Poulose and ors. Vs. Union of India (Uoi) and ors.

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Court : Kerala

Decided On : Aug-22-1967

Reported in : (1969)ILLJ336Ker

Judge : P. Govindan Nair, J.

Appellant : Poulose and ors.

Respondent : Union of India (Uoi) and ors.

Judgement :

P. Govindan Nair, J.

1. These two writ applications raise common, if not, identical, questions. The same questions have also been raised in a number of other writ applications, 56 in number, which were also heard along with them.

2. There are two petitioners in Original Petition No. 2388 of 1965. They were superintendents in the Accountant-General's Office in the former Travancore-Cochin State. On 1 April 1950, the date of the Federal Financial Integration, the persons working in the Accountant-General's office in the former Travancore-Cochin State were taken over to the Central Government. Petitioner 1 on that date was on deputation to the Electricity department and was functioning as a divisional accountant and petitioner 2 was on deputation to the Public Works Department and was also working as a divisional accountant. There was a Federal Financial Integration Agreement and this agreement accepted the recommendation of the Taxation Finance Enquiry Committee that persons who have been working in Part B States, doing work similar to that done by similar employees of the Central Government, must be taken over to the Central Government on terms and conditions not less advantageous than those that were enjoying at the time of the Integration. The petitioners allege that they had at that time passed all the tests required for promotion to the highest post that could he held in the State service. It is their contention that consequent on the Federal Financial Integration Agreement they should have been taken over to the Central service as supervisors. They were however taken over into the Central service only as divisional accountants. This was done admittedly on the basis of a categorization and selection by a committee constituted by the Comptroller and Auditor-General of India. The points raised in these writ applications are that the Comptroller had no authority for constituting a committee or for directing the adoption of the method of categorization and selection, that the whole procedure adopted is without jurisdiction and secondly that the Federal Financial Integration Agreement has been infringed when the petitioners were not taken over into the Central service in the same posts that they were holding then. Finally, it is stressed that many juniors of the petitioners have been taken over

as supervisors which is discriminatory and violative of Articles 14 and 16 of the Constitution.

3. The selection and categorization took place pursuant to an order dated 19 June 1951, and it is an admitted fact that the petitioners have been fitted in as divisional accountants soon after that order.

4. The contentions of the petitioner in Original Petition No. 2626 of 1965 are the same. All that need be noted is that the petitioner therein had been working as an upper division clerk on 1 April 1950 and was taken in only as a lower division clerk in the Central service.

5. The petitioners pray for the issue of a writ of mandamus or a direction or an order to the respondents to absorb the petitioners into appropriate grades in the Central service and on conditions not less advantageous than those the petitioners were enjoying in the Travancore-Cochin Accountant-General's Office on 1 April 1950. There is the further prayer for directions that the petitioners be given further promotions and emoluments based on such absorption.

6. The first objection raised In the counter-affidavits that have been filed is that there has been inordinate delay in moving this Court, and that these petitions should be dismissed on that sole ground. The absorption took place in the year 1951 and these writ applications were filed only in October 1965, more than fourteen years after the absorption.

7. On behalf of the petitioners, various arguments have been put forward in support of the plea that the petitions cannot be dismissed as belated. First it is said that there is no delay at all. Secondly it is argued that in cases where Articles 14 and 16 are violated, there can be no question of delay because when an infringement of a fundamental right is complained of, the Court should always interfere. It is also suggested thirdly that the breach is in the matter of a continuing wrong and that in such cases there is a recurring cause of action.

8. In support of the first argument reliance has been placed on a judgment of this Court dealing with Appeal Suits Nos. 117, 118 and 119 of 1960 which were pronounced on 7 July 1965. These writ applications have been filed within a reasonable time after the pronouncement of that judgment. The question considered therein related to the claims put forward by the three appellants in those appeals who were practically similarly situated as the petitioners in these writ applications. This Court came to the conclusion that the ad hoc committee which categorized and selected the Travancore-Cochin personnel in the Accountant-General's Office was constituted without jurisdiction and without authority, that no such categorization or selection should have been made, that the appellants were entitled to be absorbed in the Central service in posts that they were holding on 1 April 1950 and therefore gave a declaration that the appellants in two of those appeals, Appeal Suits Nos. 117 and 118 of 1960, will be considered to be holding posts of superintendents in the Central service as on 1 April 1950 and that the appellant in Appeal Suit No. 119 of 1960, the post of an upper division clerk on 1 April 1950. It is said that this declaration opened the eyes of the petitioners In this batch of cases to their rights and therefore there is no delay because the petitioners approached this Court within a reasonable time after the decision in those appeals. This contention cannot stand. The suits out of which Appeal Suits Nos. 117, 118 and 119 of 1960 arose were not

