

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

WRIT PETITION NO.38542 of 2014

Between:

Y. Yadaiah, S/o. Ramulu,
Aged about 49 years, Occ: Conductor,
E.253149, R/o.7-3-202,
Sairam Nagar Colony, Bairamalguda (M),
Hyderabad.

.....Petitioner

And

APSRTC, rep., by its Regional Manager,
APSRTC, JBS Bus Picket Region,
Secunderabad and another.

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 03.04.2017

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.38542 of 2014

% 03.04.2017

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Aged about 49 years, Occ: Conductor,
E.253149, R/o.7-3-202,
Sairam Nagar Colony, Bairamalguda (M),
Hyderabad.

... Petitioner

Vs.

\$ APSRTC, rep., by its Regional Manager,
APSRTC, JBS Bus Picket Region,
Secunderabad and another.

.... Respondents

!Counsel for the petitioner : Sri G.Ravi Mohan

Counsel for the Respondents : Sri N.Vasudeva Reddy, standing
Counsel for respondents 1 & 2

<Gist :

>Head Note:

? Cases referred:

1. 2007 (5) ALD 416
2. (1995) 2 SCR 1 = AIR 1955 SC 423
3. (2015) 15 SCC 602
4. (2014) 4 SCC 108

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.38542 OF 2017

ORDER:

Petitioner was regularly appointed as Conductor on 10.01.1990. While working as Conductor, disciplinary proceedings were initiated on the allegation of cash and ticket irregularities. The disciplinary proceedings initiated against him resulted in imposing the punishment of removal from service by order dated 30.12.1993. The reviewing authority considered the review petition sympathetically and in order to give him further opportunity, he ordered reappointment as a fresh Conductor duly dispensing with the earlier service vide order dated 16.08.1994 and accordingly the petitioner was reappointed and is continuing in service. This Writ Petition is filed challenging that portion of the order of the reviewing authority in appointing him as a fresh Conductor.

2. When the matter is taken up for consideration, learned Standing Counsel for the respondent – Corporation has raised preliminary objection on maintainability of the Writ Petition. According to him, the order of reviewing authority granting reappointment as a fresh candidate by order dated 16.08.1994 is assailed for the first time in this Writ Petition instituted after 20 years. Petitioner has enjoyed all benefits flowing there from all these years without a protest. He would contend that writ petition is liable to be dismissed on the ground of inordinate delay and laches in invoking the jurisdiction of this Court.

3.1 In response to the said objection, learned counsel for the petitioner submits that the order of fresh appointment is *ex facie* illegal and unsustainable. No such punishment is prescribed in Discipline and Appeal Regulations. As held by this Court in **K.C. Narayana v. Managing Director, APSRTC, Hyderabad**¹, disciplinary authority or higher authority in exercise of disciplinary control cannot impose punishment which is not prescribed in the Regulations.

3.2. He would further submit that the claim in the Writ Petition cannot be rejected merely on the ground of delay in invoking the jurisdiction of this Court, when the action assailed is *ex facie* illegal. In support of his contention, learned counsel placed reliance on the decision of this Court in W.P.No.1224 of 2011 and batch, dated 19.11.2015.

4. A bare perusal of the affidavit filed in support of the Writ Petition and the material papers enclosed, it is not in dispute that the order of reviewing authority was made on 16.08.1994 i.e., 20 years prior to the institution of the Writ Petition. Except for contending that the learned Single Judge of this Court in **K.C.Narayana** has taken the view that imposing punishment, which is not prescribed in the Discipline and Appeal Regulations as illegal, no other averments made to explain why he has accepted the order of Reviewing authority and enjoyed all benefits flowing there from without a protest and kept quiet for 20 years. No valid reasons are assigned or justifiable cause shown to institute this writ petition after 20 years.

¹ 2007 (5) ALD 416

5. In exercise of power of judicial review, writ Court can test the validity of a decision of the statutory authority within the well laid down parameters of judicial review. The remedy under Article 226 is an extra-ordinary remedy and equitable. Grant of relief to an aggrieved person is discretionary in the hands of writ Court.

