

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) No. 2770/2008**

Judgment delivered on: 25.01.2010

Delhi Transport Corporation Petitioner

Through: Mr. Jitender Kumar for the petitioner

versus

Chander Singh Respondent

Through: Mr. H.K. Chaturvedi for the respondent.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J.Oral:

1. By this petition filed under Article 226 and 227 of the Constitution of India the petitioner seeks directions for quashing of

order dated 12.5.2000 passed by the Labour Court, whereby the application of the petitioner management under Section 33(2) (b) of the I.D. Act seeking approval was dismissed.

2. Brief facts relevant for deciding the present petition are that the respondent workman joined the petitioner management on 14.5.83 and was dismissed vide order dated 6.6.94 on the grounds of misconduct after conducting an enquiry. Pursuant to the order of the removal, an approval application was filed under Section 33(2) (b) of the I.D. Act and the learned Labour court vide order dated 12.5.2000 dismissed the said application filed by the petitioner DTC and the respondent workman was reinstated on 17.7.2002. Thereafter, the respondent filed a writ petition bearing W.P.(C) No. 623/2006 seeking directions for grant of full back wages for the period for which he was out of service whereby the court ordered the grant of full back wages to the respondent workman vide order dated 29.11.2005. Then the management petitioner filed an appeal bearing LPA No. 228/2007 where the Hon'ble Division Bench granted liberty to the petitioner management to withdraw the appeal and take recourse to the appropriate remedy.

3. Mr. Chaturvedi, counsel for respondent no.2 at the outset took an objection that the order dated 12.5.2000 passed by the Labour Court had attained finality, as no challenge was made by the petitioner to the said order when the respondent workman had approached this court by filing writ petition (bearing W.P.(C) No. 6922/2003) to seek directions for the grant of full back wages and all consequential benefits in view of the fact that approval application of the petitioner was dismissed by the Labour court.

4. Counsel for the petitioner contended that the said order of the Labour court was earlier not challenged by the petitioner as the respondent workman had earlier agreed not to claim back wages in the court of law. Hence, due to the said representation made by the respondent, the petitioner did not choose to challenge the said order dated 12.5.2000.

5. Counsel for the petitioner drew the attention of this court to the extracts from the note of petitioner DTC at page 200 of the paper book. Counsel for the petitioner further submitted that the respondent was reinstated in the service with immediate effect but without grant of back wages but this fact was concealed by the

respondent workman from this court in writ petition bearing no. 6922/2003 filed by him. Counsel thus submitted that once the respondent was reinstated in his service, on his representation not to claim back wages, therefore, no need arose to challenge the said order of the Labour court whereby the approval application of the petitioner under Section 33(2) (b) was dismissed.

6. On the other hand, Mr. Chaturvedi, counsel for the respondent submitted that vide order dated 29.11.2005, this court gave directions to the petitioner DTC to grant full back wages with all consequential benefits and the said order was passed by this court after giving hearing to the petitioner DTC. Counsel further submitted that in para 3 of the said order this court had also observed that the order dated 12.5.2000 passed by the Labour Court was not assailed by the petitioner DTC and the same had attained finality. Counsel further submitted that the order dated 29.11.2005 was challenged by the petitioner by filing appeal bearing LPA No. 228/2007 but the same was withdrawn by the petitioner with liberty to take appropriate remedy in the matter.

7. I have heard learned counsel for the parties.

8. After dismissing the respondent from service vide order dated 6.6.94 the petitioner DTC had approached the concerned Labour Court to seek approval of their action by filing application under Section 33 (2) (b) of the I.D. Act. The said application of the petitioner was dismissed by the Labour court vide order dated 12.5.2000 as the petitioner DTC had failed to prove the alleged misconduct on the part of the respondent workman. It is not in dispute that the said order was not earlier assailed by the petitioner before this court. The contention of the counsel for the petitioner is that the said order was not assailed on account of the fact that the respondent had agreed not to claim back wages.

9. On the other hand, the respondent sought his back wages with all consequential benefits arising out of his reinstatement by filing a writ petition bearing W.P.(C) No. 6922/2003. This Court vide order dated 29.11.2005, after hearing both the parties, came to the conclusion that the respondent workman deserved grant of full back wages with all consequential benefits once the application of the petitioner under Section 33(2) (b) of the I.D. Act was dismissed by the Labour court. This court had placed reliance on the judgment of the Apex Court in **M.D. Tamil Nadu**

State Transport Corporation Vs. Neethivllangan, 2001 LLR 539, and Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Shri Ram Gopal Sharma & Ors. 2002(1) AD (SC) 182 and came to the conclusion that once the approval is not given by the Labour Court then the necessary consequence is restoring back the status of the respondent which would entitle him to continuity of service with back wages and other benefits. The Court observed in the said order that since no challenge to the said order dated 12.5.2000 was made by the petitioner; hence the said order attained finality.

