

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SMT. JUSTICE K.VIJAYA LAKSHMI

WRIT PETITION No. 32918 OF 2017

DATED 10TH OCTOBER, 2017

Between:

Anthony Divya Raj

... Petitioner

AND

Union of India,
Rep. by its General Manager,
South Central Railway, Rail Nilayam,
Secunderabad, and others

... Respondents

Counsel for the petitioner

:

Sri M.V.Pratap Reddy

Counsel for the respondents

:

Smt. K.Aruna



THE COURT MADE THE FOLLOWING

ORDER: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Writ Petition is filed for *certiorari* to quash order dated 04-09-2017 in O.A.No. 021/00135/2016 on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad (for short, 'the Tribunal').

2. We have heard learned counsel for both parties and perused the record.

3. The petitioner while working as Bungalow Peon was served with major penalty charge sheet for his alleged unauthorized absence. His services were terminated with effect from 03-08-2005 allegedly without holding an inquiry. Following the petitioner's approaching the Regional Labour Commissioner questioning the said termination order, respondent No. 2 issued proceedings dated 25-05-2007 reinstating him as Substitute Trackman in Nanded Division, subject to his medical fitness, with continuity of service but without back wages. Following the said reinstatement order, the petitioner approached respondent No. 3 on 22-08-2007 with a request to issue posting orders. The petitioner was sent for medical examination for A-II and below categories. A medical report was issued to the effect that the petitioner was fit for C-1 category and was not fit to be appointed as Substitute Trackman. As no action was taken for appointing the petitioner at least as Bungalow Peon, he made representations to respondent No. 2 for issue of appointment orders. As the petitioner's representations were not considered, he filed O.A.No. 173 of 2014 before the Tribunal challenging the validity of the action of the respondents in sending him for medical examination for A-I category instead of for B-I category as required for the post of Trackman. In the reply statement filed in the said O.A., it was stated that respondent No. 2 has directed respondent No. 3 to give an alternative post of Group – D in Nanded Division. The petitioner has taken the stand that he

was not served with any such letter. However, the said O.A. was dismissed on the ground of limitation as well as on merits on 21-11-2014 and the review application filed against the said order was also dismissed on 07-01-2016. Later, the petitioner filed O.A.No. 21 of 2016, in which the impugned order has been passed by the Tribunal, for the following reliefs:

- "(i) To declare the inaction of the respondents in non-issuing the posting orders to the applicant pursuant to his reinstatement, vide office order No. P/E/79/2007, vide Proceedings No. P/E/677/B.Peon/Vol.12, dt. 25.5.2007 as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India and set aside the same;
- (ii) Consequently, direct the respondents to appoint the applicant in any alternative post of Group-D as per his eligible medical classification; and
- (iii) to pass such orders as this Hon'ble Tribunal deems fit and proper in the circumstances of the case."

The Tribunal has dismissed the O.A. on the ground that the order in previous O.A. i.e. 173 of 2014 operates as constructive *res judicata* as the petitioner had the opportunity of seeking the reliefs claimed in the later O.A. in the previous O.A. itself. The Tribunal also held that the O.A. is barred by delay and laches as it was filed nearly nine years after the issue of proceedings dated 25-05-2007, seeking enforcement of which the O.A. was filed.

3. At the hearing, learned counsel for the petitioner submitted that while dismissing the O.A., the Tribunal has failed to take notice of the crucial admission in sub-para (f) of para No. 5 of the reply affidavit which reads as under:

"In reply to para 4 (v) of the O.A., it is submitted that as per the direction of the Hon'ble Tribunal the Applicant was offered for an alternative post of Group D in Nanded Division and accordingly he was instructed to report to the Office of the Senior Divisional Personnel officer, Nanded for further orders. But the said letter was returned undelivered and also the Applicant did not report to know the status of his appointment. Had he enquired about the same from the said office, he could have easily come to know that a letter was sent to his last known address. As far as issuing of appointment letter is concerned, it is submitted that the matter was sub-judice and any action can only be taken when the O.A. is disposed of. It is not correct on the part of the Applicant to say that he has pursued the matter with the Respondents. He is put to strict proof of the same."
(Emphasis is of ours)

4. In our opinion, the issues of constructive *res judicata* and laches fall more in the realm of technical arena. The undeniable fact however remains that the petitioner could partially succeed in securing an order for alternative post of Group-D from the department itself. His plea right through has been that the offer of alternative employment was not received by him. Added to this, the petitioner was evidently pursuing a wrong line of litigation. When the respondents themselves offered the alternative post for which the petitioner is admittedly found fit and in the light of the averment in their reply as reproduced above, we do not find any reason why in the interests of equity he is not provided with such alternative employment. Therefore, on the facts and in the circumstances of the case, we are of the opinion that the petitioner deserves to be provided with Group-D post which was offered by the respondents themselves as far back as the year 2007 without any financial benefit or the benefit of past service till a fresh appointment is made. Within one month from the date of receipt of a copy of this order, the petitioner is permitted to appear

before respondent No. 2 with a copy of this order. Respondent No. 2 shall appoint the petitioner under Group-D post within one month of his appearance.

5. The Writ Petition is accordingly allowed to the extent indicated above.

6. As a sequel to disposal of the Writ Petition, W.P.M.P.No. 40955 of 2017 shall stand closed as infructuous.

C.V.NAGARJUNA REDDY, J.

K.VIJAYA LAKSHMI, J.

Date: 10-10-2017.

JSK

