

Sushil Kumar Yadunath Jha

Vs

Union of India and Others

Civil Appeal No. 1760 of 1986

(R. S. Pathak, R. B. Misra, G. L. Oza JJ)

06.05.1986

JUDGMENT

PATHAK, J. –

1. This appeal is directed against the order dated January 24, 1985 of the High Court of Delhi dismissing the appellant's writ petition on the ground of laches.
2. Having regard to the circumstances in which the writ petition was filed at the time when it was, the High Court, in our opinion, should have ignored the delay, and considered the matter on its merits.
3. The appellant was appointed on June 29, 1965 to the post of Post-Graduate Teacher in Hindi in a Central Schools Unit under the Ministry of Education, Government of India. The Central Schools Unit was converted into an autonomous body under the Ministry of Education and is described now as the Kendriya Vidyalaya Sangathan. The appellant was appointed on probation for a period of one year. It was stipulated that even after the probation was satisfactorily completed the services of the appellant could be terminated at any time without any reason being assigned on own month's notice or one month's pay and allowances in lieu of notice. Although the appointment was to a temporary post, it was mentioned specifically that the schools were of a permanent nature and therefore, it was unlikely that the employee's services would be terminated if his work and conduct was satisfactory. The appellant appears to have done well during the period of probation and his services were contained after the expiry of that period on June 29, 1966. He continued in that post for about three years. During that period he was posted at the Central School No. 2, Holiday Camp, Colaba, Bombay. Thereafter he was sent to raise another school, the Kendriya Vidyalaya Vallabh Vidya Nagar, Sardar Patel University, Anand (Gujarat). Subsequently he was posted at the Kendriya Vidyalaya, Lonavala. According to the appellant, his work was greatly appreciated at each of his postings and he earned two increments during that period. On February 29, 1968, however, his appointment was terminated suddenly. The appellant made a representation against the termination of his services on March 8, 1968 and a few days later he was informed that an appointment letter was following. A fresh appointment with effect from June 24, 1968 was made and the appellant was specifically intimated that no benefit of the previous service rendered by him in the Kendriya Vidyalaya Sangathan would be admissible. The appellant was posted to the Kendriya Vidyalaya, Tambaram, madras and thereafter to the Kendriya Vidyalaya, Srinagar. The appellant seems to have been rather distraught about the break in service between March 3, 1968, when his services were actually terminated, and June 24, 1968 when he entered upon his fresh appointment and requested the authorities that the break in service be condoned. The request was turned down and it was intimated that his personal behaviour during his early stint of appointment was found open to

objection. The appellant, however, earned goodwill and high praise during subsequent years for the conscientious and dedicated and consistently put in by him. Successive and repeated communications were sent by his immediate superiors to the authorities detailing the high order of achievement shown by the appellant in his work and pressing that a lenient view be taken in regard to condoning the break in his service. He had been informed by the then Commissioner of the Kendriya Vidyalaya Sangathan that on the completion of three years of service his case could be reconsidered for condoning the break in service. In the hope that the assurance would be honoured the appellant persistently requested that the continuity of his service may be maintained. The record before us sufficiently establishes that his work was marked by outstanding efficiency and devotion and that almost everywhere that he was posted he was not found lacking in dedication to his responsibilities. During his posting in the Kendriya Vidyalaya Central School in Kabul, then Indian Ambassador, it appears, was so impressed by his work that in February 1983 he examined his case and found that the earlier termination of service had proceeded out of some personal misunderstanding, and that there was every reason for removing the break in service. The government, however, expressed its helplessness in accepting the request on the ground that the existing rules did not permit it. It was thereafter that the appellant, after obtaining permission to institute proceedings, filed a writ petition in the High Court.

4. It is apparent that the appellant made detailed representations from one level to another hoping that on the strength of his record the authorities would accede to his request for condoning the break in his service. There is equally no doubt that he was supported throughout by his immediate superiors because of high order of the work performed by him in his various postings. It was only when the government itself turned down his request that he considered it proper to turn to a court of law for redress. Upon the peculiar facts of this case we find it difficult to hold that the appellant was guilty of laches in resorting to the judicial process for relief. We think the High court erred in rejecting the writ petition on that ground.

5. We have examined the record before us and have heard learned counsel for the parties. We do think that the respondents should have found it possible to accede to the request of the appellant for condoning the break in his service. There is no doubt that his services were terminated, but the grounds on which they are said to have been terminated have subsequently not been found to be such as to constitute a permanent deterrent to a favourable consideration of the appellant's case. Indeed the Commissioner, as we have noted earlier, had expressed the view that it was a good case for condoning the break in service and indeed those who had occasion to personally witness the quality of the appellant's performance in subsequent years, as for example the Indian Ambassador at Kabul, had thought that in fairness and justice to the appellant his request should be accepted. It is true that the terms on which he was appointed afresh expressly stated that he would not be entitled to continuity of service, but we must have regard to the circumstances in which he accepted those terms. He was in no position to bargain for a better deal and in the straightened circumstances in which he found himself he was compelled to accept whatever was dictated to him. We do not for a moment suggest that the sanctity of the contract between the parties should be given a go-by, but what we do find is that here is a case where the subsequent conduct and the quality of his performance, of which high appreciation was recorded by his superiors, indicted that he should be relieved of the disadvantage suffered by him pursuant to that term in his contract of fresh appointment. Having regard to the interests of justice and in all the circumstances of the case we are of opinion that the appellant is entitled to an order condoning the break in his service and holding that he should be considered as continuing in service throughout from the date of his original appointment. We order accordingly.

6. The appellant will be entitled to all benefits flowing from such continuity of service. It has not been shown in the counter-affidavit filed by the respondents that the seniority of any other teacher will be affected by allowing him consequential benefits. In the circumstances we see no reasons to abridge the scope of those consequential benefits.

7. The appeal is allowed, the order dated January 24, 1985 of the High Court is set aside and the respondents are directed to condone the break in service of the appellant and treat him as in continues service from June 29, 1965 with all consequential financial and other benefits. The respondents are also directed to pay to the appellant the amount representing such financial benefits for the period ending April 30, 1986 within three months from today. In the circumstances of the case there is no order as to costs.

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