representative suits. They dealt with the individual claims of the plaintiffs in those suits. It is not as though the petitioners herein were not aware of what had been done and of their alleged rights. The fact that they had made representations immediately after the integration indicates that they considered themselves aggrieved. Some persons who were superintendents were absorbed only as divisional accountants, and persons who were upper division clerks were taken in only as lower division clerks. This is a fact which was known to the petitioners and the Federal Financial Integration Agreement and the terms thereof being also widely known; it is impossible to accept the contention that the petitioners were not aware of the facts or were under any mistaken apprehension-there is no such specific averment in any of the petitions-which would entitle them to say that they came to know of the exact position only when the judgment in the appeals was pronounced. I, therefore, negative the contention that there is no delay at all.

9. It is a well-accepted principle that in matters relating to the exercise of jurisdiction under Article 226 of the Constitution delay in approaching this Court is a material factor, at least in regard to the issue of writs in the nature of mandamus and certiorari. No decision has been brought to my notice which has taken a contrary view and in fact counsel for the petitioners did not suggest that there is no such principle. What is urged is that the complaint in these petitions being that there has been an infringement of the constitutional rights guaranteed by Articles 14 and 16 there can be no question of delay. This contention is based on a twofold argument

(a) that whenever an infringement of a fundamental right is complained of, there is no question of delay, and

(b) that in the matter of infringement of Articles 14 and/or 16 it is not merely the infringement of a personal right that is involved but the failure to carry out a duty imposed on the legislature and executive by the Constitution.

In such cases, it is urged the Court is bound to consider the complaint on the merits and should not dispose of the application in limine on the ground of delay.

10. Before I proceed to deal with these aspects, it would be profitable to reiterate the principle on the basis of which Courts have dismissed applications for the issue of writs on the ground of delay. This Court has been consistently following the rule that writ applications filed more than ninety days after the event complained of is belated. No doubt each case has to be considered on its own merits and the question whether there has been delay or not determined on the facts of a particular case. The reason for the insistence that applications should be moved without delay seems to me to be that those who seek relief must be vigilant and that the law helps only those that are diligent. There is perhaps another and a more compelling reason; the lapse of time may change the circumstance and rights might have accrued to others which it would be unjust and impracticable to alter. This being the principle, I fail to see how a distinction can arise in the matter of writ applications complaining of infringement of legal rights and those seeking redress from infringement of rights considered by the Constitution as fundamental. Both complain of infringements of legal rights, legal rights enforceable before Courts of law in appropriate proceedings. The principle that the party must be vigilant must, I think, apply with equal force in regard to those who complain about the infringement of fundamental rights as to those who complain about the infringement of other legal rights. In this view I am supported by the decisions of the Punjab High Court-a Full Bench decision-and a Division Bench ruling

of the Mysore High Court in Rajinder Parshad and Anr. v. Punjab State and Ors. and in Smt. Rahamathunisa Begun v. State of Mysore and Ors. A.I.R. 1966 Mys. 211.

11. It is not as though there are not rulings which have taken a different view and counsel has relied on some of them.

12. In Ragavendra Singh and Ors. v. State of Vindhya, Pradesh and Anr. A.I.R. (1952) 39 V.P. 13, it is observed by Justice Krishnan;

Immediately after the orders these applications could not have been made, but there was nothing to prevent the applicants from coming here soon after the Constitution came into force instead of about twenty months later. The explanation given is that they have been approaching Government and Government has not passed any final orders, but has held two annual settlements and is preparing to hold the third. As early as November 1949, thejagirdars knew that Government was not going to let them hold their own auctions. Even as early as November 1949, the jagirdara knew of Government's determination ; if they waited for final orders, even now they have not been passed. Either way, one does not understand why the applications have been filed at this stage. No doubt, an application against an alleged invasion of a fundamental right can be made at any time ; but a person who delays his application by two years cannot be heard to argue that the alternative remedy of his civil suit might take time. The answer is that had he gone to the civil Court, the dispute might by now have been decided. Therefore, I am not satisfied with the real necessity for this Court's invoking Article 226 in these cases.

Justice Velu Pillai, in A. Syed Mohammad v. Assistant Collector of Customs, Cochin 1960 K.L.T. 565 after referring to the above decision and certain others cited, stated:

In the absence of compelling authority to the contrary, I am of the view, that the discretion vested in this Court in overlooking delay in the presentation of a petition under Article 226 must be exercised liberally where a fundamental right is infringed.

