

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.5950 of 2011

Between:

Sri K.R.Reddy, S/o Prabhakar Reddy,
Occu: Conductor, E.97574, Aged about 50 years,
R/o H.No.6-8-118, Ravinder Nagar, Nalgonda,
Nalgonda District.

.....Petitioner

And

Industrial Tribunal-II, Chandra Vihar,
Hyderabad, rep. by its Presenting Officer
and another.

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 11.08.2016

-

-

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

-

-

-

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+ WRIT PETITION NO.5950 of 2011

%11.08.2016

Sri K.R.Reddy, S/o Prabhakar Reddy,
Occu: Conductor, E.97574, Aged about 50 years,
R/o H.No.6-8-118, Ravinder Nagar, Nalgonda,
Nalgonda District.

... Petitioner

Vs.

\$ Industrial Tribunal-II, Chandra Vihar,
Hyderabad, rep. by its Presenting Officer
and another

.... Respondents

!Counsel for the petitioner : Sri G.Ravi Mohan

Counsel for the Respondents : Govt.Pleader for Labour (TG) for
Respondent no.1.
Sri A.Ravi Babu, standing counsel
for APSRTC for respondent No.2

<Gist :

>Head Note:

? Cases referred:

1. (2014) 10 SCC 301 = 2014 LawSuit (SC) 650
2. 2015 LawSuit (SC) 1178 = 2015 SCC Online SC 1055

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.5950 of 2011

ORDER:

Petitioner is a Conductor in the respondent corporation. On the allegation that petitioner was un-authorisedly absent on 23.11.1984, charge memo dated 07.12.1985 was issued to him. On 12.12.1985 final order was passed imposing punishment of withholding of annual increment for a period of one year with cumulative effect. The said order is under challenge in this writ petition.

2. Heard Sri G.Ravi Mohan, learned counsel for petitioner, learned Government Pleader for Labour (TG) for respondent and Sri A.Ravi Babu, learned standing counsel for respondent No.2.

3. Learned counsel for petitioner submits that petitioner was denied reasonable opportunity before imposing punishment. He was served with charge memo dated 07.12.1985. Even before the time granted expired, final order was passed. No enquiry was conducted. Order of punishment imposed is a major penalty as petitioner suffers one annual increment permanently. Whenever a major punishment is imposed, enquiry has to be conducted and, therefore, the entire proceedings are vitiated on this ground alone. Learned counsel further submits that the allegation in the charge sheet is, his absence from duties on

23.11.1984 i.e, for one day and on allegation of absence for one day, the punishment imposed is excessive and disproportionate and on this ground also, the punishment is liable to be set aside.

4. Mr A.Ravi Babu, learned standing counsel submits that since petitioner did not file his explanation, the punishment is imposed. It is not in dispute that petitioner is absent from duties and, therefore, no useful purpose would be served even by conducting of enquiry and, therefore, there is no illegality in imposing the punishment. The foremost submission of the learned standing counsel is maintainability of claim of petitioner on the ground of inordinate delay and laches. According to Sri Ravi Babu, petitioner raised conciliation proceedings in the year 2005 i.e., almost 20 years later and reference was made in the year 2006. Industrial Dispute was registered in the year 2006 as I.D.No.19 of 2006.

5. In response, learned counsel for petitioner submits that in matters of this nature, delay cannot be a criteria to reject the claim of the petitioner. According to him, no limitation to raise a dispute is prescribed in the Industrial Disputes Act, 1947 (for short, 'Act') and, therefore, the rejection of the claim of the petitioner on the ground of delay and laches was erroneous. In support of his contention, he placed reliance on the decision of Supreme Court in **Raghubir Singh v. General Manager, Haryana Roadways, Hissar**^[1] and **Prabhakar v. Joint Director Sericulture Department and others**^[2].

6. It is not in dispute that no enquiry was conducted before imposing the punishment. In fact, final order was passed within five days from the date of charge memo. No reasonable opportunity was offered to petitioner. Absence from duty perse is not a misconduct unless such absence was deliberate, willful, without sufficient cause and is recurring. No such finding is recorded by Disciplinary Authority. It is also not in dispute that the punishment imposed is a major punishment

as the postponement of increment with cumulative effect is incurring.

7. Learned counsel for petitioner alternatively submits that since punishment is illegally imposed, punishment may be modified to that of without cumulative effect and denial of back wages payable on account of modification of punishment.

8. The issue for consideration is can petitioner raise conciliation proceedings 20 years after the punishment was imposed and whether dispute subsists ?

9. Section 10 (1)(c) of the Industrial Dispute Act, 1947 reads as under:

“S.10 (1) : Where the appropriate government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing –

(a) & (b) xxxxxx

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; ”

10. In catena of decisions, Supreme Court considered the scope of Section 10(1)(c) of the Act and application of provisions of the Limitation Act vis-à-vis the Industrial Disputes Act. Consistent view taken by Constitutional Court is even though Limitation Act is not applicable to claims arising under the Industrial Dispute Act, primary requirement to refer a dispute/raise a dispute before Labour Court is the dispute must be live. Thus, the manner in which a workman was espousing his grievance is an important factor to assess whether there were laches in setting up the claim.

