

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on : 18.04.2024
Pronounced on : 25.04.2024**

**Case : SWP No. 452/2019
CM No. 1463/2022**

Mohd. Sadeeq, Age 63 years,

...Petitioner(s)..

Through: Mr. A.A.Khan, Advocate.

Vs

1. State of Jammu and Kashmir

2. Managing Director,
J&K Industries,

.... Respondent(s)

Through: Mr. D.C.Raina, Advocate General with
Assisting Counsel for R-1.
Ms. Anshuja Tak, Advocate for R-2.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT
25.04.2024

1. The petitioner has filed the instant writ petition challenging order No. JKI/177/2017 dated 18.10.2017 passed by respondent No.2 whereby representations of the petitioner dated 17.03.2017 and 02.01.2017, upon their consideration in terms of order dated 25.08.2017 passed by this Court in SWP No. 2113/2017, have been rejected.
2. Briefly stated the case of the petitioner is that he was appointed as Sentry/Field Assistant vide appointment order No. RTO/Estt./96/5448-51 dated 19.10.1974 in Government Resin and Turpentine Factory Fatehpur,

District Rajouri. According to the petitioner on 01.01.2002 an encounter took place between the militants and Special Operations Group of the police headed by Dy.S.P Operations Rajouri and in the said encounter two militants were killed. In this regard, FIR No. 15/2002 for offences under Sections 7/27 E.A.Act, 307/120-B, 124-A and 427 RPC was registered with Police Station, Rajouri. It has been submitted that it is the petitioner who had furnished the information with regard to presence of the militants to the police as a result of which, after the incident, he started receiving life threats from the militants. It has been further submitted that due to these life threats the petitioner had to shift to Jammu City where he stayed for several months and thereafter he left the State of Jammu and Kashmir. It is being submitted that the petitioner because of these conditions got mentally disturbed and after spending about 10 years outside the State, he came back to his native place. It has been submitted by the petitioner that upon coming back to his native place, he came to know that the Resin factory in which he was employed has been closed down and the employees of the factory have been given the benefit of Voluntary Retirement Scheme in terms of Cabinet Decision No. 119/2010 dated 11.06.2010 pursuant where to Government order No. 218-F of 2007 dated 16.07.2007 has been issued.

3. It has been pleaded that a number of writ petitions came to be filed by the aggrieved persons and in compliance to the directions passed by this Court another Cabinet Decision bearing No. 189/2016/2010 dated 26.08.2010 was taken and in light of the said Cabinet Decision, Government Order No. 237-F of 2010 dated 30.08.2010 was issued by the Finance Department with regard to Voluntary Retirement Scheme of the employees of the Public

Sector Undertakings. It is case of the petitioner that he is also entitled to the benefits under the aforesaid Scheme.

4. According to the petitioner when he came back to resume his duties he came to know that his services have been terminated by respondent No.3 in terms of order No. RFR/TEG/2004-05 dated 07.07.2004. It has been pleaded that the aforesaid termination order was issued without affording any opportunity of hearing to the petitioner and without adhering to the principles of natural justice.
5. It has been submitted that in reply to the RTI query of the petitioner, the respondents informed him that after the Resin factory was closed the record and other assets were shifted to MRTF, Jammu, as such, the record pertaining to the petitioner is not available with them and the same is available with the corporate office. However, the petitioner was provided a copy of his service book which shows that his services have been terminated on 07.07.2004.
6. The petitioner is stated to have made representations dated 17.03.2015 and 02.01.2017 before the respondents asking for retiral benefits but when no decision was taken by the respondents he filed writ petition bearing SWP No. 2113/2017. Vide order dated 25.08.2017 passed by this Court in the said writ petition, a direction was issued to the respondents to decide the aforesaid representations of the petitioner within a period of two months. Pursuant to these directions, the impugned order dated 18.10.2017 came to be issued by the respondent No.2 whereby the representations of the petitioner have been rejected.