13. There are a number of decisions of this Court where the principles that should be applied in considering the question as to whether there is delay or not have been dealt with. In K.T. Abraham v. State of Travancore-Cochin A.I.R. 1954 Tra.-Co. 56 Chief Justice Koshi has laid down that:

Article 226 of the Constitution prescribed no period of limitation, but ordinarily no application under it will be entertained unless it is made soon after the right sought to be protected is infringed. No relief is ordinarily granted to a person who does not seek his remedy under the said article with due diligence.

14. The general principle of this decision has been accepted by the Travancore-Coohin High Court in two Full Bench decisions in Swaraj Motors, Ltd. v. Municipal Council, Alwaye AIR. 1954 Tra.-Co. 468 and in S. Mahadeva Iyer v. State A.I.R. 1954 Tra.-Co. 469, The decision in Swaraj Motors, Ltd. v. Municipal Council, Alioaye A.I.R. 1954 Tra.-Co. 468 also laid down that this Court considered the period available for a civil revision petition as a reasonable time within which an application under Article 226 should be presented. It was further stated that no hard and fast rule can be fixed in that regard and the matter should be left to a trying Judge or a Bench to accept the petition though presented beyond the period. Such has been the trend of decisions of this Court and the position has been reiterated in Arthur Import and Export Company

v. Collector of Customs, Cochin, and Ors. A.I.R. 1958 Kerala 357. It is unnecessary to labour the point further, for I think, on the question of delay the principle stated by this Court is in consonance with what is laid down by the Supreme Court. In State of Madhya Pradesh v. Bhailal Bhai and Ors. : [1964]6SCR261 , their lordships said:

Though the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226, the maximum period fixed by the legislature as the time within which relief by a suit in a civil Court must be claimed may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy. Where the delay is more than this period it will almost always be proper for the Court to hold that it is unreasonable.

15. So it appears to me to be clear that the Courts of this country have viewed with his favour belated applications for reliefs under Article 226 of the Constitution and have not hesitated to lay down that there should be an insistence of diligence on the part of those who seek such remedies. And on principle the same rule must apply even in cases where there has been an infringement of a fundamental right.

16. It has been contended that the infringement of a fundamental right is a continuing wrong and so the approach to the Court can be made at any time after the infringement. The petitioner is supported in this stand by a decision of the Madhya Bharat High Court in Haji Sulaiman Yusuf Bhai and nnother v. Custodian of Evacuee Property, Madhya Bharat, Gwalior, and Anr. A.I.R. 1954 M.B. 173. This is what is stated in the judgment:

In ordinary cases, the Court would be unwilling to exercise its discretion where there have been laches. But in so far as a writ is sought on the ground of the violation of some fundamental right, the breach should be regarded to be a continuing wrong and as such the question of limitation does not arise.

17. If the above remarks mean that every case of a breach of a fundamental right would be a continuing wrong, with all respect, I am unable to agree. A distinction has to be drawn between the continuance of a legal injury and the continuance of the injurious effects of that legal injury:

In other words, there must not be a single wrongful act from which injurious consequences follow, but a state of affairs every moment's continuance of which is a new tort. [See Rustomji on Limitation, P. 29.]

18. The Supreme Court has laid down the same view in Balakrishna v. D.H. Sanathan : AIR1959SC798 :

It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury... If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue.

19. This Court followed the above decision in Sankaranarayana Vadhyar v. Arunachalam and Ors. 1960 K.L.J I486.

20. The real complaint of the petitioners in these cases is that they have not been fitted in the same posts that they were holding on 1 April 1950, in the Central set-up. They were taken in posts that were lower than the posts that they were holding on that date. This fitting in, if it constitutes a wrongful act, had become complete as soon as the fitting in was effected. The consequences that may follow from such fitting in, such as the necessity of having to pass the tests prescribed under the Central rules for promotion to supervisory posts, the thwarting of the ambitions of the petitioners regarding further promotions and the fact that some of them had retired from the posts in which they were fitted in, are all consequences which followed from the fitting in. I feel therefore no doubt that the cause of action, if any, and the room for complaint arose as soon as the fitting in was effected and this was done at least on the date on which the order dated 19 June 1951 was passed. These writ applications having been filed only in 1965, more than fourteen years after the fitting in, I do not think that the inordinate delay can be ignored or excused. I am unable to accept the position that every infringement of a fundamental right must always be a continuing wrong. There may be such cases, for instance, of a tax having been imposed without the authority of law. In such cases not only the assessment order but every attempt made to collect the illegal impost can give rise to a cause of action and in such cases It would be open to a person on whom the tax has been so assessed to challenge any attempt to collect the tax long after the assessment order which has not been questioned. This is because the assessment order is without jurisdiction and therefore void and the attempt to collect the tax is against the provision in Article 365 of the Constitution which inhibits the levy or collection of tax except by the authority of law. The analogy of these decisions cannot be applied to cases where there have been completed acts by which a wrong has been perpetuated, whatever may be the consequences that may follow.

