

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

+ **W.P.(C) 619/2006**

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Reserved on: 22nd August, 2012

Decided on: 24th September, 2012

D.T.C.

..... Petitioner

Through: Ms. Manisha Tyagi, Advocate.

versus

SHRI BHAGAT SINGH

..... Respondent

Through: Ms. Kittu Bajaj, Advocate.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner seeks setting aside of the award dated 22nd November, 2002 whereby the learned Trial Court directed the management/Petitioner to reinstate the workman/Respondent with 75% back wages.

2. Learned counsel for the Petitioner contends that the award of the learned Trial Court suffers with gross and culpable error on the face of it which has occasioned substantial injustice to the Petitioner. The learned Trial Court has erred in deciding the preliminary issue as if it was deciding the reference and once it was held that the inquiry was not held in a fair and proper manner, the learned Trial Court should have remanded the matter back for fresh evidence instead of passing an award on the reference. The learned Trial Court failed to appreciate the judgment of the Hon'ble Supreme Court in the case of *DTC vs. Sardar Singh*, AIR 2004 SC 4161 wherein it was held that the period of unauthorized leave without pay can be

treated as a misconduct under standing orders. The learned Trial Court has transgressed its jurisdiction while granting reinstatement with 75% back wages and also failed to appreciate the various factors that need to be taken into consideration while awarding back wages as enunciated by this Court in *Asiatic Air Conditioning and Refrigeration Pvt. Ltd. vs. Presiding Officer*, 2004 (7) AD 487.

3. Per contra learned counsel for the Respondent contends that Petitioner/management has filed the instant petition belatedly after a delay of three years and two months which is even beyond the time prescribed for civil proceedings and is therefore, barred by delay and laches. The explanation rendered on account of such delay by the Petitioner is false and not bona fide. The Petitioner has been participating in the recovery proceedings before the Labour Commissioner and has already released an amount of Rs. 4,58,163/- towards arrears of back wages for the period from 16th January, 1988 to 31st December, 2002. The Petitioner had slept over the matter after the passing of award and even during the recovery proceedings and has, now, belatedly filed the instant petition challenging the award dated 22nd November, 2002 after almost three years and hence, is estopped from pursuing the present petition. Reliance is placed on the judgment of this Court in *DTC vs. Jai Bhagwan, Ex. Driver*, (102) 2003 DLT 376 in support of this contention. The learned counsel further contends that the workman never remained on leave continuously for a long period and as such the period of absence in question has been regularized as leave and it does not amount to any misconduct. The charge sheet itself shows that the workman availed leave without pay, which shows that it was a case of leave. The

learned Trial Court rightly held that the leave without pay was not a misconduct.

4. I have heard learned counsel for the parties and perused the records.

5. Briefly the case of the Petitioner is that the Respondent was appointed as an Assistant Painter with the Petitioner and later on he was made regular with his last place of posting at Okhla Depot-II. In the year 1986, the Respondent availed 125½ days leave without pay unauthorisedly. Further, a report was submitted by the senior clerk namely Shri Kanchan Singh on 16th April, 1987 wherein it was stated that the Respondent remained absent from duty from January, 1986 to December, 1986 without prior sanction or leave. On 7th May, 1987 a charge sheet was issued to the Respondent to which the Respondent submitted a reply dated 21st May, 1987. However, the reply was not found to be satisfactory and hence inquiry was instituted against the Respondent on charge of unauthorized leave without pay. The inquiry was proceeded as per the rules of the establishment and the principles of natural justice. The Respondent was given an opportunity to defend his case and produce his witnesses. In the inquiry the Respondent admitted the charges of his free will and without any pressure. On completion of the said enquiry, the Inquiry Officer submitted his report wherein he found that the charges leveled against the Respondent were fully proved. The reply to the show cause notice was not found satisfactory hence he was removed from services vide letter dated 15th January, 1988. Against the said order of removal, the Respondent raised an industrial dispute. The terms of reference were:

“Whether the removal of Sh. Bhagat Singh from service is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

6. Statement of claim was filed by the Respondent and reply thereto by management. On 7th February, 2001 while deciding the preliminary issue in favour of the workman, the learned Trial Court held that the inquiry conducted by the Petitioner/DTC was not in accordance with the rules and regulations, against the circular issued by them and the same cannot be sustained in the eyes of law. Finally, on 22nd November, 2002 the learned Trial Court passed the award directing the Management to reinstate the workman along with 75% back wages. Against the said award the Petitioner has approached this Court.

7. In *State of Madhya Pradesh and another vs. Bhailal Bhai*, AIR 1964 SC 1006 the Constitution Bench held:

“21. The learned Judges appear to have failed to notice that the delay in these petitions was more than the delay in the petition made in Bhailal Bhai's case out of which Civil Appeal No. 362 of 1962 has arisen. On behalf of the respondents-petitioners in these appeals (C.A. Nos. 861 to 867 of 1962) Mr. Andley has argued that the delay in these cases even is not such as would justify refusal of the order for refund. He argued that assuming that the remedy of recovery by action in a civil Court stood barred on the date these applications were made that would be no reason to refuse relief under Art. 226 of the Constitution. Learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226. 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 Art. 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 but where the delay is more than this period, it will almost

always be proper for the Court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known. If the mistake was known in these cases on or shortly after January 17, 1956 the delay in making these applications should be considered unreasonable. If, on the other hand, as Mr. Andley seems to argue, the mistake was discovered much later, this would be a controversial fact which cannot conveniently be decided in writ proceedings. In either view of the matter we are of opinion the orders for refund made by the High Court in these seven cases cannot be sustained.”

