

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

WRIT PETITION No.6638 of 2011

%21-01-2016

Between:
R.R. Chandraiah

... PETITIONER

a n d

Labour Court-cum-Industrial Tribunal, Ananthapur and another

... RESPONDENTS

< GIST:

> HEAD NOTE:

!Counsel for petitioner : Sri G. Ravi Mohan

**^Counsel for Respondents : GP for Labour and Standing
A.P.S.R.T.C.**

Counsel for

? Cases referred

- a. 2013 (4) ALD 386 (FB)
- b. (2013) 1 SCC 353
- c. *LAWS(DLH)-2014-7-248*
- d. (2007) 2 SCC 433
- e. (2013) 10 SCC 324
- f. (2003) 2 SCC 212
- g. (2005) 6 SCC 36
- h. (2009) 2 SCC 668
- i. (2015) 2 SCC 610
- 10. AIR 1964 Supreme Court 477

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ORDER:

This writ petition filed under Article 226 of the Constitution of India, challenges the award dated 30-08-2001 passed by the Labour Court-cum-Industrial Tribunal, Ananthapur in I.D.No.161 of 1998 to the extent the same went against the petitioner.

Briefly stated the facts and circumstances leading to filing of the present writ petition are as under:

The petitioner was appointed as a Conductor in the respondent Road Transport Corporation in the year 1989 and he was terminated from service on 06-03-1997 followed by a departmental enquiry on the charge of un-authorized absence for the period from 24-03-1996 to 01-04-1996. After un-successfully availing the appellate and review remedies, the petitioner raised Industrial Dispute No.161 of 1998 under Section 2 (A) 2 of Industrial Disputes Act, 1947. The Labour Court, by way of an award, dated 30-08-2001, while setting aside the order of termination, directed re-instatement of the petitioner with continuity of service without back-wages and also directed deferment of four annual increments with cumulative effect.

In the above background, the present writ petition came to instituted. This Court ordered rule nisi on 16-03-2011.

Heard Sri G. Ravi Mohan, learned counsel for the petitioner and Sri A. Rama Rao, learned Standing Counsel for the Road Transport Corporation, apart from perusing the material available before this Court.

Learned counsel for the petitioner, reiterating the grounds raised in the writ affidavit, made the following submissions:

- b. *"The award of the Hon'ble 1st respondent in so far as further imposing punishment of of deferring annual increments for period of 4 years with cumulative effect is illegal and beyond the jurisdiction of Hon'ble 1st respondent.*
- c. *The Hon'ble 1st respondent having come to the conclusion that the punishment imposed on the petitioner is disproportionate ought not to have imposed further punishment of of deferring annual increments for period of 4 years with cumulative effect.*
- d. *The Hon'ble 1st respondent failed to see that the petitioner has been explaining that due to piles disease he was unable to attend to his duties and he had no intention to avoid service. In spite of requesting the 2nd respondent, they were not considered.*
- e. *The Hon'ble 1st respondent has come to the conclusion on the ground that the petitioner past record is bad. It is submitted that the finding of the Hon'ble 1st respondent is nothing to do with the charge framed against the petitioner. It is not part of charge nor there is any pleading by the 2nd respondent nor there is any evidence to show that petitioner past record is bad. Therefore the finding of the Hon'ble 1st respondent is improper.*
- f. *The Hon'ble 1st respondent has not assigned any reasons for denying attendant benefits and backwages and apart from that imposing punishment of deferring annual increments for period of 4 years with cumulative effect is illegal.*
- g. *It is submitted that the Hon'ble 1st respondent failed to see that the petitioner worked for more than 5 years without any increment in his pay through he is entitle.*
- h. *It is submitted that the petitioner's pay has not been fixed till date, though he was reinstated into service in the month of January 2002 on the ground that his Plaintiff case was not traced and the petitioner has not filed the writ petition with fond hope that his pay will be fixed by adding increments. It is submitted that thought he is entitled for fixation of pay in the year 2007, petitioner has waited till date. Hence there is a delay in filing this present writ petition.*
- i. *It is submitted that the petitioner is the only earning member of his family and due to the imposition of further punishment of deferring annual increments for period of 4 years with cumulative effect, it has become very difficult to eke out his lively hood as he is getting minimum salary."*