21. Counsel on behalf of the petitioner in Original Petition No. 2388 of 1965 suggested that the insistence that the petitioner in that petition should pass what is called the S.A.S. test before being promoted to the supervisory cadre was a continuing wrong and that therefore there is no delay in moving this Court. The insistence that they should pass the S.A.S. test arose out of the consequences of the fitting in of the two petitioners into posts other than the supervisory posts. This is the consequence of a completed act. There is no continuing wrong.

22. I need only refer to one more argument based on the decision of the Supreme Court, in K.S. Venkataraman & Co. (Private), Ltd. v. State of Madras : [1966]60ITR112(SC) , before closing the discussion on the subject. What has been laid down in this case is that for the purpose of Article 96 of the Limitation Act, time begins to run only from the moment when the mistake becomes known to the plaintiff. This is laid down in the third column of the article. What their lordships of the Supreme Court ruled is that when the petitioner was labouring under a mistake and the mistake came to be known on a particular date, the question whether an application was in time or not must be determined by reckoning the time from the date on which the mistake came to be known. It was further ruled that the period of limitation provided by the statute will be a reasonable yardstick to measure the delay in writ applications and the application in that case having been made within the period of limitation prescribed by the Limitation Act, it was held that there was no delay in presenting the application. The suggestion put forward by counsel on behalf of the petitioners is that the petitioners were also under a mistaken belief that the fitting in was with jurisdiction and that they came to know about that mistake only when this Court disposed of Appeal Suits Nos. 117,118 and 119 of 1960. This was of

course in 1965 and it is said that the petitions having been filed within three months from the date of the judgment in those appeals there is no delay. Factually, this contention that the petitioners were under a mistaken belief has not been pleaded in these writ applications. And it is difficult to conclude that there has been any such mistake, for the averments in the affidavit in support of these petitions indicate that representations were made by the petitioners and that repeatedly, complaining of what they alleged to be a wrongful fitting-in. This being so, they were aware that what they considered to be a wrongful act has been done. It seems to me that when those representations were not heeded, the petitioners got reconciled to their fate and worked for a number of years in the posts that were assigned to them and many of them after some years of service retired. When they came to know of the decision of the High Court in the above appeals, I think they felt that they should also try their chance and have therefore approached this Court with these writ applications. I consider that it was too late to do so at the time they approached this Court.

23. My attention has been also invited to the recent pronouncements of the Supreme Court in Moon Mills, Ltd. v. Industrial Court, Bombay (M.R. Meher), and Ors. 1967-11L.L.J. 34 and in Chandra Bhushan and Anr. v. Deputy Director of Consolidation, Uttar Pradesh (Regional), Lucknow, and Ors. (1967) 1 S.C.W.R. 581. All that is said in the decision in 1967-II L.L.J. 34 (vide supra) is that delay not amounting to bar by any statute of limitation must always be considered and the defence that an application is delayed should not be accepted unless it is established that there has been unreasonable delay. The two circumstances relevant for deciding that question were also indicated; the length of the delay and the nature of the facts done during the interval.

24. The length of delay in these cases is inordinate, fourteen years, and very little has been done by the petitioners to correct the mistakes, if any, in absorbing them into the Central services. On the other hand, on the basis of the fitting-in many things followed, Some of the juniors of the petitioners were given places above the petitioners. Many were promoted and they reached the higher places and therefore drew a higher salary which the petitioners are now claiming in these writ applications. Assuming it is possible to allow these writ applications, the consequences would be that two sets of people should be paid, if not salary, at least the pension on a scale different from those to which the petitioners are now entitled. Such things intervened as a result of the inactivity of the petitioners and I do not think that they can be heard to say that all these aspects must be ignored because they allege the Infringement of Article 14 and/or 16 of the Constitution. Mere delay in the sense of an application being merely belated without there being any other consequences Is different from a case where rights have intervened and the allowing of the applications would have injurious effects on the other side which cannot be rectified.

25. The decision in (1967) 1 S.C.W.R. 581 has no application.

26. In the light of the above, I am constrained to dismiss these writ applications and I do so but without any orders as to costs.