

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

**FRIDAY, THE SECOND DAY OF SEPTEMBER,
TWO THOUSAND AND SIXTEEN**

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

WRIT PETITION No.9357 of 2011

Between:

Depot Manager, APSRTC, Bodhan and others.

.. Petitioners

AND

Parvathi Rajaiah, s/o. Rajanna, Aged about 54 years
(E.No.73126), Booking Clerk, APSRTC Bus Depot, Bodhan
(Presently working at Armoor Depot), Nizamabad and another.

.. Respondents.



The Court made the following:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.9357 of 2011

ORDER:

While the first respondent was working as Booking Clerk in the petitioner Corporation, on the allegation that he failed to verify the waybills submitted by the Conductor, he was served with charge memo dated 31.07.1991. After considering the explanation submitted by the first respondent, by order dated 26.06.1992, the disciplinary authority imposed punishment of deferment of one annual increment for one year with cumulative effect. The said punishment was implemented and increment payable to the first respondent after the punishment order was deferred.

2. It appears, in the year 2006, the first respondent raised dispute regarding the manner in which the disciplinary action was taken and punishment was imposed. Responding to the said complaint of the first respondent, the Government, in exercise of powers under Section 10(1)(d) of Industrial Disputes Act, 1947 (for short 'the Act'), referred the dispute to the Labour Court for its adjudication. On such reference, Labour Court registered the dispute as I.D.No.116 of 2007. By the award impugned in this writ petition, Labour Court set aside the punishment.

3. Heard learned Standing Counsel for petitioner Corporation and learned counsel for first respondent and learned Government Pleader for Labour for second respondent.

4. Learned Standing Counsel representing the petitioner Corporation submits that the industrial dispute ought to have been dismissed on the sole ground of inordinate delay and latches in raising the dispute. Learned counsel would submit that as against the final order dated 26.06.1992, in the year 2006, for the first time, the first respondent raised the dispute i.e., 14 years after the order. In the meantime, petitioner already undergone the punishment and three years later, the dispute was referred to the Labour Court. He would submit that before the Labour Court, though specific objection was raised by placing reliance on the decision of the Supreme Court in the case of **Assistant Engineer CAD Kota V. Dhan Kunwar**¹, the same was summarily rejected without assigning due reasons.

4.1. Learned Standing Counsel for petitioner Corporation submits that all along, the petitioner Corporation has been treating the punishment of withholding of increment, either with cumulative or without cumulative effect, as a minor punishment and therefore, no enquiry was held, and based on the explanation filed by the first respondent, the allegation

¹ 2006 LLJ 60

was held proved and punishment was imposed. He would therefore submit that there is no illegality in imposing the punishment. He would further submit that even assuming that the procedure required to be followed for imposing the major punishment was not followed, the Labour Court ought to have granted liberty to initiate the disciplinary proceedings and ought not to have allowed the claim by setting aside the punishment.

5. Learned counsel for the first respondent would submit that the Act has not prescribed any limitation and therefore, on the ground of raising of dispute only in the year 2006, the claim made by the first respondent cannot be thrown out and that such contention has no merit. When the claim made by the first respondent is valid, the dispute cannot be thrown out on the ground that the claim was not made within reasonable time. He would submit that punishment of withholding of annual increment with cumulative effect has cascading effect for the entire service and on post terminal benefits and when such a punishment is imposed, it is elementary that procedure as envisaged for imposing major punishment has to be followed. Admittedly, that procedure was not followed in the instant case, and therefore, Labour Court has come to correct conclusion in setting aside the punishment. Having regard to the fact that the punishment was of the year 1992 and the decision of the Labour Court

was in the year 2010, no liberty was granted to the employer to conduct fresh enquiry on this ground. He therefore supports the decision of the Labour Court.

6. It is not in dispute that the punishment imposed against the first respondent was a major penalty, as such punishment has the consequence of denying one annual increment for the entire service and will have impact on the post retirement benefits. However, the conduct of the first respondent, after the punishment was imposed, is crucial for consideration of the claim. It is not in dispute that first respondent suffered with punishment in the year 1992 and kept quiet up to 2006. It appears, he raised the dispute in the year 2006 and responding to the same, three years later, the Government referred the dispute to the Labour Court. Thus, there was inordinate delay of 14 years in raising the dispute. No satisfactory explanation is forthcoming why the first respondent kept quiet for such a long time. It is not in dispute that the first respondent was working and did not have any other inconvenience for him not to raise the dispute immediately. As submitted by the learned Standing Counsel for the petitioner Corporation, the first respondent did not choose to file appeal or revision.

7. It is settled principle of law that though no limitation is prescribed in the Act, the Court is required to consider whether claim is a stale claim. The workman has to satisfy

the Court that there were valid reasons for not raising the dispute within a reasonable time; that even though he has been pursuing the matter the authorities did not respond; and that on the hope of getting a relief from them, he did not immediately raise the dispute. In the instant case, there was no whisper with regard to the efforts made by the first respondent to ventilate his grievance till the year 2006. In the industrial dispute, there was no discussion by the Labour Court with regard to the reasons why the first respondent did not raise the dispute immediately after arising of the cause of action. In fact, summarily, the Labour Court rejected the objection of the petitioner about the delay and laches.

8. Similar issue was considered by this Court in W.P.No.5950 of 2011. In the judgment rendered on 11.08.2016, following the decision of the Supreme Court in **Prabhakar v. Joint Director, Sericulture Department and others**², this Court upheld the contention of the Road Transport Corporation to dismiss Industrial Dispute on the ground of delay and laches.

9. In **Prabhakar**, Supreme Court held as under:

“42. On the basis of aforesaid discussion, we summarise the legal position as under:

.....In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still

² 2015 SCC Online SC 1055

exist. Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute *in praesenti*. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute seized to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances discloses that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as “dead”, then it would be non-existent dispute which cannot be referred. Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the labour authorities seeking reference or did not invoke the remedy under Section 2A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection. Take another example. A workman approaches the Civil Court by filing a suit against his termination which was pending for number of years and was ultimately dismissed on the ground that Civil Court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that dispute is still alive as the workman had not accepted the termination but was agitating the same; *albeit* in a wrong forum. In contrast, in those cases where there was no agitation by the workman against his termination and the

dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an 'existing dispute'. In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted.

10. As there is no satisfactory explanation for not raising the dispute before the Labour Court and as there was inordinate delay in raising the dispute within reasonable time, following the law laid down by the Supreme Court in **Prabhakar**, this Writ Petition is liable to be allowed and the award is liable to be set aside.

11. The Writ Petition is accordingly allowed and the order impugned is set aside. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

2nd September 2016

sj