To bolster his submissions and contentions, learned counsel for the petitioner placed reliance on the following judgments:

- 1) *Mahabir Prasad v. Delhi Transport Corporation reported in LAWS(DLH)-2014-7-248 (paragraph No.13)*
- 2) *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Endowment Department.) and others reported in (2013) 10 SCC 324. (paragraph Nos.38.6 and 38.7)*
- 3) *J.K. Synthetics Limited v. K.P. Agrawal and another reported in (2007) 2 SCC 433. (paragraph Nos.17 to 19)*
- 4) *Tukaram Kana Joshi v. M.I.D.C. reported in (2013) 1 SCC 353 = LAWS(SC)-2012-11-8. (paragraph Nos.8 to 10)*

Per contra, it is contended by learned Standing Counsel for APSRTC that the present writ petition is liable to be dismissed on the ground of un-explained and exorbitant delay in approaching this Court and no plausible explanation is forthcoming from the petitioner herein. It is also submitted by learned Standing Counsel that the Labour Court found the charges proved but took a lenient view and exercised its discretion under Section 11-A of the Industrial Disputes Act and in the absence of any perversity in the same the present writ petition filed under Article 226 of the Constitution of India cannot be maintained by the petitioner. It is further contended that entitlement for increments is not automatic unless the award specifies the same in clear terms. It is also the contention of learned Standing Counsel that in absence of any perversity, lack of jurisdiction and violation of principles of natural justice, the writ in the nature of Certiorari cannot be issued.

In support of his submissions and contentions, learned Standing Counsel takes the support of the

following judgments:

1. *Union of India and others v. P. Gunasekaran* reported in (2015) 2 SCC 610. (paragraph Nos.12 and 13)
2. *A.P. State Road Transport Corporation and others v. Abdul Kareem* reported in (2005) 6 SCC 36. (paragraph Nos.9 to 11)
3. *V.V.G. Reddy v. Andhra Pradesh State Road Transport Corporation, Nizamabad region and others* reported in (2009) 2 SCC 668. (paragraph Nos.10 to 12 and 16)

In the above background, the issues, which this Court is called upon to answer in the present writ petition, are:

1. *Whether the delay in approaching this Court in the facts and circumstances of the case is fatal to the case of the petitioner?*
2. *Whether the petitioner is entitled for any relief under Article 226 of the Constitution of India.?*

The information available before this Court vividly reveals that the following charge was framed against the petitioner:

"For having absented for your duties from 24-03-1996 to 01-04-1996 and caused for cancellation of services by resulting nuisance to the traveling public which constitutes misconduct under Reg.28 (xxvii) of APSRTC Employees (Conduct) Regulations, 1963."

Thereafter, the Enquiry Officer conducted the enquiry and submitted a report and subsequently, the Disciplinary Authority passed an order of removal, dated 06-03-1997, and the petitioner herein also availed the remedy of appeal and review un-successfully. Against the said orders, the petitioner raised I.D.No.161 of 1998 before the Industrial Tribunal – cum- Labour Court, Ananthapur and the Labour Court, basing on the material available on record framed the following points for consideration:

1. *Whether the respondent established the charges against the petitioner?*
2. *Whether the termination is justified?*
3. *To what relief?*

The Tribunal, on consideration of the material on record, passed the award on 30-08-2001 and the operative portion of the said award reads as under:

"In the result an award is passed setting aside the order of the Respondent. The respondent is directed to reinstate the petitioner with continuity of service but without backwages. The respondent further directed to defer four annual increments with cumulative effect."

