

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.37599 OF 2015

Date: 08.12.2015

Between:

Vemula Venkatamma W/o late Ramaswamy,
Aged 60 years, Occu: Ex employee of Municipal
Corporation, R/o. H.No.2-78, Pallevelupula locality
of Bheemaram Village, Hanamkonda Mandal,
Warangal District.

... Petitioner

And

The State of Telangana, rep. by its Secretary,
Labour, Employment & Training and Factories
Department, Secretariat, Hyderabad and others.

... Respondents

This Court made the following :

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ORDER:

Petitioner challenges the award passed by the Industrial Tribunal-cum-Labour Court at Warangal on 29.06.2001 in I.D.No.58 of 1998.

2. The facts which are relevant for consideration of the issue as averred in the affidavit filed in support of the writ petition are as under:

Petitioner was appointed as Watchman in the year 1991 in Warangal Municipality (Greater Warangal Municipal Corporation). The services of the petitioner were terminated on 02.12.2013. The said termination was challenged before the Industrial Tribunal-cum-Labour Court in I.D.No.117 of 1994. Award was passed on 19.11.1994 directing the respondents to reinstate the petitioner into service with continuity of service along with back wages and attendant benefits. This award was challenged by the then Municipality in W.P.No.27049 of 1995. During the pendency of the writ petition, petitioner was taken into service on 20.09.1997. However, petitioner was terminated from service in due compliance of the mandatory requirements of the Industrial Disputes Act on 22.04.1998. This order of termination is assailed in I.D.No.58 of 1998. The Industrial Tribunal-cum-Labour Court having found that the termination was in due compliance of the mandatory requirements of the Industrial Disputes Act, upheld the termination. The award was passed by the Industrial Tribunal-cum-Labour Court on 29.06.2001. This writ petition is instituted challenging the said award.

3. Petitioner filed E.P.No.17 of 1995 for recovery of wages of Rs.20,852/- for the period from 2.12.1993 to 30.06.1995; filed E.P.No.23 of 1997 for recovery of wages of Rs.33,279/- for the period from 01.07.1995 to 31.04.1997. It appears that the said amounts were paid. Petitioner filed E.P.No.9 of 2011 claiming wages from 01.06.1997 to 31.08.2008. The said EP is pending consideration of the Labour Court.

4. W.P.No.27049 of 1995 was considered and dismissed by judgment dated 28.11.2006. This Court recorded the fact of reinstatement of the petitioner on

19.09.1997 and termination of services on 22.04.1998.

5. Having regard to the fact that the petitioner instituted this writ petition on 17.11.2015 assailing the award passed by the Labour Court on 29.06.2001, the counsel appearing for petitioner was requested to address the Court on maintainability of the writ petition on account of inordinate delay and latches.

6. Learned counsel Sri Gadi Praveen Kumar made elaborate submissions in defense of the decision of the petitioner to institute the writ petition after long lapse of time. Learned counsel for petitioner contended that petitioner is an illiterate person and was under depression on account of termination of her services. Petitioner entrusted the I.D.No.58 of 1998 and E.P.No.9 of 2011 to Sri P.M.Vijay, the then Advocate practicing in Warangal. The said advocate later shifted to Kerala due to his family and health problems. Petitioner was not informed of stopping of practice in Warangal and was not handed over the concerned files. Petitioner came to know of the dismissal of I.D., for the first time only when she received counter affidavit in E.P.No.9 of 2011 in the year 2015. On enquiry petitioner found that I.D., was dismissed in the year 2001. Since the I D was dismissed without due consideration of the long service of the petitioner and earlier award passed by the Industrial Tribunal-cum-Labour Court in I.D.No.117 of 1994, petitioner is compelled to institute this writ petition.

7. Learned counsel for petitioner further contended that in matters arising out of the Industrial Disputes Act and matters concerning un-educated persons whose services were terminated in arbitrary exercise of power, the writ Court should come to the rescue of hapless. Learned counsel further contended that while exercising equitable jurisdiction under Article 226 of the Constitution of India, the delay and latches are not relevant facts for consideration when grave injustice is caused to the petitioner and her right to earn for living was taken away in arbitrary manner. Thus, even though there is delay in filing the writ petition the writ petition be entertained and appropriate remedy be granted. Learned counsel further contended that while exercising jurisdiction in matters of this nature the Court can grant relief even when writ petition filed after long lapse of time. In support of the contention, learned counsel placed reliance on the decision of the Full Bench of this Court in **P.V.Narayana Vs. APSRTC Hyderabad and others**; decision of the Supreme

Court in the case of **H.M.T. Ltd., vs. Labour Court, Ernakulam and others** and decision of the Division Bench of this Court in the case of **M.M.Baig vs. APSRTC**.

8. The decisions relied upon by the learned counsel for petitioner do not come to the rescue of the petitioner. The decision of the Supreme Court in **H.M.T. Ltd.**, (supra) is with reference to delay in disposal of the case pending in the Courts. The Court observed that on account of delay in the decision by the Court the party should not suffer and accordingly relief was modified and granted. Similarly in the case of **M.M.Baig**, (supra), Division Bench of this Court was considering the case of illegal dismissal from services. As then required, unless reference is made by the State, the Labour Court did not have jurisdiction to adjudicate on the termination/removal of the workmen. There was inordinate delay in referring the dispute to the Labour Court. The Court noticed that petitioner was no way responsible for the delay in espousing the cause. Having regard to the same, Court directed for payment of 60% of the back wages i.e., 10% more than the back wages awarded in I.D.