6. In **Sangram Singh Vs. Election Tribunal**², Supreme Court delineated scope of exercise of power of judicial review under Article 226 of the Constitution of India. Supreme Court held:

“14. That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not, and should not, act as courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of case.” (emphasis supplied)

7. Though there is no time limit prescribed for institution of a Writ Petition by invoking Article 226 of the Constitution of India, it must be within a reasonable time. Merely because no time limit is prescribed a person can not knock the doors of this Court whenever he feels convenient for him. What is a reasonable time within which a person can avail the extra-ordinary jurisdiction of this Court depends on facts of a given case.

² (1995) 2 SCR 1 = AIR 1955 SC 423

8. Learned counsel for petitioner contended that notwithstanding delay in filing writ petition, petitioner is entitled to relief prayed in as much as order impugned is ex-facie illegal. In support of said contention he placed heavy reliance on the decision of the learned single Judge of this Court in W.P.No.1224 of 2011 and batch.

9. As can be seen from the prayer and facts noted in the said case, petitioners therein were visited with punishment of deferment of annual increments for a period of six months with cumulative effect. The said punishment was challenged on the ground that as it is a major punishment, it could not have been imposed without following procedure required by the Discipline and Appeal Regulations to impose major punishment. The objection raised by the respondent corporation on the ground of delay and laches was rejected by the learned single Judge on the ground that the punishment is ex-facie illegal and modifying the punishment would not involve third party interests. Learned single Judge held that when there is no involvement of third party interest, the delay pales into insignificance. Learned single Judge modified the punishment to that of without cumulative effect as stoppage of annual increments without cumulative effect is a minor punishment. The modification of punishment would only result in releasing of the increments withheld for six months.

10.1. In ***State of Jammu and Kashmir v. R K Zalpuri and others***³, the very issue of delay in instituting the writ petition after long lapse of time was considered. It was a case of dismissal and

³ (2015) 15 SCC 602

challenge was on the ground of violation of procedural safeguards incorporated into the Jammu & Kashmir Civil Services (Classification, Control and Appeal) Rules. Disciplinary action resulted in imposing punishment of dismissal from service by order dated 6.9.1999. This was challenged by filing writ petition in the High Court on 18.2.2006. The delay was of 7 years, Supreme Court held that the delay and laches were not satisfactorily explained and, therefore, writ petition was not maintainable.

10.2. The State Government raised objection on maintainability of writ petition on the ground of delay and laches. Without accepting this plea, punishment was set aside on the ground that Rule 34 of the Classification, Control and Appeal Rules was not complied. Even in appeal the Division Bench has not considered objection on delay in filing writ petition. Hence, appeal before Supreme Court.

10.3. Supreme Court reviewed the precedent decisions:

“20. Having stated thus, it is useful to refer to a passage from *City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla* [*City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla*, (2009) 1 SCC 168] , wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus: (SCC p. 175, para 30)

“30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.”

21. In this regard reference to a passage from *Karnataka Power Corpn. Ltd. v. K. Thangappan* [*Karnataka Power Corpn. Ltd. v. K. Thangappan*, (2006) 4 SCC 322 : 2006 SCC (L&S) 791] would be apposite: (SCC p. 325, para 6)

“6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party.”

After so stating the Court after referring to the authority in *State of M.P. v. Nandlal Jaiswal* [*State of M.P. v. Nandlal Jaiswal*, (1986) 4 SCC 566] restated the principle articulated in earlier pronouncements, which is to the following effect: (SCC p. 326, para 9)

“9. ... the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.”

22. In *State of Maharashtra v. Digambar* [*State of Maharashtra v. Digambar*, (1995) 4 SCC 683] a three-Judge Bench laid down that: (SCC p. 692, para 19)

“19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in

exercise of such power, when he approaches it with unclean hands or blameworthy conduct.”

