

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT APPEAL Nos.669, 670, 671 AND 672 OF 2012

COMMON JUDGMENT: *(Per Hon'ble Dr. Justice Shameem Akther)*

These four Appeals arise out of a common order dated 11.08.2011 passed in W.P. Nos.22673, 22674, 22680 and 22780 of 2011 by the learned Single Judge, dismissing all the four writ petitions.

2. The parties hereinafter are referred to as arrayed in the Writ Petitions.

3. All the writ petitioners are employees of respondent No.1-Chirala Municipality and are assigned duties of operating pump houses to supply water in the Municipal area. They filed Miscellaneous Petitions separately under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short, the 'I.D.Act') before the Labour Court, Guntur-respondent No.2, claiming salary for working beyond office hours, alleging that respondent No.1-Municipality is a factory and that as per Section 59 of the Factories Act, 1948, the wages are payable for over-time work done by them. The Labour Court dismissed all the Miscellaneous Petitions through separate orders dated 09.11.2005, holding that respondent No.1-Municipality is not a factory under the Factories Act, 1948, and that is the reason for not prosecuting respondent No.1-Municipality for any violation of the Provisions of the Factories Act and the Rules made thereunder and consequently, the writ petitioners are not entitled to receive any amounts under Section 59 of the Factories Act, 1948. The said orders are

challenged in this batch of writ petitions in the year 2011 under Article 226 of the Constitution of India, praying to declare the order passed by respondent No.2-Labour Court dated 09.11.2005, as arbitrary and violative of Article 14 of the Constitution of India and the provisions of the Factories Act, 1948, and consequently, set aside the same allowing their Miscellaneous Petitions.

4. The learned Single Judge, after hearing both sides, vide common order dated 11.08.2011, dismissed all the writ petitions observing that all the writ petitions were filed in the year 2011, challenging the orders passed in the year 2005, and there is delay of five years in approaching the Court, which cannot be overlooked, and they are barred by laches.

5. Heard the learned counsel for the appellants-writ petitioners, the learned Standing Counsel appearing for respondent No.1-Municipality and the learned Government Pleader for Labour appearing for respondent No.2, in all the appeals, apart from perusing the material available on record.

6. The learned counsel, appearing on behalf of the appellants-writ petitioners, would submit that respondent No.1 is a factory, the Labour Court and the learned Single Judge erred in ignoring the law laid down in arriving at a conclusion; the writ petitioners are assigned duties of operating pump houses to supply water to the houses situated within the respondent No.1-Municipality; the writ petitioners are workmen, as defined under Section 32-C(2) of the I.D. Act, they are entitled for the salary for working beyond office hours; and as per Section 59 of the Factories Act,

wages are payable for over-time work done by the writ petitioners. In support of his contentions, he relied on the following decisions:

- (1) **Ramchandra Shankar Deodhar and others v. The State of Maharashtra and others**¹,
- (2) **The Begum Bazar Fish Market Association v. The Municipal Corporation of Hyderabad and others**²,
- (3) **B.Narayana Murthy and others v. The State of A.P. rep. by its Chief Secretary, Hyderabad and another**³, and
- (4) **Tukaram Kana Joshi and others v. Maharashtra Industrial Development Corporation and others**⁴.
- (5) **The Managing Director, The Nagarjuna Co-operative Sugars Limited, Gurazala v. T.K.Mohan Rao, Retd. Chief Engineer and another**⁵

7. On the other hand, learned Standing Counsel appearing for respondent No.1, would submit that the writ petitioners were granted casual leaves and other category of leaves, whenever they attended to work on Sundays and Holidays, and their Miscellaneous Petitions filed under Section 33-C(2) of the I.D. Act were dismissed and the writ petitions filed by them are lacking merits; the learned Single Judge had dealt with all the issues and ultimately, dismissed the writ petitions holding that the writ petitions are barred by laches and declined to entertain the same; and finally, prayed to dismiss all the writ appeals.

8. In view of the contentions putforth by both sides, the points that arise for determination are:

¹ AIR 1974 SC 259

² AIR 1983 AP 278

³ 1991(1) ALT 688

⁴ (2013) 1 SCC 353

⁵ 1995(2) ALT 348 (D.B.)

(1) Whether the writ petitioners are entitled for the reliefs sought for?

(2) Whether the impugned common order passed by the learned Single Judge suffers from infirmity and is liable to be set aside?

9. The material placed on record reveals that the Labour Court has elaborately dealt with all the issues and contentions urged before it, with reference to the provisions and the law applicable and ultimately held that respondent No.1-Municipality did not qualify the requirement of factory. The learned Single Judge, while dealing with the issue, held that the writ petitioners ought to have pursued their remedies with required amount of promptitude. The writ petitions are filed in the year 2011, wherein the orders of the Labour Court passed in the year 2005 are challenged, i.e., with a delay of five years. The writ petitioners are municipal employees, the delay caused by them in filing the writ petitions cannot be overlooked or ignored and no interpretation of fundamental rights, as contended by the writ petitioners, is violated. There is also a serious contention with regard to the accommodating the writ petitioners granting compensatory leaves, etc. Certain issues are required to be decided on evidence.