It is the strenuous opposition/contention of the learned Standing Counsel for APSRTC that the present writ petition deserves to be dismissed on the ground of delay in approaching this Court. As mentioned supra, the Tribunal passed the impugned award on 30-08-2001 and the petitioner herein filed the present writ petition on 10-03-2011.

As rightly pointed out by the learned Standing Counsel for the APSRTC, there is absolutely no plausible explanation offered by the petitioner for the said exorbitant and abnormal delay of more than 10 years in approaching this Court. In this connection, it may be appropriate to refer to the judgment of this Court in *M.V.G. Prasad, Ananthapur District v. M.D. APSRTC and three others* in W.P.No.31629 of 2010, dated 21-11-2013.

This Court rendered the said judgment by following Full Bench judgment in case of ***P.V. Narayana v. A.P. State Road Transport Corporation, Rep. by its Managing Director, Musheerabad Hyderabad and others***^[1] and dismissed the writ petition on the ground of laches. In this context, it may be appropriate to

refer to paragraph Nos.51 and 52 of the said judgment rendered by Full Bench, which read as under:

"51. From the decisions of the Supreme Court, it is seen that no limitation is prescribed for filing a petition under Article 226 of the Constitution and there is no rule of universal application for condoning the delay. Though there is no period of limitation prescribed for filing a petition under Article 226, a person aggrieved should approach the court without loss of time and if there is delay, then cogent explanation should be offered for the same. The line of decisions of the Supreme Court on the issue would be indicative that the Courts have evolved self-imposed restraints in enquiring into belated or stale claims. Though it is open to the High Court to exercise its own discretion to grant any relief in stale or belated claims, before going to exercise such discretion, the Court has to enquire whether the party is guilty of laches for a reasonable period of delay in approaching the Court. The exercise of such discretion would depend upon different circumstances and facts and may be different from case to case. In a case delay of six months or so may be treated as inordinate and fatal in the facts and circumstances of the case and the Court may decline to condone the delay but in another case delay of five years or so though may be treated as inordinate but not fatal in the fact situation the Court may condone the delay as an exception to meet the ends of justice. Therefore, it all depends upon facts of each case.

52. On the basis of the decisions of the Supreme Court referred to above, the relevant considerations that may be taken into account in determining the issue of delay and laches may be summarized thus:

- (1) Though no period of limitation is prescribed for the Writ Courts to exercise their powers under Article 226 of the Constitution of India or to file a writ petition, a person aggrieved should approach the Court without loss of time. In appropriate cases, where there is delay and the same has properly been explained with cogent reasons, Court may condone the delay as an exception to meet the ends of justice. But, it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters.*
- (2) Courts have evolved rules of self-imposed restraints or fetters where the High court may not enquire into belated or stale claim and deny relief to a party if he is found guilty of laches. One who is tardy, not vigilant and does not seek intervention of the Court within a reasonable time from the date of accrual of cause of action or alleged violation of the constitutional, legal or other right, is not entitled to relief under Article 226.*
- (3) No hard and fast rule can be laid down for universal application and every case shall have to be decided on its own facts.*
- (4) There is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.*
- (5) There is no lower limit or upper limit and it will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose.*
- (6) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.*
- (7) Where there is remiss or negligence on the part of a party approaching the Court for relief after an inordinate and unexplained delay, in such cases, it would not be proper to enforce the fundamental right. As a general rule if there has been unreasonable delay the Court ought not ordinarily to lend its aid to a party in exercise of the extraordinary power of mandamus.*
- (8) There is no waiver of fundamental right. But, while exercising discretionary jurisdiction Court can take into account delay and laches on the part of the applicant in approaching a Writ Court.*
- (9) Though the High Court in exercise of the power under Article 226 in its discretion grant relief in cases where the fundamental rights are violated, but, in such cases also, High Court, to meet the ends of justice, shall refuse to exercise its high prerogative jurisdiction in favour of a party who has been guilty of laches and where there are other relevant circumstances which indicate that it would be inappropriate to exercise the discretionary jurisdiction.*
- (10) The maximum period fixed by the Legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured.*
- (11) If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Courts have applied the rule of delay with greater rigor in service matters.*
- (12) The benefit of a judgment cannot be extended to a case automatically. The Court is entitled to take into consideration the fact as to whether the petitioner had chosen to sit over the matter and wake up after the decision of the Court. If it is found that the petitioner approached the Court with unreasonable delay, the same may disentitle him to obtain a discretionary relief. Long Delay disentitles a party to the discretionary relief under Articles 32 and 226 and persons who had slept over their rights for long and elected to wake up when they had the impetus from the*

