

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION Nos.1224, 1975,1376 and 2093 of 2011

COMMON ORDER:

In view of the identical nature of issues in all these writ petitions this Court deems it appropriate to dispose of these writ petitions by way of this common order.

The orders passed by the respondent authorities, inflicting punishment of withholding the increments with cumulative effect are under challenge in these writ petitions.

Heard Sri P. Govinda Rajulu, learned counsel for the petitioners and Sri N. Vasudeva Reddy, learned Standing Counsel for respondents, apart from perusing the material available before this Court.

The sum and substance of the case of the petitioners is that without being preceded by full-fledged enquiry as contemplated under APSRTC (CC&A) Regulations, the respondent authorities imposed major punishment of withholding the annual increments with cumulative effect.

In support of his stand learned counsel for the petitioners placed reliance on the earlier judgments of this Court in W.P.No.18209 of 2015 and W.P.No.23846 of 2010 and the judgment of the Hon'ble Apex Court reported in case of ***TUKARAM KANA JOSHI AND OTHERS v. MAHARASHTRA INDUSTRIAL DEVELOPMENT CORPORATION AND OTHERS*** and in case of ***S.K. MASTHAN v. MANAGING DIRECTOR, APSRTC AND OTHERS***.

Per contra, it is vehemently contended by learned Standing Counsel for the Road Transport Corporation that these writ petitions are liable to be dismissed on the sole ground of delay and laches on the part of the petitioners herein in approaching this Court under Article 226 of the Constitution of India. It is also contended by learned Standing Counsel that without properly explaining the delay, the petitioners herein cannot invoke the extraordinary jurisdiction of this Court.

In support of his submissions learned Standing Counsel takes the

support of Full Bench judgment of this Court in **P.V. NARAYANA AND OTHERS V. A.P. STATE ROAD TRANSPORT CORPORATION, REP. BY ITS MANAGING DIRECTOR AND OTHERS.**

In the present writ petitions, there is absolutely no dispute with regard to the reality that the respondent authorities did not hold any regular enquiry before inflicting major punishment of withholding the annual increments with cumulative effect. The only defence advanced by the learned Standing Counsel is the delay on the part of the petitioners herein in approaching this Court.

In order to decide the said issue it is appropriate to refer to the judgments cited by the learned counsel. In the case 3rd cited above this Court refused to exercise the jurisdiction under Article 226 of the Constitution of India. In case of **KARNATAKA POWER CORPORATION LIMITED THROUGH ITS CHAIRMAN AND MANAGING DIRECTOR v. K. THANGAPPAN AND ANOTHER** the Hon'ble Apex Court held that in an appropriate cases the High Court may refuse to invoke its extraordinary powers if there is 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 opposite party.

Coming to the judgment 1st cited above, the Hon'ble Apex Court at paragraph No.12 held as under:

“12. The State, especially a welfare State which is governed by the Rule of Law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.”

In the judgment in W.P.No.18209 of 2015 this Court exercised the discretion under Article 226 of the Constitution of India in favour of the petitioners herein despite the delay.

As per the principles laid down in the above said judgments it is crystal clear that when there is no involvement of third parties interest, the delay pales into insignificance.

In the instant cases also, the rights of the third parties would not get affected if the relief is granted in favour of the petitioners by restricting the same only for the purpose of calculation and payment of terminal benefits.

It is also significant to note that against the judgments of this Court on which learned counsel placed reliance in these writ petitions, the respondent corporation did not file any appeals. Learned counsel for the petitioners has also brought to the notice of this Court that the Corporation implemented the said orders and the same is not disputed by learned Standing Counsel, therefore, this Court finds absolutely no justification for denying the relief in favour of the petitioners, who are identically placed on the ground of mere delay when the similar delay did not come in the way of extending the benefits to the petitioners in other cases.

In view of the principles laid down by the Hon'ble Apex Court, in the judgment 1st cited, the Full Bench judgment of this Court, 3rd cited above, would not render any assistance to the respondents.

In view of the above reasons, these writ petitions are allowed in part, directing that the impugned orders passed by the respondent authorities shall be treated as one for stoppage of annual increments without cumulative effect. It is also made clear that the petitioners herein are also not entitled for any monitory benefits.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

A.V. SESA SAI, J

November 19, 2015

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THE HON'BLE SRI JUSTICE A.V. SETHA SAI

WRIT PETITION No.1224, 1975,1376 and 2093 of 2011

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November 19, 2015

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