

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.21897 of 2014

ORDER:

This writ petition is filed by the Depot Manager, APSRTC, Nellore and another challenging the Award passed by the Industrial Tribunal-cum-Labour Court, Guntur in I.D.No.30 of 2007 dated 30.04.2012 whereby the punishment of stoppage of two increments with cumulative effect imposed by the appellate authority was modified into stoppage of one increment 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 K. Subrahmanyam, E.No.506787, conductor. By virtue of proceedings dated 25.02.2006, the said Subrahmanyam allegedly committed several irregularities and therefore, five charges have been framed against him. After completion of domestic enquiry, the employee was found guilty of misconduct and imposed punishment of stoppage of one increment for a period of two years treating the suspension period as 'not on duty'. Against the same, the said Subrahmanyam preferred an appeal and the same was rejected. A review petition was filed challenging the order passed by the appellate authority, who modified the punishment to that of deferment of one increment with cumulative effect. Challenging the same, Subrahmanyam approached the Labour Court. The Labour Court by the impugned order dated 30.04.2012 modified the order passed by the Regional Manger into stoppage of one increment without cumulative effect.

The present writ petition is filed challenging the quantum of punishment imposed against K. Subrahmanyam i.e., stoppage of one increment without cumulative effect for the alleged misconduct attributed to him on various grounds. The main ground in the writ petition is that the said K. Subrahmanyam is guilty of grave

misconduct under Regulation No.28 of 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 K. Subrahmanyam and the said charges have been proved by the enquiry officer, the punishment imposed by the appellate authority is to be restored since the Labour Court did not record any reasons to modify the punishment.

Per contra, the learned counsel for the 1st respondent Sri M. Pitchaiah would contend that the writ petition is liable to be dismissed on the ground of delay and laches initially and on the ground that there is no perversity in the finding recorded by the Labour Court. He placed reliance on the judgment of the Supreme Court in **Nadia Distt. Primary School, Council and another v. Sristidhar Biswas and Ors.**^[1].

Undisputedly, the punishment of stoppage of two increments with cumulative effect imposed by the appellate authority against K. Subrahmanyam, conductor, was modified by the Labour Court reducing the same to stoppage of one increment 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 Labour Court recorded its reasons for modification of major penalty into minor penalty. However, the petitioner is unable to show any grave illegality committed by the Labour Court. In the absence of any illegality in the order passed by the Labour Court and when the Court did not satisfy that the punishment imposed by the Labour Court against K. Subrahmanyam 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. It 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 the above judgment, the scope of judicial review is limited. The learned counsel for the petitioner did not bring to my notice any extraneous material considered by the Labour Court 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 conduct of 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 the above case, 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, the 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 Labour Court did not record any reasons for conversion of major penalty into minor penalty. But as seen from the order, the Labour Court recorded its own reasons for such conversion, however, the punishment imposed by the Labour Court is in proportion to the gravity of misconduct. Therefore, in view of the principles laid down in the above judgment, I am afraid to interfere with the penalty imposed by the Labour Court.

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

Admittedly, the Award was passed on 30.04.2012 but the writ petition was filed on 24.07.2014, 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 and Ors.**, case (1 supra) relied on by the learned 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.

Hear the petitioner is APSRTC and the Department is not expected to move like any ordinary litigation. 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.

13th April, 2016
Js.

[\[1\]](#) (2007) 12 SCC 779

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

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