judgment of similarly placed persons.

- (13) *Where during the intervening period rights of third parties have crystallized, it would be inequitable to disturb those rights at the instance of a person who has approached the Court after long lapse of time and where there is no cogent explanation for the delay.*
- (14) *Where the appellate authority acting within its jurisdiction condoned the delay after being satisfied with the facts stated in relation thereto, the High Court in exercise of its powers under Article 226 or 227 of the Constitution should not ordinarily interfere with the order."*

Repelling the said contention of the learned Standing Counsel, touching the delay aspect, it is submitted by learned counsel for the petitioner that mere delay in approaching the Court cannot be a ground to non-suit the party when there is no involvement of third party rights.

In support of the said submission, learned counsel for the petitioner takes the support of the judgment in case of **Tukaram Kana Joshi v. M.I.D.C.**^[2], wherein paragraph Nos.7 to 10 read thus:

"7. 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.

8. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide: P.S. Sadasivaswamy v. State of T.N. AIR 1974 SC 2271; State of M.P. & Ors. v. Nandlal Jaiswal & Ors., AIR 1987 SC 251; and Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors., (2009) 1 SCC 768;)

9. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non- deliberate delay. The court should not harm innocent parties if their rights have in fact emerged, by delay on the part of the Petitioners. (Vide: Durga Prasad v. Chief Controller of Imports and Exports & Ors., AIR 1970 SC 769; Collector, Land Acquisition, Anantnag & Anr. v. Mst. Katiji & Ors., AIR 1987 SC 1353; Dehri Rohtas Light Railway Company Ltd. v. District Board, Bhojpur & Ors., AIR 1993 SC 802; Dayal Singh & Ors. v. Union of India & Ors., AIR 2003 SC 1140; and Shankara Co-op Housing Society Ltd. v. M. Prabhakar & Ors., AIR 2011 SC 2161)

10. In the case of H.D Vora v. State of Maharashtra & Ors., AIR 1984 SC 866, this Court condoned a 30 year delay in approaching the court where it found violation of substantive legal rights of the applicant. In that case, the requisition of premises made by the State was assailed.

14. The High Court committed an error in holding the appellants non- suited on the ground of delay and non-availability of records, as the court failed to appreciate that the appellants had been pursuing their case persistently. Accepting their claim, the Statutory authorities had even initiated the acquisition proceedings in 1981, which subsequently lapsed for want of further action on the part of those authorities. The claimants are illiterate and inarticulate persons, who have been deprived of their fundamental rights by the State, without it resorting to any procedure prescribed by law, without the court realising that the enrichment of a welfare State, or of its instrumentalities, at the cost of poor farmers is not permissible, particularly when done at the behest of the State itself. The appellants belonged to a class which did not have any other vocation or any business/calling to fall back upon, for the purpose of earning their livelihood.

15. Depriving the appellants of their immovable properties, was a clear violation of Article 21 of the Constitution. In a welfare State, statutory authorities are bound, not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons. The non-

fulfillment of their obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments would be born in them on account of such ill-treatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his fundamental/ constitutional/human rights, under the garb of industrial development.

It is to be noted that in the above-cited judgment, there was persistent persuasion by the parties but in the instant case, the same is conspicuously absent. The situation as found in the said judgment does not find place in the instant case. Therefore, the said judgment would not render any assistance to the petitioner.