9. In **P.V.Narayana**, Full Bench of this Court reviewed the entire case law on the subject with reference to the entertainment of the writ petitions under Article 226 of the Constitution of India when there is inordinate delay in instituting the writ petitions. Court has delineated the principles laid down in the precedents in para 52. The said decision also does not come to the aid of the petitioner. In paragraph 51, the Full Bench of this Court observed that “a person aggrieved should approach the Court without loss of time and if there is delay, then cogent reasons should be offered for the same”. Court observed that if there is delay of five years or so, it should be treated as inordinate delay. In paragraph 53, Court observed that if the workman is not able to satisfactorily explain with cogent reasons for the delay he is not entitled to seek to condone the delay. The Full Bench of this Court held that workman is under statutory obligation to challenge the same within the time provided by the statutory rules or regulations or within a reasonable period of time before writ Court. If delay of 5 to 18 years is condoned, for no reason or fault on the part of authority, the proceedings which attained finality are to be set aside. Setting aside such order at a belated stage and allowing of a stale claim inspire the workman to seek for consequential benefits of promotion as well, in which event, the rights of the third parties would be adversely affected for no fault of them. A workman who is tardy and not diligent for years in availing a statutory remedy or in approaching the Court of law cannot be encouraged. 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 a person who is tardy and negligent or slept over the matter in availing the statutory or legal remedies.

10. The issue of knocking the doors of the High Court under Article 226 of the Constitution of India, after inordinate delay from the date of arising of cause of action was considered by the Supreme Court in the case of **Chennai Metropolitan Water Supply and Sewerage Board and others vs. T.T.Murali Babu**. It was a case of dismissal from services. Employee was dismissed on 16.04.1998. An appeal filed by the employee was rejected on 30.06.1998. The High Court of Madras in W.P.No.15272 of 1998 by order dated 12.03.2003 directed reconsideration of the appeal. On reconsideration, appeal was dismissed on 01.07.2003. The same was assailed in W.P.No.25673 of 2007 filed on 07.07.2007. In other words, writ petition was instituted after four years from the date of rejection of appeal. The Supreme Court reviewed the law on the subject of delay in invoking the jurisdiction of the High Court under Article 226 of the Constitution of India and held,

16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. In the case at hand, though there has been four years’ delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinise whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some

kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons — who compete with “Kumbhakarna” or for that matter “Rip Van Winkle”. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.”

11. In the instant case, the only reason assigned for not invoking jurisdiction of this Court immediately after the award was passed in I.D.No.58 of 1998 is that advocate who was representing the petitioner later shifted to Kerala State and petitioner was not aware of the dismissal of ID. It is appropriate to notice that petitioner filed E.P.No.9 of 2011 in I.D.No.117 of 1994 through the same Advocate. By the time E.P. No.9 of 2011 was filed, I.D.No.58 of 1998 was already dismissed. From the averments in paragraphs 9, 10 and 11 of the affidavit filed in support of the writ petition, it appears that counsel who was representing petitioner left from Warangal only after 2011. If that is so, at least by the time petitioner approached the Advocate in 2011, she should have been aware of the dismissal of the I.D. Furthermore, averments in paragraph 11 of the affidavit are also vague. The record would disclose that petitioner is not new to the litigation. Earlier I.D. was filed and was allowed. Petitioner filed E.P.s claiming salaries for the relevant period. No material is also enclosed to show that petitioner was never informed about the dismissal of the I.D.

12. In view of inordinate delay in filing writ petition, such vague pleas cannot be appreciated. The burden is heavy on the petitioner to satisfy the Court that in spite of exercising due diligence petitioner could not prosecute the litigation. It is not as a matter of course, the writ court entertains the writ petition. Petitioner failed in discharging the burden and inspiring confidence of the Court that the petitioner's claim is *bona fide*. The principle laid down by the Supreme Court in **Chennai Metropolitan Water Supply and Sewerage Board** (supra) applies in all fours to the facts of this case. Petitioner cannot be permitted to wake up, as observed Supreme Court, from ‘Kumbhakarna nidra’ and challenge the award passed on 29.06.2001 at

this distance of time.

13. *Prima facie*, even on merits I do not see any error in the award passed by the Labour Court. Labour Court found that petitioner was terminated from services by observing due formalities as required by the Industrial Disputes Act and there were no procedural illegalities vitiating the termination. One month notice pay was given to the petitioner before terminating her services. Petitioner did not even complete 240 days after her reinstatement and before subsequent termination.

14. Therefore, I am of the considered opinion that the petitioner is guilty of laches. Petitioner cannot seek to revive a cause dead long ago. The writ petition is liable to be dismissed and is accordingly dismissed.

Miscellaneous petitions if any pending in the writ petition shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 08.12.2015

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