

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.4782 of 2001

ORDER:

This writ petition is filed by Tirumala Tirupathi Devasthanams (for short "TTD") seeking a writ of Certiorari to call for the records pertaining to I.D.No.172 of 1996 on the file of Industrial Tribunal-cum-Labour Court, Ananthapur (for short "Tribunal") and quash the Award dt:29.08.2000 and consequential G.O.Rt.No.2302 Labour Employment Training and Factories (Lab-I) Department dt: 15.11.2000.

2) The brief facts of the case are thus:

a) The 1st respondent/workman joined in the petitioner—organization in the year 1967 at choultries of Tirumala and his services were confirmed from 01.03.1970. He was never sincere and honest and never discharged duties properly nor was obedient and loyal to the superiors. He was found unauthorisedly absent on several occasions and was imposed punishments for his misconduct. On earlier occasions his unauthorised absence led the administration of the office to chaos as he did not even handover files and dispatch registers and kept with him for longer period.

b) While-so he abstained from duties from 04.01.1978 to 20.01.1978 unauthorisedly without obtaining any leave or permission from the superiors. Before his absence he was entrusted with the distribution of Tappal work which he did not

bother to comply and simply absented from duty. The said Tappal was not even given to the concerned nor brought back till 16.01.1978. He reported to duty only on 21.01.1978. The said Tappal was handed over to the concerned officials subsequently by some other person. Since the conduct of R.1 led to disruption of the work and the officials suffered due to his negligent act of dereliction of the duties, a charge memo in ROC No.E3/2346/78 dt:24.02.1978 was served on him but he did not choose to give reply. An enquiry was conducted according to rules on 08.08.1978. On the said date he requested for 2 days time which was granted. An opportunity was given to him to state as to whom he handed over the Tappal but he did not make any further representation nor submitted any explanation. He did not deny the allegations and the charge levelled against him during the enquiry. The charges were thus proved against him. Therefore, it was provisionally concluded by an order dt:02.12.1978 to dismiss him from service and accordingly orders were issued in ROC No.E3/2346/78 dt:02.12.1978 and he acknowledged the same on 14.12.1978. A second opportunity was also given to him indicating the punishment and he was directed to show cause as to why he should not be dismissed from TTD service for the proven misconduct. In the written explanation he admitted his guilt and prayed for mercy. However as he was a habitual offender and underwent punishment on several times for similar misconduct of unauthorised absence and again committed the same offence without mending his ways by

absenting himself from 31.12.1978 and 21.04.1978 despite the disciplinary case was pending against him, the authorities left with no other alternative, except dismissing him from service. Hence orders were issued on 30.07.1979 in proceedings No.C2/2346/ Dy.E.O(T).

c) It is further stated by the petitioner that respondent No.1 filed Claim Petition I.D.No.172 of 1996 before the Tribunal under Sec.2(a)(ii) of the I.D. Act, questioning his dismissal order dt: 30.07.1979 belatedly after a long lapse of 17 years. The said application is not maintainable since the Tribunal has no jurisdiction because T.T.D is a Charitable Institution and administered as per the provisions of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (A.P.H.R. & C.E. Act) (Act 30 of 1987) and a separate set of service rules called as T.T.D Employees Service Rules were issued in G.O.Ms.No.1060 Revenue (Endts-I) Department dt:24.10.1989 to regulate the services of T.T. Devasthanams Employees. As per the service rules, against the dismissal order dt:30.07.1979, an appeal lies under Sec.88(3) of A.P.H.R & C.E Act within 30 days from the date of issue of orders. However, respondent No.1 remained silent for 12 years and filed an appeal before the Board of Trustees, T.T. Devasthanams in August, 1991 and the Trust Board in Resolution No.161 dt:25.06.1992 rejected the appeal considering all the facts and the said order was communicated to him in proceedings Roc No.B2/35596/91 dt: 27.06.1992.