As per the judgment cited by the learned Standing Counsel, the un-explained and abnormal delay in approaching this Court is certainly fatal to the case of the petitioner as such on the ground of delay, the petitioner is liable to be non-suited. Accordingly, point No.1 is answered against the petitioner and in favour of the respondents.

Yet another submission made by the learned counsel for the petitioner is that since the Tribunal below granted continuity of service, there is no justification on the part of the authorities in refusing to grant the increments for the period, the petitioner was out of duty.

Judgments cited by the learned counsel for the petitioner are as follows:

In case of **Mahabir Prasad v. Delhi Transport Corporation** ^[3] it is held in paragraph No.13 as thus: "13. J.K. Synthetics, Narsagoud and Abdul Kareem (supra) suggest that any award reinstating the employee with the term of "continuity W.P.(C) 2216/2014 Page 10 of service" cannot be interpreted to mean that the court granted consequential reliefs or benefits and a specific direction by the court to grant such benefits upon reinstatement, is required. At the same time, the decision in Deepali Gundu Surwase (supra) discusses and assimilates a large number of previous decisions, including those rendered by three judge benches which emphasized the essential purpose of reinstating with backwages and other benefits, i.e. its restitutionary intent. An employee denied benefit of work and pay, is as much entitled to restitution in law, as a businessman whose contract is terminated capriciously. In the latter case, the courts award damages, a head which often includes damages for loss of profit, and a further interest. Similarly, a tax payer who is made to pay amounts which cannot be legitimately recovered is entitled to interest for the duration that the amounts are retained by the tax authorities. A plaintiff who sues for illegal termination of contract of service (i.e. a managerial cadre official in a private enterprise) on proof of illegal termination can succeed in getting damages. In the case of employment contract of employment, where the employee is terminated for no justifiable cause or wrongfully, surely restitution has to likewise, be complete. This Court notices that the ruling in Deepali Gundu Surwase (supra) relied on at least three larger, three judge bench rulings (Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Pvt Ltd AIR 1979 SC 75; Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court AIR 1981 SC 422 and General Manager, Haryana Roadways v. Rudhan Singh (2005) 5 SCC591) and held that J.K. Synthetics (supra) W.P.(C) 2216/2014 Page 11 did not correctly state the principle; J.K. Synthetics, in turn had considered Narasagoud and Abdul Kareem. The relevant discussion in Deepali Gundu Surwase (supra) is as follows:

"33. The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact.

Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed W.P.(C) 2216/2014 Page 12 and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties W.P.(C) 2216/2014 Page 13 are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (supra).

vii) The observation made in *J.K. Synthetics Ltd. v. K.P.*

Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

In case of **J.K. Synthetics Limited v. K.P. Agrawal and another**^[4] it is held in paragraph Nos.17 to 19

as thus:

"17. There is also a misconception that whenever reinstatement is directed, 'continuity of service' and 'consequential benefits' should follow, as a matter of course. The disastrous effect of granting several promotions as a 'consequential benefit' to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualized while granting consequential benefits automatically. Whenever courts or Tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether 'continuity of service' and/or 'consequential benefits' should also be directed. We may in this behalf refer to the decisions of this Court in *A.P.S.R.T.C. v. S. Narasa Goud* [2003 (2) SCC 212], *A.P.S.R.T.C. v. Abdul Kareem* [2005 (6) SCC 36] and *R.S.R.T.C. v. Shyam Bihari Lal Gupta* [2005 (7) SCC 406].

18. Coming back to back-wages, even if the court finds it necessary to award back-wages, the question will be whether back-wages should be awarded fully or only partially (and if so the percentage). That depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back- wages, in addition to the several factors mentioned in *Rudhan Singh* (supra) and *Udai Narain Pandey* (supra). Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then the burden will shift to the employer. But there is, however, no obligation on the terminated employee to search for or secure alternative employment. Be that as it may.

