A CHAIRMAN/MANAGING DIRECTOR, U.P. POWER CORPORATION LTD. & OTHERS

v.

RAM GOPAL

B (Civil Appeal No. 852 of 2020 etc.)

JANUARY 30, 2020

[S. A. BOBDE, CJI, B. R. GAVAI AND SURYA KANT, JJ.]

Service Law:

C *Termination of service – On account of finding irregularities in the selection process of the employees including that of the respondent – One of the terminated candidates was granted relief of continuation of his service – Thereafter respondent filed writ petition challenging termination of his service – Writ Petition was* D *allowed by Single Judge of High Court holding that the respondent's case was squarely covered by the case of the other employee who was granted relief by the Court – Special appeal by the employer was dismissed by the Division Bench of the High Court – Appeal to Supreme Court – Held: Termination order cannot be said to be non-reasoned – Termination order of the respondent could not have* E *been set aside drawing parity from the case of another employee, as the case of another employee was decided on equitable grounds – Equity acts in* personam *and not in* rem *– Equity.*

Limitation:

F *Limitation in filing writ petitions – Held: Limitation does not strictly apply to proceedings u/Ars. 32 or 226 of the Constitution – However, such rights cannot be enforced after an unreasonable lapse of time – Writ Courts ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs* G *and allowed illegalities to foster – However, such principles do not apply to the judgments delivered* in-rem *– In the present case, the judgment granting relief to the other employee in setting aside his termination order, does not have the ingredient of a judgment* in-rem*, hence cannot come to respondent's rescue.*

H

Allowing the appeals, the Court

HELD: 1. The impugned order of the High Court is legally untenable. The Division Bench's finding that "no reason has been assigned in the order of cancellation of appointment of the respondent", is vividly erroneous. Termination of another candidate was held legal only on account of pending litigation and interim directions of courts that he had spent 17 years in employment of UPPCL-employer. Paying heed to these equitable considerations, and not as a matter of any legal right, the High Court had urged the employer to sympathetically consider the case of that employee for retention in employment. This conclusion of the High Court has undoubtedly attained finality. Whereas that employee had remained in service for over seventeen years (except a brief period between August to November in 1978) and had fought his case tooth and nail, the respondent has not been in the employment of UPPCL since 1978. The fact-situation in that case was unique and altogether different from that of the respondent and there arises no reason to seek or grant parity. Even otherwise, it is a settled canon of common law that equity acts in *personam* and not in *rem*. Hence, there could be no extension of parity between them. [Paras 10, 11, 12 and 13][519-D-F; 520-A-E]

2.1 Services of the respondent were terminated within months of his appointment, in 1978. Statedly, the respondent made a representation and served UPPCL with a legal notice in 1982, however such feeble effort does little to fill the gap between when the cause of action arose and he chose to seek its redressal (in 1990). The prolonged delay of many years ought not to have been overlooked or condoned. [Para 14][520-F-G]

2.2 Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be

allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. These principles may not, however, apply to judgments which are delivered *in-rem*. The State and its instrumentalities are expected in such category of cases to themselves extend the benefit of a judicial pronouncement to all similarly placed employees without forcing each person to individually knock the doors of courts. The order passed by the High Court for retention of another employee in service, does not possess any ingredient of a Judgment *in-rem*. The above cited exception, therefore, does not come to the respondent's rescue. It has neither been pleaded nor is it apparent from the material on record that the respondent was unable to approach the court-of-law in time, on account of any social or financial disability. Had such been the case, he ought to have availed free legal aid and should have ventilated his grievances in a timely manner. [Paras 16, 18 and 19][521-E-G; 522-E; 523-G-H; 524-A]

S*tate of Uttar Pradesh v. Arvind Kumar Srivastava* **(2015) 1 SCC 347 : [2014] 12 SCR 193 – relied on.**

