

· THE HON'BLE SRI JUSTICE R.KANTHA RAO

-
W.P.No.18209 OF 2015

% 15.07.2015

Between:

S.Sravan Kumar

..... PETITIONER

AND

**1.Telanga State Road Transport Corporation,
rep., by its Joint Managing Director,
Bus Bhavan, Musheerabad,
Hyderabad and three others.**

.....RESPONDENTS

! Counsel for the Appellant: Sri V.Narasimha Goud

^Counsel for the respondents: Sri N.Vasudeva Reddy

< **Gist:**

> **Head Note:**

? **CITATIONS:**

1. 2013(4) ALD 386 (FB)

HON'BLE SRI JUSTICE R.KANTHA RAO

W.P.No.18209 OF 2015

ORDER

Heard learned counsel appearing for the petitioner and learned Standing Counsel appearing for the respondent-Corporation.

This writ petition is filed seeking to declare the action of the respondents in terminating the petitioner from service, as arbitrary and illegal.

The petitioner was appointed as Conductor in the respondent-Corporation on 13.09.2008 by due process of selection. While working under the control of the 4th respondent, he met with an accident on 19.12.2009, due to which his left hand and left leg were fractured. As he could not recover from the injuries suffered, the petitioner was unable to report to duty and did not apply for any leave. After undergoing prolonged treatment, he became normal and reported to duty on 26.02.2009 before the 4th respondent, who in turn, served termination order dated 25.02.2009 to him.

The grievance of the petitioner is that the 4th respondent has not afforded any opportunity either by charge sheet or show cause notice calling for explanation regarding his unauthorized absence from 20.12.2008 to 24.02.2009. Feeling aggrieved, the petitioner preferred an appeal dated 5.2.2015, which was rejected on the ground of delay. Thereafter, the petitioner preferred revision before the 3rd respondent and the same was also rejected holding that the

termination order is valid. Then, the petitioner preferred review before the 2nd respondent, who confirmed the order of termination. Again, he filed mercy petition before the Executive Director, who, also rejected the same, on merits. In the aforesaid circumstances, the petitioner filed this writ petition seeking reinstatement and other allied reliefs.

Learned Single Judge of this Court had dealt with a batch of writ petitions wherein the writ petitioners were terminated from service on the ground of certain misconduct and they approached the authorities/Court after expiry of the time prescribed therefor. Learned Single Judge while disposing of the batch of writ petitions issued certain directions regarding reinstatement of the petitioners therein. The said guidelines are relevant for the purpose of the present case.

“In cases where appeals/revisions or writ petitions are filed after three years of the orders of termination, it is directed that such petitioner/s shall be considered for re-engagement as fresh contract employee/s, subject to medical fitness and other formalities, but he/they shall not be entitled to continuity of past service.”

Sri V.Narasimha Goud, learned counsel appearing for the petitioner would contend that the termination of the petitioner on the ground of unauthorized absence nearly for 50 days i.e., from 20.12.2008 to 24.02.2009 without issuing any charge sheet, conducting any enquiry or without affording him any opportunity to explain the circumstances under which he was unable to attend the duty is contrary to the service regulations and also in violation of principles of natural justice and therefore, the petitioner is directed to be reinstated into service.

On the other hand, Sri N.Vasudeva Reddy, learned Standing Counsel appearing for the respondents would submit that the petitioner preferred an appeal five years after the termination order and the same was rejected and therefore, the present writ petition even though it was filed soon after the rejection of the mercy petition by the Executive Director is not maintainable on the ground of laches and that no relief can be granted to the petitioner in exercise of jurisdiction under Article 226 of the Constitution of India.

Apparently, the reason for absence of the petitioner is that he was bed ridden due to fracture of his left hand and left leg on account of accident, but not intentional. The respondent-Corporation did not consider the said fact and passed the termination order on the ground that the petitioner absented from duties without any leave or permission from it. In terms of the order passed by the learned Single Judge in the batch of writ petitions referred to above, the petitioner is entitled for reinstatement. The Circular dated 23.2.2009 issued by the Corporation clearly mandates that in cases of contract employees, a detailed enquiry has to be conducted within a period of three months and due procedure has to be followed in cases of regular employees. In the instant case, the impugned order of termination was passed against the petitioner before issuance of the Circular dated 23.02.2009. Therefore, there is no dispute about the fact that the order of termination is illegal.