10. It is relevant to refer the decisions, on which reliance is placed by the learned counsel for the writ petitioners. In **Ramachandra Shankar Deodhar's** case (supra 1), it is held that the rule which says that a Court may not inquire into belated or stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay the Court must necessarily

refuse to entertain the petition and the question is one of discretion to be followed on the facts of each case. **The Begum Bazar Fish Market Association's** case (supra 2) relates to lessees of stalls in the municipal market, licence was given to sell fish in the stalls. In **B.Narayana Murthy's** case (supra 3), writ petition is filed for payment of pension of retired teachers after more than ten years. In **Tukaram Kana Joshi's** case (supra 4), writ petition is filed, questioning the land acquisition proceedings, 24 years after taking over of possession of property. The facts and circumstances of the case on hand and the facts and circumstances of the case referred above are distinct.

11. **T.K.Mohan Rao's** case (supra 5) relates to the claim by workmen of Municipality for wages relating to Sundays and Holidays under Section 33-C(2) of the Industrial Disputes Act. The writ petitioners while in service, filed the writ petitions. Here in the case on hand, the contention of respondent No.1-Municipality is that the writ petitioners are granted special leaves, etc., to compensate working hours worked during holidays.

12. The writ petitions are filed with a delay of more than five years, the reason assigned by the writ petitioners for the delay is that they have given evidence in the Miscellaneous Petitions during the pendency of the same before the Labour Court, they were under the bona fide impression that there would be a communication from the Labour Court regarding the result of the Miscellaneous Petitions. As there was no communication for a quite long time, they enquired and came to know that the Miscellaneous Petitions were dismissed and there is no willful default or negligence on

their part in filing the writ petitions, at any rate, the question of delay may not come in their way in the writ petitions.

13. In view of the contentions made on behalf of the learned counsel, appearing on behalf of the writ petitions, it is appropriate to refer the decision of the Hon'ble Supreme Court in **Shankara Co-operative Housing Society Limited v. M.Prabhakar and others**⁶, wherein it is held that the delay and laches is one of the factors for refusal to exercise of discretionary power under Article 226 of the Constitution of India, 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 rights taken in conjunction with the lapse of time and other circumstances and that there is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition, and each case must be dealt with on its own facts. It is also held therein that the appellant therein, who was a respondent before the High Court had raised a specific plea of delay, as a bar to grant relief to the writ petitioners therein and there is no explanation much less satisfactory explanation offered by the respondents in approaching the Writ Court in 1966, after an inordinate delay of nearly 15 years from the date of notification dated 11.12.1952 issued under Section 7 of the Evacuee Property Act, 1950, and at every stage, there was inordinate delay in approaching the authority for redressal of their grievance, even when they approached the authorities, they were claiming wrong reliefs or incomplete reliefs.

⁶ (2011) 5 SCC 607

14. In another decision of the Hon'ble Supreme Court in **State of Jammu and Kashmir v. R.K.Zalpuri and others**⁷, it is held that in the instant case, first respondent was dismissed from service in the year 1999, chose not to avail any departmental remedy and approached High Court after a lapse of about 5½ years and hence, the grievance of respondent did not deserve to be addressed on merit, for doctrine of delay and laches had already visited his claim and that stale claims should not be adjudicated unless the same causes grave injustice.

15. As seen from the record, the writ petitioners herein have simply blamed the Labour Court for not intimating the result of the proceedings in the Miscellaneous Petitions filed by them, they are all municipal employees, they cannot plead ignorance, the unexplained delay is more than five years, the relief claimed by them is akin to the provisions of Section 33-C(2) of the Industrial Disputes Act, 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, and that 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 scrutinize the lis, at a belated stage, should be entertained or not. Be it noted, the inordinate delay comes in the way of equity. The unexplained inordinate delay invited disaster to the litigants in these writ petitions. The approach of the writ petitioners is very leisure,

⁷ (2015) 15 SCC 602

there is no proper required explanation, there is no violation of fundamental rights. The decisions rendered in the above cases are squarely applicable to the case on hand. The learned Single Judge analysed all the aspects in question and recorded a well reasoned finding. In an intra-Court appeal, filed under Clause 15 of the Letter Patent, the intervention of this Court is limited, where a patent illegality is committed. There is no infirmity in the impugned common order and accordingly, the same is confirmed.

16. In the result, the impugned common orders under appeals are confirmed and the Writ Appeals are dismissed. There shall be no order as to costs. As a sequel, pending miscellaneous petitions, if any, shall stand closed.



(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J.)

Date:15-03-2017

siva