10. Feeling aggrieved with the said order dated 29.11.2005, the petitioner preferred an LPA before the Division Bench of this Court, but for reasons best known to the petitioner DTC, the same was withdrawn by the petitioner. Undoubtedly, the petitioner had every right to challenge the order of the learned Labour Court whereby the application of the petitioner was dismissed seeking approval under Section 33(2) (b) of the I.D. Act, but the petitioner himself remained oblivious even after the respondent had approached this court to seek enforcement of payment of his back wages and other dues. The order in the said writ petition

bearing W.P.(C) No. 6922/2003 was passed by this court on 29.11.2005 but even then the petitioner did not wake up to challenge the said order inviting observation of this court to say that the order dated 12.5.2000 passed by the Labour Court has attained finality.

11. Even by this writ petition, which has been filed after a lapse of eight years, the petitioner has approached this court to challenge the order dated 12.5.2000 and no explanation has been offered by the petitioner in the present petition for such a long delay of eight years except stating that the said petition was not filed earlier on account of the stand taken by the respondent not to claim his back wages. I do not find any force in the stand taken by the petitioner as in the year 2003 the respondent had approached this court to seek enforcement of payment of his back wages and at least that should have alarmed the petitioner to assail the said order dated 12.5.2000 passed by the Labour court.

12. Since already this court had made observation vide order dated 25.11.2005 that the order dated 12.5.2000 has attained finality, therefore, this court in the present petition would not take any contrary view to the decision taken by this court vide order

dated 25.11.2005.

13. This court in the case of **Delhi Transport Corporation Vs. Jai Bhagwan (2003)103 DLT 376** was faced with a similar situation and while discussing the rulings of the Apex Court it held the delay to be fatal in such cases of industrial dispute. It would be relevant to reproduce the paras of said judgment here:

"4. My attention has been drawn by Ms. Bajaj to the judgment of the Constitution Bench in State of Madhya Pradesh v. Bhailal Bhai, : [1964]6SCR261 . The Apex Court observed that "it is not easy nor is it desirable to lay down any rule for universal application. It may, however, be stated as a general rule that if there has been unreasonable delay, the Court ought not ordinarily lend its aid to a party by this extraordinary remedy of Mandamus. It appears to us, however, that the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 of the Constitution of India can be measured. The Court must consider the delay unreasonable, even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable". It will be relevant to bear in mind that the Constitution Bench was concerned with a situation where the Petitioner had voiced the grievance that he had been assessed to tax under a void statute. Even in those extraordinary circumstances, the Supreme Court had declined to overlook the laches. Ms. Kittoo Bajaj also relies on the decision of the Hon'ble Supreme Court in Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and Ors. : [1969]1SCR808 . In that case, the Apex Court again articulated that "it is well-established that the Writ of Certiorari will not be granted in a case where there is such negligence or omission on the part of the applicant to assert this right as, taken in conjunction with the lapse of time and other circumstances, causes

prejudice to the adverse party". The Court relied on Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Arbram Farewell, and John Kemp 1874 (5) PC 221 and also specifically noticed in its earlier decision in The Moon Mills Ltd. v. M.R. Meher, President, Industrial Court, Bombay and Ors. AIR 1967 SC 1450. Ms. Kittoo Bajaj also relies on the observations of the Apex Court in Naib Subedar Lachhman Dass v. Union of India and Ors. MANU/SC/0326/1977 : 1977CriLJ1574 , where the Hon'ble Court found that the Writ Petition had been filed after a gross delay for which there was no specific Explanationn and, therefore, endorsed the High Court's decision for a summary dismissal of the action. It may be observed that the laches has not even been attempted to be answered or explained by the DTC.

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There is not even a whisper of an Explanation given in the Petition justifying or explaining the Petitioner's approaching this Court after a period of four years, i.e. one year beyond the sanctioned period for a civil action. It may even be possible to perceive acquiescence in the Petitioner's conduct inasmuch as it has correlated the Petition to the issue of "leave without pay" rather than the dismissal for non-payment of costs.

This Court has been approached after an inordinate period of four years during which the Appellate while defending the Approval application Under Section 33(C)(2) took no action to assail the dismissal of the Approval application on which the subsequent action was predicated. In the Writ Petition, there is a reference to the pendency of a number of writ petitions, on the issue of "leave without pay". It is the pendency of those petitions which spurred the Petitioner to file the present Petition. The Petition is clearly barred by delay, laches and limitation and is dismissed on this ground."

14. The present petition is bad for delay and laches and therefore, it cannot be entertained while exercising jurisdiction under Article 226 of the Constitution of India without there being

any sufficient explanation being offered by the petitioner for the delay and the same is hereby dismissed.

JANUARY 25, 2010
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KAILASH GAMBHIR,J