19. But the cases referred to above, where back-wages were awarded, related to termination/retrenchment which were held to be illegal and invalid for non-compliance with statutory requirements or related to cases where the court found that the termination was motivated or amounted to victimization. The decisions relating to back wages payable on illegal retrenchment or termination may have no application to the case like the present one, where the termination (dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental inquiry, and the court confirms the finding regarding misconduct, but only interferes with the punishment being of the view that it is excessive, and awards a lesser punishment, resulting in the reinstatement of employee. Where the power under Article 226 or

section 11A of the Industrial Disputes Act (or any other similar provision) is exercised by any Court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment, and a consequential direction is issued for reinstatement, the court is not holding that

the employer was in the wrong or that the dismissal was illegal and invalid. The court is merely exercising its discretion to award a lesser punishment. Till such power is exercised, the dismissal is valid and in force. When the punishment is reduced by a court as being excessive, there can be either a direction for reinstatement or a direction for a nominal lump sum compensation. And if reinstatement is directed, it can be effective either prospectively from the date of such substitution of punishment (in which event, there is no continuity of service) or retrospectively, from the date on which the penalty of termination was imposed (in which event, there can be a consequential direction relating to continuity of service). What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement; and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back-wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions etc."

In case of **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Endowment Department.) and others**^[5] it is held in paragraph Nos.38.6 and 38.7 as follows:

"38.vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).

38.vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

Refuting the contention of the learned counsel for the petitioner with regard to grant of increments, it is the emphatic submission of learned Standing Counsel for APSRTC that simply because continuity of service is granted, it cannot be construed as an entitlement for increments also and unless the Labour Court specifically grants the same, the petitioner is not entitled for any increments automatically.

Supporting the above contention, the following judgments are cited:

In case of **A.P.S.R.T.C. and Anr vs S. Narsagoud**^[6], it is held in paragraph No.9 as follows:

"We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorised absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorised absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with benefit of continuity in service."

In case of **A.P.S.R.T.C. & Ors vs Abdul Kareem**^[7] it is held in paragraph Nos.9 to 11 as follows:

"In our considered opinion, the argument advanced by the counsel is not tenable in law in the view taken by this Court in the recent decision. In the case of A.P. SRTC and Anr. Vs. S. Narsagoud (2003)2 SCC 212, this Court had occasion to deal with the identical controversy and succinctly crystallized the point of law. In that case the respondent was a Conductor in the employment of appellant - A.P.S.R.T.C. He remained absent from duty between 05.06.1982 and 08.08.1982 and again between 13.10.1992 and 01.11.1992. A departmental inquiry was initiated against him on the charges of unauthorized absence which ended in the punishment of removal from service and a

dispute was raised before the Labour Court. The Labour Court upheld the departmental enquiry and the findings arrived thereat, but the respondent was directed to be reinstated with continuity of service but without back-wages. The Learned Single Judge, on being approached by the respondent, directed the appellant to fix the wages payable to him on his reinstatement by taking into account the increments that he would have earned had he been in service during the period of absence from duty. This finding of the Learned Single Judge was affirmed in an appeal by the Division Bench. This Court allowed the appeal preferred by the A.P.S.R.T.C.

The principle of law on point are no more res integra. This Court in *S. Narsagoud* (supra) succinctly crystallized principle of law in Paragraph 9 of the judgment on Page SCC 215:

"We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorized absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorized absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service."

Reverting to the facts of the case at hand, as already noticed, the Labour Court specifically directed that the reinstatement would be without back wages. There is no specific direction that the employee would be entitled to all the consequential benefits. Therefore, in the absence of specific direction in that regard, merely because an employee has been directed to be reinstated without back wages, he could claim a benefit of increments notionally earned during the period when he was not on duty or during the period when he was out of service. It would be incongruous to suggest that an employee, having been held guilty and remained absent from duty for a long time, continues to earn increments though there is no payment of wages for the period of absence."