7. The petitioner has challenged the impugned order passed by respondent No.2 on the grounds that the same is devoid of any reasons. It has been submitted that termination of the petitioner from service was effected in violation of the principles of natural justice and no enquiry was conducted before passing the termination order. It has been further contended that order of termination has to be treated as null and void. It has been claimed that the petitioner is entitled either to reinstatement in service or to the benefits of Voluntary Retirement Scheme floated by the government in respect of the employees of the Public Sector Undertakings.
8. The writ petition has been contested by the respondents by filing their counter affidavit. In the counter affidavit filed by respondent No.2, it has been submitted that the writ petition warrants dismissal on the ground of delay and laches. It has been contended that the petitioner had abandoned his services in the year 2002 and he has approached the court for the first time in the year 2017 i.e. after about 15 years. According to the respondents, the petitioner has acquiesced in the action of the respondents, as such, he is estopped from challenging the same. It has been further submitted that petitioner was continuously absent from duty w.e.f 2002 and, as such, he had abandoned his service. According to the respondents, they waited for about 2 years after the petitioner stopped attending his office and tried to ascertain his whereabouts. Once the whereabouts of the petitioner were not known, his services came to be terminated due to prolonged absence from service. It has been submitted that the petitioner has not appended any material with his petition that would go on to explain the circumstances under which he was

prevented from attending his duties or in approaching the respondents during all these years.

9. I have heard learned counsel for the parties and perused the record.
10. As already noted, the respondents have raised preliminary objections as regards the maintainability of the writ petition on the ground that there is unexplained delay in filing the writ petition and on this count alone the writ petition deserves to be dismissed.
11. On the other hand, learned counsel appearing for the petitioner has contended that the petition has been admitted to hearing by this Court in terms of order dated 19.08.2019 and once the writ petition stands admitted to hearing the plea of delay and laches cannot be raised by the respondents. Learned counsel for the petitioner in support of his aforesaid contention has relied upon the judgments of this Court in case of **Bashir Ahmad Bhat and Ors. vs. State of J&K & Ors., 2004 (3) JKJ 189** and in case of **State of J&K vs. Renu Mahajan and Ors., 2022 Legal Eagle (J&K) 781**. It has also been contended by learned counsel for the petitioner that even otherwise the cause for filing of the present writ petition has accrued in favour of the petitioner when his representations were rejected by the respondents on 18.10.2017 pursuant to the directions of this Court passed in the earlier round of litigation between the parties, therefore, it cannot be stated that the claim of the petitioner is stale.
12. The first issue which is required to be determined is as to whether in view of admission of the writ petition, this Court is precluded from examining the merits of the contention relating to delay and laches.

13. It is true that the Division Bench of this Court in the cases of Bashir Ahmad Bhat (supra) and Renu Mahajan (supra) have held that plea of laches cannot be entertained after admission of the writ petition but the facts of both these cases are entirely different and distinct from the facts of the present case. In Bashir Ahmad Bhat's case (supra), this Court after examining the facts of the said case has clearly observed that the contribution towards delay and laches was on the part of both the parties and only the writ petitioner could not be held responsible for the delay. In the case of Renu Mahajan (supra), it was observed by the Division Bench that she came to know about the Final Seniority List only in February 2016, therefore, her writ petition was not hit by delay and laches. In the instant case, the situation is different inasmuch as the respondents have not contributed to the delay. Besides this even after returning to his native place after ten years of leaving his place of posting in the year 2002, the petitioner approached the respondents only in the year 2017. So the ratio laid down in the aforesaid two judgments is not applicable to the present case.
14. Apart from the above, judgment of the Division Bench in Bashir Ahmad Bhat's case (supra) was considered by a single bench of this Court in case of **Om Raj Katoch vs. State Forest Corporation, Jammu and others bearing SWP No. 1288/2008, decided on 04.11.2023** and it was held that issue of delay and laches can be raised, notwithstanding the admission of the writ petition to hearing, when the writ petition is admitted to final hearing in absence of the objectors-respondents or when the writ petition is admitted in absence of the reply of the objectors-respondents or when the plea of delay and laches was not considered at the time of admission of the writ petition

and the said plea is reiterated in the counter affidavit. A similar view has been taken by Division Bench of this Court in the case of **Abdul Rashid Wani vs. Union Territory of J&K and others [RP No. 53/2022 in WP (C) No. 182/2021]** decided on 21.07.2023.