Under Sec.120 (ii) of A.P Act 30 of 1987, a second appeal lies to Government within 90 days from date of receipt of orders. Thus without exhausting the statutory provisions of the Second Appeal, R.1 filed the I.D after lapse of 17 years suppressing all the material facts. Hence, the I.D is not maintainable either way due to separate service rules and also due to R.1 not exhausting the remedies available by way of second appeal within time.

d) The petitioner herein contested the I.D. However, the Tribunal erroneously allowed the belated claim of petitioner/R.1 herein and passed the impugned Award dt:29.08.2000 directing the T.T.D to reinstate the petitioner into service with continuity of service and by granting notional increments but without back wages.

Hence, the writ petition.

3) Heard arguments of Sri A.K.Jayaprakash Rao, learned counsel for petitioner; Sri M.V.Pratap Reddy, learned counsel for respondent No.1 and learned Government Pleader for Labour.

4) Severely castigating the Award learned counsel for petitioner would argue that R.1 was unauthorisedly absent from 04.01.1978 to 20.01.1978 without even bothering to handover the Tappal entrusted to him in the concerned section and thereby putting the officials of the concerned section to much embarrassment and due to his dereliction of

the duty, files could not be circulated and work was stalled. He joined duty only on 21.01.1978 and therefore a regular departmental enquiry was conducted wherein charge against him was proved. Considering his irresponsible and callous attitude and also taking into account the previous punishments imposed on him for similar unauthorised absences, the authorities considered to dismiss him from service. He lackadaisically filed appeal after a period of 12 years before the T.T.D Board and therefore, the Board was pleased to dismiss the appeal due to enormous delay. Four years thereafter he filed the I.D. Learned counsel argued that the Tribunal having regard to the facts that he was a regular and unauthorised absentee from duties and punished earlier, ought to have dismissed the claim petition but erroneously allowed the same. Since the Award smacks the proper appreciation of the facts, it is liable to be set aside. On the aspect that when there was an enormous delay the Tribunal ought not to have considered his case, he relied upon the decision reported in **Chief Engineer Ranjit Sagar Dam vs. Sham Lal**^[1].

5) Per contra, learned counsel for respondent No.1 argued that in this case the period of absence of R.1 was only from 04.01.1978 to 20.01.1978 and the absence being a minimum one, the authorities ought to have taken a lenient view in imposing the punishment but the punishment imposed was one of dismissal from service which is grave and

disproportionate to the conscience of one and all. Therefore, the Tribunal considering the poverty of R.1 directed the authorities to restore him to service with continuity and notional increments but ofcourse without back wages on the principle of no work no pay and the said Award was perfectly valid and legally justified and there is no need to set aside the same. He submitted that it is not a case of misappropriation of funds or other type of moral turpitude but only absence from duty and therefore, the Tribunal rightly entertained his application though a delayed one.

6) In the light of above rival arguments, the point for determination is:

“Whether the Award passed by the Tribunal is factually and legally sustainable?”

7) **POINT:** The proceedings dt:30.07.1979 vide ROC No.C2/2346/ Dy.E.O(T) would show that a charge was framed against R.1 stating that he was entrusted with the Tappal work on 03.01.1978 with certain files and he has neither handed over the same to the E.E-III office and Huzur office nor brought them back until 16.01.1978 and he was unauthorisedly absent himself from duty from 04.01.1978 to 20.01.1978 and reported to duty only on 21.01.1978. He was called for explanation. It appears, he submitted his explanation to the effect that he could not handover Tappal and files as he went to his village Mallavaram. He further stated in his explanation that he handed over the Tappal and files in Huzur office on

04.01.1978. The above explanation was not found favour with the Enquiry officer. Thus the charge was held proved against him. The proceedings would further read that having regard to his proven unauthorised absence from 04.01.1978 to 20.01.1978 and also due to his earlier unauthorised absence for different periods for which he was punished, the Deputy Executive Officer in his proceedings treated him as habitual offender of unauthorised absenteeism and he was incorrigible and therefore ordered for his dismissal from service. The record shows that the petitioner filed an appeal before the Board of Trustees, T.T. Devasthanams, Tirupathi i.e, after a period of 12 years. The said appeal was rejected by the Board on the ground that the appeal was belated and no valid reasons were shown for such delay. Thereafter the R.1 filed I.D.No.172/1996 before the Industrial Tribunal-cum-Labour Court, Ananthapur.

