

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.11093 of 2017

DATED : 30.03.2017

Between :

A.Janaki Ammal W/o.Late A.Yadagiri,
Aged about 71 yrs, Occu : Retired as Assistant Director/I/c.
Regional Deputy Director of Town and Country Planning,
Anantapur Region, Anantapur,
R/o.D.No.10-3-350, R.L.Nagar,
Rampally Village, Keesara Mandal,
Medchal District.

.. Petitioner

And

The State of Telangana,
Rep., by its Principal Secretary,
Municipal Administration and Urban Development Department,
Secretariat Buildings, Hyderabad & others.

.. Respondents



This court made the following :

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ORDER :

Heard.

2. Petitioner was an employee of erstwhile combined State of Andhra Pradesh. Disciplinary proceedings initiated against the petitioner resulted in imposing punishment of 10% cut in pension permanently by the order impugned by the Government in G.O.Ms.No.255 dated 31.03.2005. In this writ petition, petitioner challenges the said order. In support of the contention that the punishment imposed is not maintainable, petitioner placed reliance on the decision of this Court in W.P.No.2826 of 2013 dated 26.04.2013 and contended that when similarly situated employees who were visited with different punishments are exonerated or no punishment was imposed against them, it is not justified in imposing punishment of 10% cut in pension against the petitioner. Except contending that the discriminatory treatment was meted out by the petitioner, there is no averment in the writ petition as to why petitioner has to invoke the jurisdiction of this Court after more than 12 years.

3. Adjudication of all service matters of employees working in combined State of Andhra Pradesh was earlier vested in Andhra Pradesh Administrative Tribunal (for short 'the Tribunal') constituted under the Administrative Tribunals Act, 1985 (for short 'the Act'). The Act prescribes one year period to invoke the jurisdiction of the Tribunal against any grievance of the employee. In terms of the provisions contained in Section 21 of the Act,

petitioner was to invoke the jurisdiction of the Tribunal within one year from 31.03.2005. Thus, the period of limitation to agitate against the punishment imposed on 31.03.2005 was available to the petitioner only till 31.03.2006 and thereafter, she was barred by limitation to file O.A. Merely because petitioner is presently living in the State of Telangana and pension is paid by the State of Telangana and that the jurisdiction of the Tribunal is taken away in so far as employees of State of Telangana, petitioner cannot seek to invoke the jurisdiction of this Court on the same issue, after this long time.

4. Even otherwise, the writ remedy under Article 226 is a discretionary remedy and equitable; the said remedy can be granted only if the Court is convinced on the merits of the case and that a person who is agitating his right is diligent and invokes the jurisdiction within reasonable time.

5. On review of the case law on the issue of delay in instituting writ petition, the Hon'ble Supreme Court in the ***State of Jammu & Kashmir Vs R.K.Zalpuri and others***¹, held as under :

24. At this juncture, we are obliged to state that the question of delay and laches in all kinds of cases would not curb or curtail the power of the writ court to exercise the discretion. In Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn. [Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn., (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] it has been ruled that: (SCC pp. 359-60, para 12)

“12. ... 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

¹ (2015) 15 SCC 602

cause of action, etc. That apart, if the 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.”

And again : (SCC p.360, para 14)

*“14. 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 Prashad v. Controller of Imports and Exports* [Durga Prashad v. Controller of Imports and Exports, (1969) 1 SCC 185] , *Collector (LA) v. Katiji* [(1987) 2 SCC 107 : 1989 SCC (Tax) 172] , *Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur* [(1992) 2 SCC 598] , *Dayal Singh v. Union of India* [(2003) 2 SCC 593] and *Shankara Coop. Housing Society Ltd. v. M. Prabhakar* [(2011) 5 SCC 607 : (2011) 3 SCC (Civ) 56]”*

25. Be it stated, in the said case the appellants were deprived of the legitimate dues for decades and the Maharashtra Industrial Development Corporation had handed over the possession of the property belonging to the appellant to the City Industrial Development Corporation of Maharashtra without any kind of acquisition and grant of compensation. This Court granted relief reversing the decision of the High Court which had dismissed [Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn., 2011 SCC OnLine Bom 1789] the writ petition on the ground of delay and non-availability of certain documents. Therefore, it is clear that the principle of delay and laches would not affect the grant of relief in all types of cases.

26. In the case at hand, the employee was dismissed from service in the year 1999, but he chose not to avail any departmental remedy. He woke up from his slumber to knock at the doors of the High Court after a lapse of five years. The staleness of the claim remained stale and it could not have been allowed to rise like a phoenix by the writ court.

27. The grievance agitated by the respondent did not deserve to be addressed on merits, for doctrine of delay and laches had already visited his claim like the chill of death which does not spare anyone even the one who fosters the idea and nurtures the attitude that he can sleep to avoid death and eventually proclaim “deo gratias”—“thanks to God”.

28. Another aspect needs to be stated. A writ court while deciding a writ petition is required to remain alive to the nature of the claim and the unexplained delay on the part of the writ petitioner. Stale claims are not to be adjudicated unless non-interference would cause grave injustice. The present case, needless to emphasise, did not justify adjudication. It deserved to be thrown overboard at the very threshold, for the writ petitioner had accepted the order of dismissal for half a decade and cultivated the feeling that he could freeze time and forever remain in the realm of constant present.

[Emphasis supplied]

6. In the instant case also there is inordinate delay of 12 years in challenging the punishment imposed on 31.03.2005 and the delay is not explained.

7. Learned counsel for the petitioner sought to contend that pension is continuous cause of action and therefore, the punishment of cut in pension is also continuous cause of action and therefore, the writ is maintainable.

8. I cannot appreciate the said contention. Punishment imposed is 10% cut in pension and cause of action arises when such punishment is imposed at the initial stage and it cannot be treated as continuous cause of action.

9. Law is also well settled that even in cases of continuous cause of action, such as determination of increments and payment of retirement benefits, the writ Court may refuse to accept the plea to issue writ, if person is not diligent to agitate denial of his right, within the reasonable time. In the instant case since punishment was imposed in exercise of disciplinary control in the year 2005,

the cause of action arises only when the punishment imposed and it cannot be treated as continuous cause of action.

10. Therefore, I see no merit in the contentions urged and the writ petition deserves to be dismissed in limini.

11. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

30th March, 2017
Rds

P.NAVEEN RAO,J

