

THE HON'BLE SRI JUSTICE S.V.BHATT

Writ Petition No.26361 of 2009

ORDER :

Heard Sri S.D.Gowd, the learned counsel for the petitioner and
Sri S.V.Ramana, learned counsel for the Respondent-Corporation.

The petitioner challenges proceedings No.P3/87/(1)/99-NSP, dated 25-01-2000 of the 1st Respondent and proceedings No.PA/19(38)/2002-DVM/TNK, dated 20-04-2002 of the 2nd Respondent, as illegal, arbitrary and unconstitutional. The proceedings of the 1st Respondent read as follows :

"To
Sri N.K.Murthy,
E 457854, Trimmor,
Tadepalligudem Depot.

Sub : CONDUCT REGULATIONS – Using of
unparliamentary
language by Sri V.Vinoda Rao, E 94913, Painter
and Sri S.Jayapal, E354352, C.B. of Narsapur
depot on 19.3.99 – Issue of final order-cum-show
cause notice –Reg.

Ref : 1. This office charge sheet No.even dt.30.3.99.
2. This office suspension order No.even
dt.30.3.99.
3. Your explanation to the charge sheet dt.4.4.99.
4. Enquiry Officer/WG/Eluru report dt.28.7.99.

-:-

After giving careful consideration to the explanation submitted by you vide reference 3rd cited and other evidences available on record for both sides I came to the conclusion that no new points were adduced for worth consideration. The case has been entrusted to the Chief Inspector (Enquiries)/WG/Eluru for conducting detailed enquiry.

I do agree with the findings of the Chief Inspector (Enquiries)/WG/Eluru and the charges (1) & (2) levelled against proved beyond any reasonable doubt for which the punishment of deferment of your annual increment for a period of ONE YEAR which shall have the effect of postponing your future increment is fit and proper to be imposed on you.

Therefore, I hereby order that your annual increment when next falls due be deferred for a period of ONE YEAR which shall have the effect of postponing your future increments.

Further, you are hereby called upon to show cause as to why the suspension period should not be treated as not on duty for all purposes.

Please acknowledge the receipt.”

The proceedings of 1st Respondent were confirmed by the
2nd Respondent through the order dated 20-04-2002.

The learned counsel for the petitioner contends that the punishment of deferment of annual increment with cumulative effect amounts to a major penalty under the regulations and the respondents could not have issued the impugned proceedings dated 25-01-2000 without issuing second show cause notice to the petitioner. Therefore, he prays for setting aside the impugned proceedings.

The learned counsel for the petitioner places reliance upon the common order dated 19-11-2015 in Writ Petition No.1224 of 2011 and batch wherein this Court considered imposition of major penalty without issuing show cause notice to the delinquent employee and the applicable case law on the point. The final analysis of the Court reads as follows :

“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 THOROUGH ITS CHAIRMAN

AND MANAGING DIRECTOR v. K.THANGAPPAN AND ANOTHER^[1] 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 respondent.

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 learned Standing Counsel fairly submits that the respondent did not issue second show cause notice and deferment of increment with cumulative effect is a major punishment and the point is covered by common order dated 19-11-2015.

Having regard to the above circumstances, the Writ Petition is allowed in part by directing that the impugned proceedings dated 25-01-2000 shall be treated as one for stoppage of annual increment without cumulative effect. As the Writ Petition was filed after lapse of nearly seven years from the date of order of 2nd Respondent, it is further made clear that the petitioner is not entitled for any monetary benefit in terms of the conversion of punishment from cumulative effect to as

stoppage of annual increment without cumulative effect. No order as to costs.

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

**S.V. BHATT,
J.**

Date:22.02.2016

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[\[1\]](#) (2006) 4 Supreme Court Cases 322