8) The main plank of the argument of the writ petitioner is that the claim petition before the Tribunal is a belated one filed after 16 years and hence the Tribunal ought not to have exercised its jurisdiction. With regard to the delay, in **Shyam Lal's** case (1 supra), the Apex Court held in Para 9 of its judgment as follows:

“Para 9: So far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on the facts of each individual case.”

After observing as above, the Supreme Court

recapitulated its observations in different cases as follows:

a) In **Nedungadi Bank Ltd. v. K.P.Madhavankutty**^[2]
it was held that a dispute which is stale could not be the
subject-matter of reference under Sec.10 of the I.D. Act.
As to when a dispute can be said to be stale would depend
on the facts and circumstances of each case.

b) In **S.M.Nilajkar v. Telecom District Manager**^[3]
it was held that though there is no limitation prescribed for
reference of a dispute to an Industrial Tribunal; even so it
is only reasonable that the disputes should be referred as
soon as possible after they have arisen and after
conciliation proceedings have failed, particularly so when
disputes relates to discharge of workmen wholesale. It
was also held that the delay would certainly be fatal if it
was resulted in material evidence relevant to adjudication
being lost and rendered not available.

9) So, the essence in the observations made in **Shyam**
Lal's case (1 supra) and other cases referred therein is to
the effect that there is no limitation prescribed for referring a
dispute to an Industrial Tribunal but it has to be referred within
a reasonable period. A belated reference when material
evidence is lost would prove fatal. What is stale is a question
of fact depending upon each case and no universal
application can be laid down in that regard.

10) When applying the above observations of the Apex
Court to the case on hand, it is true that the 1st respondent
was dismissed from service in the year 1979 and he preferred
the appeal before the Board of Trustees in 1990 and the same
was rejected on the ground of delay. Four(4) years thereafter
he filed the I.D without going for Second Appeal. So when

entire facts are taken into consideration, since he filed the First Appeal before the Board though belatedly, that period of delay cannot be attributable to the filing of I.D since he pursued the remedy under First Appeal though unsuccessfully. Hence the delay in filing the I.D if any is for a period of 4 years only. The delay has to be considered in the light of facts and circumstances of each case as held by the Apex Court. The Tribunal has considered the claim petition of the R.1 on the main ground that the R.1 was poor and himself and his family were suffering and most importantly, the punishment imposed was quite disproportionate to the misconduct i.e, unauthorised absence from service. This Court is of the view that the ground of delay should not defeat the principles of natural justice. It is only a case of unauthorised absence of R.1 and ofcourse earlier also he was imposed punishment for his unauthorised absence. However, it must be noted that he was not charged for any grave offences like misappropriation of funds or misplacing the files etc. In that view of the matter and also considering that himself and his family were starving, the Industrial Tribunal has rightly took up his cause and passed the impugned Award. The punishment imposed by the petitioner was shockingly disproportionate and therefore, it was rightly set aside by the Tribunal and directed that R.1 should be reinstated into service with continuity of service by granting notional increments but without back wages. I find no illegality or irregularity in the said order. It was informed that pending writ petition, R.1 had retired from service. So at this

length of time, it is not appropriate to disturb the Award of the Tribunal.

11) It may be noted that in the grounds of writ petition, the petitioner contended that I.D is not maintainable as the Tribunal has no jurisdiction in view of the fact that T.T.D is not an industry. However, the said ground was not raised before the Industrial Tribunal and also in the arguments before this Court. Hence, the same is not considered.

12) In the result, this Writ Petition is dismissed confirming the Award dt:29.08.2000 passed by the Tribunal in I.D.No.172 of 1996. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 03.06.2016

SCS

[\[1\]](#) (2006) 9 SCC 124

[\[2\]](#) (2000) 2 SCC 455

[\[3\]](#) (2003) 4 SCC 27