P. S. Sadasivaswamy v. State of Tamil Nadu **(1975) 1 SCC 152 : [1975] 2 SCR 356;** *SS Balu v. State of Kerala* **(2009) 2 SCC 479 : [2009] 1 SCR 196;** *Vijay Kumar Kaul v. Union of India* **(2012) 7 SCC 610 : [2012] 6 SCR 128 – referred to.**

Case Law Reference

[1975] 2 SCR 356	**referred to**	**Para 15**
[2009] 1 SCR 196	**referred to**	**Para 16**
[2012] 6 SCR 128	**referred to**	**Para 17**
[2014] 12 SCR 193	**relied on.**	**Para 18**

CIVIL/CRIMINAL APPELLATE JURISDICTION: Civil Appeal No.852 of 2020

From the Judgment and Order dated 29.04.2016 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Special Appeal No. 643 of 2007.

With

Crl. A. No. 204/2020.

Pradeep Misra, Adv. for the Appellants.

Farrukh Rasheed and Asim Chandra, Advs. for the Respondent.

JUDGMENT

The following Judgment of the Court was delivered :

1. Leave granted.

2. Uttar Pradesh Power Corp. Ltd. (hereinafter, "UPPCL") has preferred this appeal, assailing an order dated 29.04.2016 passed by a Division Bench of the High Court of Judicature at Allahabad (Lucknow Bench) which in turn upheld the order dated 05.04.2016 passed by a learned Single Judge whereby Ram Gopal (Respondent)'s writ petition for setting aside his termination order and directing his consequent re-instatement, was allowed.

FACTUAL BACKGROUND

3. UPPCL conducted selections for certain Class IV positions of Junior Meter Tester & Repairer, Mate and Meter Coolie/Chaukidar and declared results on 31.08.1978 through an Office Memorandum. The Respondent emerged as one of the successful candidates for being appointed as Meter Cooli/Chaukidar. Owing to subsequent discovery of certain irregularities in the selection process, UPPCL cancelled these selections on 03.11.1978 and consequently terminated services of all appointees on 07.11.1978.

4. Shyam Behari Lal, another successful candidate whose services too had been terminated, promptly approached the jurisdictional High Court which allowed his writ petition on 26.10.1989 observing that no reasons had been assigned for the termination. UPPCL unsuccessfully filed an intra-court appeal, and thereafter approached this Court by way of ***Civil Appeal No. 7123 of 1993*** (***U.P. State Electricity Board and Others v. Shyam Behari Lal***). The said appeal was allowed vide order dated 22.11.1993 with an observation that the reason for termination was 'writ large' on the order itself, namely, "*cancellation of result of selection of operating staff*", and the matter was accordingly remitted to the High Court for disposal on merits.

5. Thereafter, a Division Bench of the High Court considered Shyam Behari Lal's case and held that though the writ petition was

liable to be dismissed on merits, however, considering the peculiar circumstances wherein Shyam Behari Lal had already served the UPPCL for 17 years, rendering him jobless might be too harsh a consequence. The relevant operative part of the order dated 30.05.1997 reads as follows:

> *"In view of what has been discussed above, is true that the petitioner is liable to be dismissed, but in the peculiar circumstances of the case and in view of the fact that the petitioners are continuing in service for last seventeen years, it would be too harsh to render him jobless at this stage. We would, therefore, only provide that the opposite parties may consider his continuance in service and take a suitable decision as may be thought appropriate in the facts and circumstances of the case expeditiously."*
>
> (emphasis supplied)

6. After the initial round of litigation in which Shyam Behari Lal had obtained relief from the High Court in 1989, the present Respondent also filed WP No. 7897 of 1990 in July, 1990, impugning the order dated 07.11.1978 terminating his services. A learned Single Judge of the High Court of Judicature at Allahabad summarily allowed the Respondent's writ petition on 05.04.2007 on the premise that the matter was "squarely covered" by the decision of the High Court dated 26.10.1989 in Shyam Behari Lal's case.

