

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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WRIT PETITION No.27997 OF 2014

ORDER:

This Writ Petition is filed by the Divisional Manager, APSRTC, Nellore challenging the Award passed by the Industrial Tribunal-cum-Labour Court, Guntur (for short, 'the Tribunal') in I.D. No.35 of 2008 dated 05.06.2012 whereby the punishment of deferment of annual increment for a period of two years with cumulative effect imposed by the appellate authority was modified into deferment of annual increment for a period of two years without cumulative effect.

A reference was made under Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act') by the Regional Manager, APSRTC, Nellore, against G. Venkaiah, E.No.514532, conductor. By virtue of proceedings dated 11.05.2001, the said Venkaiah allegedly committed several irregularities and, therefore, three charges have been framed against him. After completion of domestic enquiry, the employee was found guilty of misconduct and imposed punishment of removal from service. Against the same, the said Venkaiah preferred an appeal; wherein, the appellate authority *i.e.*, Divisional Manager, APSRTC, Nellore, set-aside the punishment of removal from service, reinstated the petitioner into service with continuity of service without back wages on deferment of annual increment for a period of two years, which shall have effect on future increments. Subsequently, a review petition was filed challenging the order passed by the appellate authority; who, after through scrutiny and hearing, rejected the review. Challenging the same, Venkaiah approached the Tribunal. The Tribunal by the impugned order dated 05.06.2012 modified the order passed by the Divisional Manager into stoppage of annual increment for a period of two years without cumulative effect.

The present writ petition is filed challenging the quantum of

punishment imposed against G. Venkaiah *i.e.*, stoppage of two increments without cumulative effect for the alleged misconduct attributed to him on various grounds. The main ground in the writ petition is that the said G. Venkaiah is guilty of grave misconduct under Regulation No.28 of the A.P.S.R.T.C. Employees (Conduct) Regulations, 1963 (for short, 'the Regulations') but the Tribunal did not impose appropriate penalty against the said employee and committed an error.

Learned counsel for the petitioner, while reiterating the contentions urged in the writ petition, mainly contended that in view of grave charges framed against G. Venkaiah and they have been proved by the enquiry officer, the punishment imposed by the appellate authority is to be restored since the Tribunal did not record any reasons to modify the punishment.

Per contra, Sri M. Pitchaiah, learned standing counsel for the 1st respondent, would contend that the writ petition is liable to be dismissed on the ground of delay and laches initially and on the other ground that there is no perversity in the finding recorded by the Tribunal, placing reliance on the decision of the Apex Court in ***Nadia District Primary School, Council and another Vs. Sristidhar Biswas and others***^[1].

Undisputedly, the punishment of stoppage of two increments with cumulative effect imposed by the appellate authority against G. Venkaiah, conductor, was modified by the Tribunal reducing the same to stoppage of two increments without cumulative effect, which is minor penalty. The scope of judicial review under Article 226 of the Constitution of India is limited and unless the Court finds that the punishment imposed by the authorities under the Regulations is shockingly disproportionate to the conscience of the Court or it is

totally disproportionate to the gravity of misconduct, the Court may interfere. But here, the Tribunal recorded its reasons for modification of major penalty into minor penalty. However, the petitioner is unable to show any grave illegality committed by the Tribunal. In the absence of any illegality in the order passed by the Tribunal, and when this Court satisfies that the punishment imposed by the Tribunal against G. Venkaiah is proportionate to the gravity of misconduct, this Court while exercising the power of judicial review cannot interfere with the punishment.

In *Union of India and others Vs. P. Gunasekaran*^[2], the Apex Court held that in exercise of power of judicial review under Articles 226 or 227, the High Court cannot venture into re-appreciation of evidence or interfere with conclusions in enquiry proceedings, if the same are conducted in accordance with law, or go into reliability/ adequacy of evidence, or interfere if there is some legal evidence on which findings are based, or correct error of fact however grave it may be, or go into proportionality of punishment unless it shocks conscience of court and it can only consider whether enquiry held by competent authority was in accordance with procedure established by law and principles of natural justice, whether irrelevant or extraneous considerations and/or exclusion of admissible or material evidence or admission of inadmissible evidence have influenced decision rendering it vulnerable. The Apex Court further held that it can interfere where finding is wholly arbitrary and capricious based on no evidence, which no reasonable man could ever arrive at.

In view of the principles laid down in by the Apex Court in *Gunasekaran*², the scope of judicial review is limited. The learned counsel for the petitioner did not bring to my notice any such extraneous material considered by the Tribunal in modifying the

punishment from major penalty to minor penalty and enquiry was not conducted in accordance with the established procedure.

In ***Chairman-cum-Managing Director, Coal India Limited and another Vs. Mukul Kumar Choudhuri and others***^[3], the Apex Court held that while exercising power of judicial review, it is not open to the High Court to examine findings recorded by the inquiry officer as a court of appeal and reach its own conclusions, and the power of judicial review is not directed against the decision, but is confined to the decision-making process, and, in the absence of any procedural illegality or irregularity in conducting departmental enquiry, it has to be held that charges against delinquent stood proved and the Court, if finds that penalty imposed against the employee is disproportionate, may interfere with the punishment.

In ***Mukul Kumar Choudhuri***³, the employee was charged for his unauthorized absence, but the employee admitted his guilt fairly and, thereupon, he was removed, finding him guilty of misconduct and such removal is disproportionate, harsh and grossly excessive. Therefore, the Apex Court directed the employer to reinstate the employee holding that the employee was not entitled to back wages from the date of his removal, till reinstatement.

But in the present case, learned counsel for the petitioner did not raise any specific ground as to the violation of settled procedure in conducting enquiry except contending that the Tribunal did not record any reasons for conversion of major penalty into minor penalty. But as seen from the order, the Tribunal recorded its own reasons for such conversion; however, the punishment imposed by the Tribunal is in proportion to the gravity of misconduct. Therefore, in view of the principles laid down by the Apex Court in ***Mukul Kumar Choudhuri***³, I am afraid to interfere with the penalty imposed by the Tribunal.

The next contention of the learned standing counsel appearing for the 1st respondent is that the writ petition is liable to be dismissed on account of the delay and laches.

Admittedly, the Award was passed on 05.06.2012 but the writ petition was filed on 04.09.2014 *i.e.*, almost after a lapse of two years. In the entire affidavit, no explanation was offered for such abnormal delay in approaching the Court seeking relief under Article 226 of the Constitution of India. In the absence of any explanation on the ground of delay and laches, the writ petition is liable to be dismissed since the jurisdiction of this Court under Article 226 of the Constitution of India is purely discretionary in nature.

In ***Sristidhar Biswas***¹, relied upon by the learned standing counsel for the 1st respondent, at Paragraph 11, the Apex Court held that the delay is very significant in matters of granting relief and courts cannot come to the rescue of the persons who are not vigilant of their rights.

Here the petitioner is A.P.S.R.T.C. and the Department is not expected to move like an ordinary litigant. However, when a public interest is affected on account of such litigation, the Court can ignore the principle of delay and laches, but in the instant case, no such public interest is involved.

Therefore, on the ground of delay and laches, the writ petition is liable to be dismissed and the same is, accordingly, dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

**M. SATYANARAYANA MURTHY,
J**

Date: 27-04-2016.
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[\[1\]](#) (2007) 12 SCC 779

[\[2\]](#) (2015) 2 SCC 610

[\[3\]](#) (2009) 15 SCC 620