23. Recently in *Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu* [*Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu*, (2014) 4 SCC 108 : (2014) 1 SCC (L&S) 38] , it has been ruled thus: (SCC p. 117, para 16)

“16. Thus, ***the doctrine of delay and laches should not be lightly brushed aside.*** A writ court is required to weigh the explanation offered and the acceptability of the same. ***The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity.*** In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant—a litigant who has forgotten the basic norms, namely, ‘procrastination is the greatest thief of time’ and second, ***law does not permit one to sleep and rise like a phoenix.*** Delay does bring in hazard and causes injury to the lis.”
(emphasis supplied)

10.4. Supreme Court held,

“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.”
(emphasis supplied)

11. In the instant case, the order of the reviewing authority was passed on 16.08.1994. Even assuming that the decision rendered in **K.C. Narayana** (supra) propelled the petitioner to assail the order passed against him, the Court could have appreciated the same if the Writ Petition is filed within reasonable time, at least thereafter. As a consequence of appointment of the petitioner as a fresh Conductor, all the service conditions are regulated thereon. He never protested and settled for whatever was given to him. If

the claim of the petitioner is accepted, it would have serious adverse consequences to other employees who may have been treated as senior to him after his appointment is made as 'fresh appointment'. They may have earned promotion or due for promotion. In the service, one change in the placement in seniority can have deleterious effect in securing advancement in service. Thus, all of those appointed between his removal and fresh appointment would be affected.

12. Disciplinary action was initiated against the petitioner on the allegation of cash and ticket irregularities, which has resulted in removal from service, affirmed by the appellate authority. In this writ petition, petitioner only challenges the order of the Reviewing Authority holding the petitioner to be appointed afresh by placing reliance on the decisions on the issue. Petitioner prays to set aside the order of the Reviewing Authority on the ground that punishment imposed is not prescribed in the Discipline and Appeal Regulations and seeks continuity of service and other attendant benefits. It is also appropriate to note that in disciplinary proceedings, jurisdiction of the writ Court is limited.

13. In exercise of power of judicial review, writ Court cannot re-appreciate the evidence as if sitting in appeal and record different findings from the findings recorded in the domestic enquiry. Except for vague contention that enquiry authority has not conducted enquiry properly, no material is placed on record to hold that findings of the enquiring authority are not based on evidence and that the order of the disciplinary authority is perverse. Subject to delay and laches, no case is made out to

exercise power of judicial review against findings of domestic tribunal. The Reviewing authority confirms the disciplinary action and holds the petitioner guilty, but takes a lenient view on punishment. Thus, even if the order of the Reviewing Authority is set aside on the ground that the punishment now imposed is not one prescribed in the Discipline and Appeal Regulations, since the delinquency alleged stands, setting aside order of review authority can only result in remitting the case to the Reviewing Authority to pass fresh orders, to impose appropriate punishment other than removal. This would result in restoration of petitioner as conductor and regulation of the entire period. Thus, granting prayer sought in the writ petition at this stage will also have adverse impact on the employer; would impose heavy financial liability on the employer.

14. The claim of petitioner is stale. Petitioner was in deep slumber for 20 years. As held by Supreme Court in **Chennai Metropolitan Water Supply and Sewerage Board Vs. Murali Babu⁴**, '*law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis*'. Thus granting relief to petitioner is not just and equitable in a petition filed after 20 years. Having regard to inordinate delay of 20 years the Court declines to exercise discretionary and equitable jurisdiction. This Writ Petition is liable to be dismissed on the ground of delay and laches in invoking the jurisdiction of this Court.

⁴ (2014) 4 SCC 108

15. Accordingly, the writ petition is dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

JUSTICE P NAVEEN RAO

Date: 03.04.2017
Kh/tvk/kkm

Note : L R copy to be marked-- YES

b/o tvk



THE HON'BLE SRI JUSTICE P. NAVEEN RAO



WRIT PETITION No.38542 OF 2014

Dated: 03.04.2017

Kh/tvk/kkm