8. Also, in *Maharashtra State Road Transport Corporation vs. Balwant Regular Motor Service, Amravati and others*, AIR 1969 SC 329 the Hon’ble Supreme Court observed:

“11. In any event, we are satisfied that it is not open to the private operators including respondent No. 1 to apply for a writ in the nature of certiorari for quashing the order of the R. T. A. dated September 10/11, 1965 in view of their conduct. It is not disputed that the private operators including respondent No. 1 were present in the meeting of the R. T. A. held on September 10/11, 1965 either personally or through duly appointed Counsel. Respondent No. 1 and the other private operators assured the R. T. A. at the hearing that they would withdraw the writ petitions pending in the High Court. On such assurances and subject to the actual withdrawal of the writ petitions in terms of the assurance, the R. T. A. considered the matter in the said meeting and after hearing the parties, made an order giving effect to the compromise. It is obvious that the private operators including respondent No. 1 were parties to the order dated September 10/11, 1965, had accepted that order, acted upon it and derived benefits and advantages from it for nearly one year and 9 months. But for the said order which suspended the operation of the permit of the appellant till July 1, 1967 the private operators including respondent No. 1 could not have got

temporary permits to operate on the same routes as no stage carriage permits could be issued under Section 62 of the Act during the subsistence of substantive permits. In these circumstances we consider that there was such acquiescence in the R. T. A.'s order dated September 10/11, 1965 on the part of respondent No. 1 and other private operators as to disentitle them to a grant of a writ under Article 226 of the Constitution. 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 his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. The principle is to a great extent, similar to though not identical with, the exercise of discretion in the Court of Chancery. The principle has been clearly stated by Sir Barnes Peacock in *Lind say Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp*, (1874) 5 PC 221 as follows:

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

This passage was cited with approval by this Court in a recent case-*The Moon Mills Ltd. v. M. R. Mehar*, President Industrial

Court, Bombay, AIR 1967 SC 1450. In our opinion, the principle of this decision applies to the present case and since respondent No. 1 and the other private operators had not even pleaded any circumstances justifying the delay or their conduct, the High Court was in error in granting a writ of certiorari in their favour.”

9. Placing reliance on the aforesaid judgment of the Hon’ble Supreme Court this Court in *Delhi Transport Corporation vs. Jai Bhagwan, Ex. Driver* (Surpa) held:

“7. Mr. Vibhu Shankar reiterates the argument that since the Division Bench has specifically ruled that an industrial action cannot be dismissed for failure to pay costs, particularly in view of Section 33, the Petitioner has a good case on merits and, Therefore, the laches should be ignored. I am unable to accede to this argument, since it would annihilate the legal principles concerning delay and laches altogether. As has already been noticed, even where a person had been taxed under a void statute, the Hon'ble Supreme Court refused to interfere because of delay of a period beyond that prescribed for a civil action. It must also be mentioned once again, that Ms. Kittoo Bajaj has not laboured on the correctness of the Petition on merits in view of the judgment of the Hon'ble Division Bench.

8. In these circumstances, even though the Petitioner may have a good case on merits I am unable to close my eyes to the fact that 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 paragraph 40 of 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 quite clear that 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.”

10. In the present case the impugned award of the learned Trial Court was passed on 22nd November, 2002 and the instant writ petition was filed on 12th January, 2006 after a delay of almost three years and two months. Learned counsel for the Petitioner submits that the reason of delay in filing the writ petition accrued due to the fact that the case file was inadvertently tagged with the similar cases in which the appeal was proposed to be filed by corporation/petitioner in the Supreme Court. The Petitioner had been throughout participating in the recovery proceedings initiated by the Respondent workman before the Labour Commissioner and has already released an amount of Rs. 4,58,163/- towards arrears of back wages for the period of 16th January, 1988 to 31st December, 2002 and also in another execution/recovery proceedings wherein an order of recovery of amount of Rs. 60,958/- was issued vide notice dated 8th November, 2005. Thus, from 22nd November, 2002 till the filing of the instant petition no grievance about the validity of the impugned award was raised by the Petitioner and only in 2006 the Petitioner challenged the award by filing of the instant petition despite the fact that the Petitioner was participating in the execution proceedings pursuant to such award. As held by the Hon'ble Supreme Court in *State of Madhya Pradesh and another vs. Bhailal Bhai* (Supra) that although the provisions of limitation act do not apply to the granting of relief under Article 226 of the Constitution, however, 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 can be measured. It was further held that 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 but where the delay is more than this period it will always be proper to hold that it is unreasonable. In *Maharashtra State Road Transport Corporation vs. Balwant Regular Motor Service, Amravati and others* (supra) it was held 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 his right, as taken in conjunctions with time causing prejudice to adverse party. This Court in *DTC vs. Jai Bhagwan, Ex Driver* (Supra) refused to grant relief in a case which was filed after an inordinate delay of four years even though the Court observed that the Petitioner may have a good case on merits.

11. The present writ petition was filed clearly beyond the time prescribed for filing the civil remedy, that is, after a delay of three years and two months. Further, the management/Petitioner have failed to give a sufficient cause/reason for the delay. Although, there is no period prescribed for invoking the writ jurisdiction under Article 226 of the Constitution, however, it does not mean that the said jurisdiction can be invoked as and when desired by the party. A party who is not vigilant about his rights cannot be allowed to take advantage of his own wrong/delay. It is well settled that “delay defeats equity”.

12. Hence, in the light of the above discussion and the judgments aforementioned, the instant petition is dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 24, 2012
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