Learned Standing Counsel appearing for the respondent-Corporation placed reliance on the judgment of this Court in P.V.Narayana v. APSRTC, Hyderabad and others^[1] and argued that in view of the law laid down by the

Full Bench of this Court, the petitioner is guilty of the laches and that he is not entitled for any relief in the writ petition even though the Court comes to the conclusion that the order of termination is illegal.

After going through several judgments of the Hon'ble Supreme Court, the Full Bench of this Court took the view that even though no limitation is prescribed for filing a petition under Article 226 of the Constitution and there is no rule of universal application for condoning the delay, a person aggrieved should approach the Court without loss of time and if there is delay, then cogent explanation should be offered for the same. According to the Full Bench, the line of decisions of the Supreme court on the issue would be indicative that the Courts have evolved self imposed restraints in enquiring into belated or stale claims. Though it is open to the High court to exercise its own discretion to grant any relief in stale or belated claims, before going to exercise such discretion, the court has to enquire whether the party is guilty of laches for a reasonable period of delay in approaching the Court. The exercise of such discretion would depend upon different circumstances and facts and may be different from case to case. In a case delay of six months or so may be treated as inordinate and fatal in the facts and circumstances of the case and the Court may decline to condone the delay but in another case delay of five years or so though may be treated as inordinate but not fatal in the fact situation the Court may condone the delay as an exception to meet the ends of justice. Therefore, it all depends upon facts of each case. The Full Bench further held that it is true that in some cases where the delay is five years or so the Supreme Court inclined to

condone the delay but under different circumstances. When the fundamental rights are violated or where the delay is not directly attributable to the party seeking the relief or where the rights of the third parties are not intervened or in matters where seniority of employees is not finalized, the Court, would be justified to grant the relief, but not as a general rule of practice.

Thus even from the judgment of the Full Bench of this Court referred to above, no strait-jacket formula can be laid down for the purpose of condoning the delay in filling writ petition under Article 226 of the Constitution of India.

One of the contentions raised by the learned counsel appearing for the respondent-Corporation is that the petitioner did not assign any reason as to why he preferred the appeal before the authority with a delay of five years and therefore, he is not entitled to any relief in the writ petition.

In this context, it is required to be noticed that though the appeal was rejected on the ground of delay, the revisional and the review authorities passed the orders on merits rejecting the claim of the petitioner and confirmed the order in appeal. Since the appeal order merges with the order in the revision and review and in view of the fact that the orders are passed on merits, it cannot be said that the claim of the petitioner was rejected only on the ground of delay and after thorough examination of the records, it was held that there was inordinate delay on the part of the petitioner in challenging the termination order.

Learned counsel appearing for the petitioner fairly concedes that the petitioner is not claiming any service benefits, as prayed in the writ petition and the relief is

restricted only for appointment as fresh conductor.

Here it is a case wherein the respondent-Corporation imposed major punishment of termination of service without conducting any enquiry and even without affording the petitioner any opportunity of being heard.

Obviously, the order was passed in contravention of the circular dated 23.02.2009 and also in violation of principles of natural justice. Further, the petitioner challenged the termination order before the appellate authority five years after it was passed.

The facts and circumstances of the case indicate that the petitioner absented from his duty as he received fractures to his hand and leg in the accident. Thus, there is some reasonable cause for his absence. Even though he says that he did inform the same to the respondent-Corporation, he did not send any application in writing seeking grant of leave.

There is no doubt about the proposition of law that a writ petition under Article 226 of the Constitution of India can be maintained in appropriate cases even if the petitioner approaches the Court for the relief with some delay.

In the instant case, there is abnormal delay on the part of the petitioner in filing the appeal. According to the Full Bench Judgment of this Court which is referred above, even though there is delay, it would not always be fatal to the case and it depends on the facts and circumstances of each case. In this case, there is some reason for his absence which resulted in termination and he is not entitled to any service benefits such as seniority, back wages etc. However, learned counsel for the petitioner restricted the relief only for appointment as fresh conductor. If the said relief is granted to

him, it would not effect the rights of any third parties.

Having regard to the foregoing reasons, the impugned termination order is set aside. The respondents are directed to reinstate the petitioner into service as fresh conductor without any attendant benefits including continuity of past service. The petitioner shall be entitled for recruitment as fresh Conductor subject to medical fitness and other formalities.

Writ petition is disposed of accordingly. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE R.KANTHA RAO

15th July, 2015
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Note: LR Copy to be marked.

[\[1\]](#) 2013(4) ALD 386 (FB)