

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.2748 of 2006

ORDER:

Assailing the award, dated 24.08.1999, passed in I.D.No.129 of 1998 on the file of the Industrial Tribunal-cum-Labour Court, Warangal, the present writ petition is filed by the Project Officer, ITDA, Eturunagaram, Warangal.

For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Industrial Tribunal-cum-Labour Court.

The facts in issue are as under:

The petitioner was appointed by respondent No.1 as Junior Assistant on daily wage basis on 16.07.1986. Later, he was transferred to the school of respondent No.2 at Tadvai vide proceedings dated 22.07.1986 issued by respondent No.1 and in compliance of the said order, the petitioner reported to duty before the Ashram High School, Tadvai on 23.07.1986. Since then he is said to have been working continuously as Junior Assistant in the said school till 10.01.1988, on which date, his services were terminated by the respondents without issuing any notice. Challenging the same, the petitioner filed I.D.No.129 of 1998 on the ground of non-compliance of provisions of the Industrial Disputes Act before terminating the petitioner from the services. Respondent Nos.1 and 2 did not choose to contest the matter despite service of notice on them. Making them exparte, the Tribunal proceeded with the case by recording the evidence of the petitioner as WW.1 and marking the documents as Exs.W1 to W8. After hearing the petitioner, the order of termination was set-aside and the petitioner was directed to be reinstated into service with continuity of service, back wages and attendant benefits.

It is to be noted that subsequent to the said award, the workman died on 10.10.2000, due to heart-attack. In the year 2005, the legal representatives of the workman filed E.P.No.16 of 2015 for recovery of arrears and also for other benefits which they are entitled to pursuant to the order passed in I.D.No.129 of 1998. At that stage, the present writ petition is filed questioning the award passed in I.D. and also the E.P.

Learned counsel for the legal representatives of workman submits that there is abnormal delay in filing the writ petition, for which no proper explanation is forthcoming.

Per contra, learned Standing Counsel for I.T.D.A. submits that the department was not put to notice and therefore they could not contest the I.D. It is stated in the affidavit filed in support of the writ petition that the award has been passed without giving any proper opportunity and as such they could not take any steps for implementing the award in I.D. Thus, it is contended that the respondents were not aware of the proceedings till filing of the E.P. In that view of the matter, it is stated that the delay in filing the writ petition is neither intentional nor wanton.

As stated earlier, the workman worked continuously in the department of the respondents from 16.07.1986 to 10.01.1988. Without giving any notice and without following the procedure contemplated under the provisions of the Industrial Disputes Act, the services of the workman was terminated. Later he died on 10.10.2000.

The only ground urged by the learned counsel appearing for I.T.D.A. is that the petitioners herein were not put to notice and that they were not aware about the proceedings before the Labour Court.

A perusal of the order in I.D. would show that respondent Nos.1 and 2 therein, who are petitioners herein, received notices and in spite of receiving the same they did not chose to appear and file counter. That being the position the argument of the petitioners herein cannot be accepted.

A Full Bench of this Court in ***P.V.Narayana v. APSRTC, Hyderabad and others*** held as under:

“An analysis of the case law discussed above would amply make it clear that issue of a writ of mandamus or certiorari is largely a matter of sound discretion and will not be granted if there is negligence or omission on the part of the person to assert his right as, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. Therefore, burden lies on the workman who has to establish that in spite of his best efforts and diligence he was prevented from approaching the authority within the period of limitation provided for or the writ Court within a reasonable period of time. If the workman is not able to satisfactorily explain

with cogent reasons for the delay he is not entitled to seek for condonation of the delay. It is true that the punishment imposed cannot be sustained in law because of the illegality crept in it in not conducting a prior enquiry. But, still the workman is under a statutory obligation to challenge the same within the time provided by the statutory rules or regulations or within a reasonable period of time before the writ Court. If delay of 5 to 18 years is condoned, for no reason or fault on the part of the authority, the proceedings which had attained finality are to be set-aside. Setting aside of such order at a belated stage and allowing of a stale claim, may, as rightly held by the Division Bench in Esa Ali's case (W.A.No.623 of 2007, dated 10.08.2007), inspire the workman to seek for consequential benefits of promotion as well, in which event, the rights of the third parties would adversely be affected for no fault of theirs. A workman who is tardy and not diligent for years in availing a statutory remedy or in approaching the Court of law, in our view, cannot be encouraged or permitted to contend that in view of the decision of the Supreme Court the punishment cannot be sustained in law, therefore, delay to any extent is to be condoned automatically in exercise of the power conferred on the appellate or revisional authorities or by the writ Courts in exercise of the discretionary powers under Article 226 of the Constitution of India. Courts can come to the aid of a person who is diligent and vigilant but unable to approach the authority or Court of law for redressal of his grievance in spite of his best efforts and reasons beyond his control but not to a person who is tardy and negligent or slept over the matter in availing the statutory or legal remedies."

Applying the principles laid down in the said judgment, the petitioners herein stand on no better footing than the workman, whose request for condonation of delay in filing the appeal was rejected by a Full Bench of this Court.

In view of the judgment referred to above, and having regard to the fact that the petitioners herein have filed the present writ petition after filing of E.P.No.16 of 2005 by the legal representatives of the deceased workman, I see no reason to interfere with the order passed by the Industrial Tribunal-cum-Labour Court, Warangal in I.D.No.129 of 1998 and the writ petition is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

19.11.2015

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