7. The aggrieved UPPCL preferred Special Appeal No. 643 of 2007 which was dismissed by a Division Bench vide the impugned order dated 29.04.2016. Although the Court noted that the order of 1989 relied upon by the learned Single Judge had been set-aside by this Court and during fresh consideration of the matter a co-ordinate Bench had held *Shyam Behari Lal's* case being devoid of any merit; yet it laid emphasis on the equitable considerations which were pressed into aid in *Shyam Behari Lal's* case for his resultant continuation in service. The Division Bench, thus, dismissed UPPCL's appeal and held as follows:

> *"The case of the respondent is similarly situated as his appointment pertains to the same selection and no reason has been assigned in the order of cancellation of appointment of the respondent. Therefore, learned Single Judge has rightly extended the parity of the aforesaid judgment and order to the respondent while allowing the Writ Petition."*

CONTENTIONS OF PARTIES

8. Vehemently refuting the Respondent's claim of illegal termination, UPPCL has preferred this Civil Appeal both against the Division Bench's order dated 29.04.2016, as well as the contempt proceedings initiated before the High Court by the Respondent. UPPCL has painstakingly urged that there is no correlation in law or any similarity in facts between the case of Shyam Behari Lal and the present case of Ram Gopal.

9. On the other hand, counsel for the Respondent defends the judgment of the Division Bench, maintaining that both Shyam Behari Lal and Ram Gopal were recruited through the same office memorandum, and their services were terminated through the same order. It was urged that what holds true for one candidate must necessarily also hold true for the other; and it would be iniquitous and unequal to give rise to a situation where similarly placed persons end up in vastly different situations.

ANALYSIS

10. Having heard learned counsel for the parties at a considerable length, we find that the impugned order of the High Court is legally untenable and cannot be sustained for at least three glaring reasons.

i) Erroneous conclusion of termination order being non-speaking

11. First, the Division Bench's finding that "*no reason has been assigned in the order of cancellation of appointment of the respondent",* is vividly erroneous. This Court had earlier vide order dated 22.11.1993 passed in ***Civil Appeal No. 7123 of 1993*** overruled the High Court's finding of non-reasoned termination in Shyam Behari Lal's case and had held that the termination order was in fact a speaking order, with the reason for termination being writ large and clearly given. The High Court's findings thus undoubtedly fall foul of the observations made by this Court and the impugned order hence ought to be set-aside on this count alone.

ii) Lack of similarity between Shyam Behari Lal and Ram Gopal

12. Second, Quite palpably, the High Court has erred in concluding that the Respondent's claim fell squarely within the four corners of its

previous decision in Shyam Behari Lal's case. The relied-upon judgment dated 30.05.1997 determined unequivocally that there was no merit in the writ petition and that Shyam Behari Lal's claim was "*liable to be dismissed*". It was only on account of pending litigation and interim directions of courts that Shyam Behari Lal had spent 17 years in employment of UPPCL. Paying heed to these equitable considerations, and not as a matter of any legal right, the High Court urged the employer to sympathetically consider his case for retention in employment. This conclusion of the High Court was not appealed by any party and has undoubtedly attained finality. Hence, it is clear in law that Shyam Behari Lal's termination was legal, and that he had no right of continuation in service, let alone reinstatement as sought in the present case. The only question which thus survives is whether the Respondent, Ram Gopal, could seek parity?

13. At the outset, it is apparent that Shyam Behari Lal and Ram Gopal share little similarity. Whereas the former had remained in service for over seventeen years (except a brief period between August to November in 1978) and had fought his case tooth and nail, the Respondent has not been in the employment of UPPCL since 1978. The fact-situation in Shyam Behari Lal's case was unique and altogether different from that of Ram Gopal, and there arises no reason to seek or grant parity. Even otherwise, it is a settled canon of common law that equity acts in personam and not in rem. Hence, there could be no extension of parity between the case of Shyam Behari Lal and Ram Gopal (Respondent).

iii) Inordinate delay in filing writ petition

14. Finally, the prolonged delay of many years ought not to have been overlooked or condoned. Services of the Respondent were terminated within months of his appointment, in 1978. Statedly, the Respondent made a representation and served UPPCL with a legal notice in 1982, however such feeble effort does little to fill the gap between when the cause of action arose and he chose to seek its redressal(in 1990).