15. Adverting to the facts of the present case, the instant writ petition came to be admitted to hearing as the respondents failed to file their objections at the pre-admission stage. After admission of the writ petition, the respondents filed their counter affidavit in which they specifically raised the plea of delay and laches. No re-joinder has been filed by the petitioner. In view of the ratio laid down in cases of Om Raj Katoch (supra) and Abdul Rashid Wani (supra), the respondents cannot be debarred from raising the plea of delay and laches in the instant case.
16. As has been already noted while narrating the facts of the case, the petitioner left his place of posting at Rajouri in the year 2002 and as per his own case he returned and filed his first representation before the respondents in the year 2017. Prior to that he sought information under the RTI Act from the respondents in the year 2015. Thus, for about one and a half decade, petitioner neither resumed his duties nor did he make any effort to know about the status of his service. The only explanation tendered by the petitioner for not approaching the respondents or the court during all these years is that he faced life threats while he was working in the Resin factory at Rajouri whereafter he shifted to Jammu. He got mentally disturbed and resided outside the State for about 10 years. In order to substantiate these assertions, the petitioner has not placed on record any material. He has not produced any medical record to show that he was mentally disturbed during

all these years nor has he given particulars of the places where he had stayed during all these years either within the State or outside the State. The bald explanation of the petitioner without any supporting material and without any specific details cannot be accepted.

17. That takes us to the contention of the petitioner that a fresh cause of action has arisen in his favour when representations were decided by respondents on 18.10.2017. In this regard, it is to be noted that filing of representations and a decision thereon in respect of a stale claim does not offer a fresh cause of action to a litigant. Infact the Supreme Court has deprecated the practice of entertaining stale claims of the litigants and issuing directions for consideration of such stale claims in the case of **C. Jacob vs. Director of Geology and Mining and another, (2008) 10 SCC 115**. It would be apt to notice the observations of the Supreme Court in the aforesaid case made in para Nos. 8 to 14, which are reproduced hereunder:-

“8. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying to such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation.

9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any "decision" on rights and

obligations of parties. Little do they realise the consequences of such a direction to "consider". If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to "consider". If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

10. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of "acknowledgement of a jural relationship" to give rise to a fresh cause of action.

12. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for the purpose of pension. That will be a travesty of justice.

13. Where an employee unauthorisedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches the court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/removal, court cannot draw an adverse inference against the employer for not producing records, nor direct

reinstatement with back wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back wages.

14. We are constrained to refer to the several facets of the issue only to emphasise the need for circumspection and care in issuing directions for "consideration". If the representation on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing "consideration" of such claims."

18. From the foregoing analysis of law on the subject, it is clear that mere filing of representations does not extend the period of limitation unless an action has been taken on those representations. It is also clear that even when an order is passed rejecting and considering the claim of the petitioner in compliance to the directions of the court such an order does not revive the stale claim nor does it give rise to a fresh cause of action.
19. In the instant case, as already noted, the petitioner left his place of posting in the year 2002, his services were terminated in the year 2004, but he acquiesced in the action of the respondents without either approaching the respondents by way of a representation or approaching this Court within a reasonable time. He did so only in the year 2017 after a lapse of more than one and a half decade. His plea that he was mentally disturbed and was staying outside the State due to security reasons cannot be accepted in view of the reasons stated hereinbefore. The rejection of representations of the petitioner by respondent No.2 in terms of the impugned order does not give a fresh cause of action to the petitioner because his claim was already stale. Thus, on the grounds of delay and laches alone, the writ petition deserves to be dismissed.

20. Even on merits, the petitioner does not have any case because he has himself admitted that he left his service in the year 2002 and did not resume his duties until the year 2015 when he for the first time applied under the RTI Act for knowing the status of his service. Even though the respondents may not have conducted an enquiry prior to terminating the service of the petitioner but in the instant case admittedly the petitioner did not attend his duties for years together. The cause shown by him, as stated hereinbefore, has been found to be illusory and vague. Therefore, even if an enquiry is held no fruitful purpose would be served as the facts in the instant case are admitted. The rules of natural justice do not operate in vacuum. Once the facts are evident and admitted, it would be futile to hold an enquiry. In the instant case it has been established from the pleadings of the petitioner that he had abandoned his services. Therefore, even on merits, the petitioner does not have a case.
21. For the foregoing reasons, I do not find any merit in the petition. The same is, accordingly, dismissed.

(SANJAY DHAR)
JUDGE

Jammu :-
25.04.2024
Pawan Chopra

Whether the Judgment is speaking: Yes
Whether the Judgment is reportable: Yes