In case of **V.V.G. Reddy v. Andhra Pradesh State Road Transport Corporation, Nizamabad region and others**^[8], it is held in paragraph Nos.10 to 12 and 16 as follows:

"The award appeared to have been passed by the labour court on consent of the parties. Appellant himself stated so in his affidavit in support of the writ petition. The terms of the consent order have not been produced before us by the appellant. We will, however, proceed on the premise that the parties thereto agreed that the appellant would be reinstated within a month from the said date. Appellant was, therefore, not only denied back wages but also the attendant benefits.

Interpretation of terms of consent will depend upon the nature of the lis and the background events.

Appellant, as noticed hereinbefore, had not only foregone back wages but also attendant benefits. The word "attendant benefits" should be given its natural meaning. The "attendant benefits" was in regard to a period for which he had been denied back wages. A person may be denied back wages which otherwise can be interpreted to mean that he would be entitled to claim the benefit of increments notionally.

... ..

Appellant has not been directed to be reinstated in service by reason of an Award holding that the order of termination was wholly illegal and, thus, void ab initio. On what premise, parties entered into a compromise is not known. It is possible to hold that findings of the Enquiry Officer which might have been accepted by the disciplinary authority holding him guilty of misconduct had not been set aside; the Management might have thought that denial of back wages and attendant benefits would be sufficient punishment. If that be so, appellant being not in service during the period in question, namely, 1.10.1983 to 15.2.1989, in our opinion, would not be entitled to increment."

Therefore, in view of the above judgments, the contention that the entitlement for increments is a sequel to the continuity of service cannot be countenanced and approved. On the other hand, the same is neither automatic, nor inceptional, nor a natural corollary for continuity of service. The Tribunal recorded categorical and cogent reasons in support of the conclusions, as such, no interference under Article 226 of the Constitution of India is warranted.

In this connection, it may be apt and appropriate to refer to the judgment of the Hon'ble Apex Court in the case of **Union of India and others v. P. Gunasekaran**^[9], wherein the Hon'ble Apex Court at paragraph No.12 held as follows:

"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not

and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extra
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

It is also required to be noted that in the judgment

5th cited supra, the Hon'ble Supreme Court found by finding, touching the continuity of service on re-instatement as un-sustainable in view of the earlier judgments of the Apex Court. In the said judgment, order impugned was found to be illegal and in the instant case, taking a lenient view, the Tribunal ordered re-instatement without indicating anything with regard to the increments. Paragraph No.38 of the 5th cited judgment only dealt with entitlement for continuity of service on re-instatement but not increments on reinstatement.

It is a settled and well established proposition of law that the Writ in the nature of Certiorari can be issued when there is patent perversity and this Court finds no such perversity in the impugned award. In this connection, it may be appropriate to refer to the judgment of the Hon'ble Supreme Court reported in **Syed Yakoob v.**

K.S. Radhakrishnan & Others^[10] wherein at paragraph No.7 the Hon'ble Apex Court held as follows:

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence, which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was 'insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque(1), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam(2), and Kaushalya Devi v. Bachittar Singh(3). It is, of course, not easy to define or adequately describe what an error of law apparent on the face of (1) [1955] 1 S.C.R. 1104. (2) [1958] S.C.R. 1240. (3) A.I.R. 1960 S.C. 1168."

For the aforesaid reasons and having regard to the judgments referred to supra, this Court finds no valid reason to meddle with the impugned award and finds no merit in the writ petition.

Accordingly, the writ petition is dismissed. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

January 21, 2016
PN

A.V. SESA SAI, J

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

WRIT PETITION No.6638 of 2011

January 21, 2016

[1] 2013 (4) ALD 386 (FB)
[2] (2013) 1 SCC 353
[3] LAWS(DLH)-2014-7-248
[4] (2007) 2 SCC 433
[5] (2013) 10 SCC 324
[6] (2003) 2 SCC 212
[7] (2005) 6 SCC 36
[8] (2009) 2 SCC 668
[9] (2015) 2 SCC 610
[10] AIR 1964 Supreme Court 477