15. Seen from a different perspective also, it is clear that the Respondent has shown little concern to the settled legal tenets. Even a civil suit challenging termination of services, if filed by the Respondent, would have undoubtedly been barred by limitation in 1990. In a similar situation where the appellant belatedly challenged the promotion of his

junior(s), this Court in ***P.S. Sadasivaswamy v. State of Tamil Nadu***[1], held as follows:

> *"2. ... if the appellant was aggrieved by it he should have approached the Court even in the year 1957, after the two representations made by him had failed to produce any result. One cannot sleep over the matter and come to the Court questioning that relaxation in the year 1971. ... In effect he wants to unscramble a scrambled egg. It is very difficult for the Government to consider whether any relaxation of the rules should have been made in favour of the appellant in the year 1957. The conditions that were prevalent in 1957, cannot be reproduced now. ...It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters....."*

16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In ***SS Balu v. State of Kerala***[2], this Court observed thus:

> *"17. It is also well-settled principle of law that "delay defeats equity". ...It is now a trite law that where the writ petitioner*

[1] (1975) 1 SCC 152.
[2] (2009) 2 SCC 479

A *approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment."*

(emphasis supplied)

B 17. Similarly, in ***Vijay* Kumar *Kaul v. Union of India***[3] this Court while considering the claim of candidates who, despite being higher in merit, exercised their right to parity much after those who were though lower in merit but were diligently agitating their rights, this Court observed that:

C *"27. ...It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and*
D *paves the path of extinction with the passage of time."*

18. We may hasten to add that these principles may not, however, apply to judgments which are delivered in-rem. The State and its instrumentalities are expected In such category of cases to themselves extend the benefit of a judicial pronouncement to all similarly placed
E employees without forcing each person to individually knock the doors of courts. This distinction between operation of delay and laches to judgments delivered in-rem and in personam, is lucidly captured in ***State of Uttar Pradesh v. Arvind Kumar Srivastava***[4], laying down that:

"22.1. The normal rule is that when a particular set of
F *employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this*
G *Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.*

H [3] (2012) 7 SCC 610
[4] (2015) 1 SCC 347

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India [K.C. Sharma v. Union of India, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence." **(Emphasis applied)**

19. The order passed by the High Court for retention of Shyam Behari Lal in service, does not possess any ingredient of a Judgment in-rem. The above cited exception, therefore, does not come to the Respondent's rescue. It is also pertinent to mention that neither has it been pleaded nor is it apparent from the material on record that the Respondent was unable to approach the court-of-law in time on account of any social or financial disability. Had such been the case, he ought to have availed free legal aid and should have ventilated his grievances in a

A timely manner. Instead, he seems to be under the assumption that the termination order is illegal, that he consequently has a right to be reinstated, and that he can agitate the same at his own sweet-will. Neither of these three assumptions are true, as elaborated by us earlier.

Conclusion

B 20. For the reasons aforementioned, the appeals are allowed. The impugned order delivered by the learned Single Judge on 05.04.2007 as well as the order dated 29.04.2016 of the Division Bench upholding it, are set aside. Respondent's writ petition is consequently dismissed. As a sequel thereto, the High Court's interim order dated 02.11.2016 in C Contempt No. 1271 of 2016, which is under challenge in SLP (Crl.) No. 2014 of 2017, is also quashed and the contempt petition stands dismissed. No order as to costs.

Kalpana K. Tripathy Appeals allowed.