 (supra) where the Supreme Court was of the view that the delay itself may not defeat the claim of the petitioner unless the position of the respondent had been altered on account of lapse of time. The third and fourth cases cited by Mr. Bose are on the question that the seniority should be taken into consideration in case of the Government Employees. Since that proposition has not been in his usual fairness disputed by Mr. Gupta appearing for the respondent. I do not wish to deal with the said two cases. Mr. Bose lastly contended that as the Corporation has refixed the seniority in respect of other candidates they should not be denied of such relaxation on the ground of delay only.

5. Mr. Samarjit Gupta appearing for the respondent has contended that the writ petitioners have been superseded in the year 1965 and the cause of action for this writ petition arose in the year 1965 when they did not approach this Court or made any representation before the authority concerned. It has also been contended by Mr. Gupta that the writ petitioners appeared before the Selection Committee, availed of the promotional process and got their promotions subsequently and ultimately accepted the Voluntary Retirement Scheme propounded by the

Corporation. Having accepted all such benefits the writ petitioners are not entitled to any relief. Mr. Gupta lastly contended that the Company is now having only three officers. All other employees have left the Company after accepting Voluntary Retirement. The Company has also been closed on and from January 16, 2001. This statement has been made by Mr. Gupta upon instruction from his client's representative who is present in Court. Mr. Gupta in support of his contention has cited the decision reported in : [1987]1SCR1 . The relevant passage of the said judgment is quoted below:-

'23. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the 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 in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an Important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal. We may only mention in the passing two decisions of this Court one in Ramanna Dayaram Shetty v. International Airport Authority of India, : (1979)1ILLJ217SC and the other in Ashok Kumar v. Collector, Raipur, : [1980]1SCR491 . We may point out that in R.D. Shetty's case (sitpra), even though the State action was held to be unconstitutional

as being violative of Article 14 of the Constitution, this Court refused to grant relief to the petitioner on the ground that the writ petitioner had been filed by the petitioner more than five months after the acceptance of the tender of the fourth respondent and during that period, the fourth respondent had incurred considerable expenditure, aggregating to about Rs. 1.25 lakhs, in making arrangements for putting up the restaurant and the snack bar. Of course, this rule of laches or delay is not a rigid rule which can be cast in a strait jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would be their very nature be few and far between. Ultimately it would be a matter within the discretion of the Court; *ex hypothesi* every discretion must be exercised fairly and justly so as to promote justice and not to defeat it.'

6. Relying on the said decision Mr. Gupta has prayed for dismissal of the present writ petition.

7. The first case cited by Mr. Bose, in my view, supports the case of the respondent. In the said case, the Supreme Court was of the view that the consideration has to be made as to the amount of laches. In the instant case, the writ petitioners suffered supersession in the year 1965, not a single representation was made before the Corporation at least pleaded in the writ petition, before 1987. I feel that fact is sufficient to deny the writ petitioners of their rights, if any, following the said Supreme Court decision.

8. The second case, also I feel, goes against the writ petitioners. The writ petitioners have accepted their promotions after supersession, they served the Corporation and ultimately accepted Voluntary Retirement Scheme and got, all pecuniary benefits attached thereto. The Company is now under closure. The situation has thus totally altered and if I direct re-fixation they may create disastrous situation. This position however would not have been the same in the year 1965 and the reliefs could have been granted to the writ petitioners in 1965 or immediately thereafter. Having not approached this Court at that time, in the

changed circumstances the writ petitioners are not entitled to the relief as prayed for.

9. The last case being the case cited by Mr. Gupta really prompts me to dismiss the present writ petition. Here the Supreme Court was of the view that the unexplained delay coupled with creation of third party right is an Important factor to deny the writ petitioners of their rights even if the action on the part of the respondent is unconstitutional or illegal. In the instant case, paragraphs 26 and 27 of the writ petition have been relied on by Mr. Bose. I find that the averments made in the said paragraphs are not only vague but also are not supported by sufficient particulars as I have said earlier. The first representation was made by the writ petitioners in the year 1987. I am also told that respondent No. 6 has also retired from service accepting Voluntary Retirement benefit. Refixation of seniority of the writ petitioners would amount to refixation of seniority of the other cadres also who have already retired from service. Such situation would create tremendous complication and more so because of the reason that the Company is now under closure.

10. Hence I feel that whatever best case the writ petitioners have, they slept over their right for years together which are sufficient to deny relief to them. In the result, the writ petition falls and is dismissed with no order as to costs.

Let xerox certified copy of this judgment be supplied to the parties if applied for the same.

11. Petition dismissed