10.1. In **Raghubir Singh**, the appellant was also a Conductor in Haryana Road Ways. The appellant was involved in Criminal case.

On the ground of involvement in criminal case, the services of the appellant were terminated by order dated 21.10.1994. On 11.07.2002, he was acquitted in criminal case. After acquittal, his request for admitting him into duty was rejected and he was informed that his

services were already terminated. Thereafter, he raised conciliation proceedings and on failure of the conciliation proceedings, the State Government in exercise of power under Section 10(1) (c) of the Act, referred the dispute to the Labour Court for adjudication. The Labour Court by award dated 17.05.2011 held that the reference as time barred. On challenge, High Court dismissed the writ petition, which was affirmed by the Division Bench.

10.2. Supreme Court observed that Labour Court erroneously rejected the reference without judicially considering all the relevant facts of the case, particularly the points of dispute referred to it and erred in answering only the second issue that is, 'being barred by limitation', but not on the merits of the case. Supreme Court observed that appropriate Government in exercise of its statutory power under Section 10(1)(c) of the Act, can refer the industrial dispute between the parties at any time. It is observed, by referring to the words, "at any time" used in Section 10(1)(c) that it is permissible for the appropriate government to refer the dispute at any time and the Article 137 of the Schedule to Limitation Act has no application and no dispute can be rejected merely on the ground of delay in the reference or raising the dispute.

11. Similar issue has come up for consideration before the Supreme Court in **Prabhakar v. Joint Director, Sericulture Department and others**^[3]. In the said case, the appellant services were terminated on 1.04.1985, whereas industrial dispute was raised in the year 1999 i.e., after a period of more than fourteen years. The Labour Court passed award directing reinstatement of appellant. The said award was upheld by the learned single Judge of Karnataka High Court. On appeal, the Division Bench of Karnataka High Court reversed the decision of the learned single Judge and set aside the award on the ground of raising the industrial dispute after a long delay. The Division Bench of the High Court held that no live dispute survived for adjudication even though no period of limitation is prescribed in Industrial Dispute Act and provisions

of the Limitation Act are not applicable to disputes under the Industrial Disputes Act. There could not have been reference at such belated stage and after lapse of abnormal delay, appropriate Government has no jurisdiction or power to make a reference of non-existent dispute.

Supreme Court also observed that between 1.4.1985 and till 1999, appellant did not approach any judicial or quasi-judicial authority; not even any notice or legal notice was served on the management. Only in the year 1999, he approached the appropriate Government alleging illegal termination and violation of the provisions of Section 25(F) of the Act. He did not give satisfactory explanation on the delay.

11.1. The Supreme Court extensively considered the scope of relevant provisions and precedent decisions. The Supreme Court held that there was inordinate, unexplained delay in referring the dispute. It is useful to extract the observations of Supreme Court as under:

“8. It maybe stated that the question is of utmost importance as it is seen that many times, as in the instant case, the workers raise dispute after number of years of the cause of action. Whether the dispute can still be treated as surviving ? Or whether it can be said that dispute does not exist when the concerned workmen after his say termination kept quiet for number of years and thus acquiesced into the action ?

(9) to (35) xxxxx

36. It is now a well recognized principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases Courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity “delay defeats equities”.

38. Likewise, if a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while the act is in progress he cannot afterwards complain. This principle is based on the doctrine of acquiescence implying that in such a case party who did not make any objection acquiesced into the alleged wrongful act of the other party and, therefore, has no right to complain against that alleged wrong.

42. To summarise, although there is no limitation prescribed under the Act for making a reference Under Section 10(1) of the Act, yet it is for the ‘appropriate Government’ to consider whether it is

expedient or not to make the reference. The words 'at any time' used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to proceedings under the Act. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers' financial arrangement and to avoid dislocation of an industry. "

12. In the case on hand, the **Raghubir Singh** do not come to the rescue of petitioner. This case fits into decision in **Prabhakar**. There is no satisfactory explanation for the delay in raising the dispute. The delay is more than 20 years. He did not make any representation against punishment imposed at any time prior to raising conciliation proceedings in the year 2005. Long ago petitioner had undergone the punishment. Even modification of punishment without payment of arrears would require detailed exercise of revising the annual increment from 1995-96 and raising the increment level. It cannot be said that the respondent corporation would not be put to inconvenience. It is not just and equitable to grant the prayer sought by the petitioner. Writ Petition is dismissed.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

JUSTICE P.NAVEEN RAO

Date: 11.08.2016

kkm

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.5950 of 2011

-
Date: 11.08.2016

kkm

[\[1\]](#) (2014) 10 SCC 301 = 2014 LawSuit (SC) 650

[\[2\]](#) 2015 LawSuit (SC) 1178 = 2015 SCC Online SC 1055

[\[3\]](#) 2015 LawSuit(SC) 1178