

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.140 of 2018

Bindu Devi, Wife of Late Subhash Chandra Choudhary, Resident of Mohalla-Akasho Tola (Bariarpir), P.S.- Muffasil Munger, District- Munger.

... .. Petitioner/s

Versus

1. The Bihar State Road Transport Corporation Through Its Managing Director, Pariwahan Bhawan, Veerchand Patel Road, Patna.
2. The Administrator, Pariwahan Bhawan, Veerchand Patel Road, Patna.
3. The Chief Accounts Officer, Bihar State Road Transport Corporation, Pariwahan Bhawan, Veerchand Patel Road, Patna.
4. The Divisional Manager, Bihar State Road Transport Corporation Tilkamanjhi Bus Depot, Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Mrityunjay Kumar

For the Respondent/s : Mr. Prabhat Kumar Verma

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 03-10-2018

Heard learned counsel for the petitioner and counsel for the State as also counsel for the Bihar Road Transport Corporation.

In the present case, the petitioner is the wife of Late Subhash Chandra Choudhary who was an employee of Bihar State Road Transport Corporation. Her husband was terminated from service and that matter was referred to the Labour Court, Bhagalpur which was registered as Reference Case No. 19 of 1979 and the Labour Court has passed the award with full back wages. That award was challenged before this Court in C.W.J.C. No. 8405 of 1993 and the said writ application of the Corporation was rejected and, thereby, affirmed the order passed by the Labour Court, Bhagalpur. It also appears that another writ application was



filed against the same award in C.W.J.C. No. 8410 of 1993 and the same was disposed of on 4.9.1995 in view of the order passed in C.W.J.C. No. 8410 of 1993. There is no dispute that the order passed by the Labour Court finally settled the lis as the writ application filed by the Corporation was not entertained. After the rejection of the writ application, the husband of the petitioner was reinstated but, the salary of back-wages having not been paid to the husband of the petitioner during his life time, also appears that the husband of the petitioner did not pursue for payment of salary of back-wages thereafter.

The wife has filed the present writ application and she wants that the award, which was given in favour of her husband, should properly be translated to the reality as though the husband was reinstated but, was deprived of the back-wages.

Learned counsel for the Corporation has submitted that in terms of the agreement, the husband of the petitioner was allowed to join the service but, with a condition of deprivation of the back-wages.

Nothing has been brought by the Corporation to show that the husband of the petitioner had entered into agreement with the Corporation with respect to deprivation of his back-wages and the question has been raised by the Corporation that after delay of



about 22 years, this Court should not entertain the application for giving a direction for payment of back-wages to the wife of an ex-employee of the Transport Corporation and placed reliance on the judgment passed in Appeal (Civil) No. 953 of 2004 where the delay of 17 years was not accepted by the Hon'ble Apex Court. In that case, the appeal was filed after delay of 17 years before the High Court under the second appeal, inasmuch as, the issue was finally decided by the Hon'ble Apex Court in another writ application which reached to its finality. In that context, the Hon'ble Apex Court has held that the condonation of delay for 17 years was not justified.

Learned counsel for the Corporation has placed reliance in the case of Malti Kumari Vs. The State of Bihar & Ors. reported in 2013 (2) PLJR 677.

In the present writ application, there is no condonation of delay. So far, entertainment of the writ application after long delay depends upon different factors, exercising writ jurisdiction having has wide and untrammelled power than that of relates to exercise of power under common law. So the judgment that has been cited by the Corporation is not applicable to the fact of this case whereas this Court in Mohan Prasad Singh Vs. The state of Bihar & Ors. reported in 2000(2) PLJR 187, has considered the



scope and power under writ jurisdiction and scope of entertainment of writ application after long delay, the Court, placing reliance on the judgment passed in the case of Ramchandra Shankar Deodhar & Ors. Vs. The State of Maharashtra & Ors. reported in AIR 1974 SC 259, held that delay and laches will be fatal in the event the third party right has been created, in the event third party right has not been created and the right has already been adjudicated in favour of the petitioner, partly acted upon, he cannot be deprived of the right to be implemented in his or her favour.

In the present case, it will be relevant to quote paragraph no.14 to 26 of the aforesaid judgment which reads as follows:

“14. The principles on which such discretion is to be exercised have been indicated as early as in 1874 when Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Arm Strong Hurd, reported in (1874) 5 Privy Council, page 221 at page 229, sitting in the judicial Committee of the Privy Council, laid down the same with such felicity of expression that this Court can do nothing but quote the same.

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet



put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

(emphasis supplied).

15. About the said exposition of principle a few years later, Lord Blackburn, again sitting in the Privy Council, and referring to the aforesaid passage in *Hurd (supra)* observed in the case of *Emile Erlanger v. The New Sombrero Phosphate Company*, reported in 1877 (3) *Appeal cases* page 1218 at page 1279 “I have looked in vain for any authority which gives a more distinct and definite rule than this”.

16. In a very well considered Full Bench judgment of the erstwhile Nagpur High Court in the case of *Krishna Rajeshwar v. The Chief Secretary to the M.P Government, Police Department, Nagpur* reported in AIR 1954 Nagpur page 151, Justice Bhutt speaking for the Full Bench laid down the same principles very lucidly in paragraph 28 of the judgment. His Lordship was pleased to observe while



referring to Article 226 of the Constitution that wide and untrammelled are its power. The Court acting under Article 226 of the Constitution cannot be precluded from rectifying a grave injustice simply because the petitioner could have not moved in the matter earlier. According to the learned Judge the object of the jurisdiction, in such cases, is the removal of grave and patent errors which infringe on human rights and unless, by undue delay or laches, inconsistent legal or equitable considerations have arisen which judicial conscience can not with equanimity ignore, justice should not be denied simply because the Court has not been moved soon after the injury was caused or threatened and the delay has not been explained.

(emphasis added)

17. This Court is entirely in agreement with the aforesaid proposition.

18. The Apex Court in our country has also expressly approved the aforesaid elucidation of the principle by Sir Barnes Peacock in the Constitution Bench judgment in the case of the Moon Mills Limited v. M.R Meher, President Industrial Court, Bombay reported in AIR 1967 S.C page 1450 by quoting the aforesaid passage in Hurd (supra) in paragraph 6 at page 1454 of the said judgment.

19. After the Judicature Act, 1973, there is hardly any division in England between the Court of Equity and Common Law and it has been held by Lord Cairns in PUGH v. Heath reported in 1882 (7) Appeal Cases page 235 at page 237 that the Court “is now not a court of law or a court of equity. It is a court of complete jurisdiction”.



20. Similarly the Apex Court has also declared in the case of *Delhi Development Authority v. Skipper Construction Company (P) Limited* reported in (1996) 4 SCC 622 that in India the Courts are not only the courts of law but also the courts of equity.

21. Therefore, those principles formulated by Sir Barnes Peacock as governing the doctrine of laches in courts of equity apply with full force to this Court exercising the writ jurisdiction under the Constitution of India.

22. The question can be also considered from another angle. Under Article 226, power is conferred on High Court to issue different writs mentioned therein for achieving twin objectives—one is for the enforcement of any of the right conferred by Part III and the other is for 'any other purpose'. But it is well settled that when there is an infringement of fundamental right, as in this case, the Court will liberally consider the objection on the ground of delay and laches.

23. Thus it said that the power under Article 226 of the Constitution has been conferred in very wide terms and to secure the aforesaid two objectives. This makes the jurisdiction of the High Court under Article 226 of the Constitution much wider than the jurisdiction conferred on the Hon'ble Supreme Court under Article 32 of the Constitution.

24. Even then in a proceeding under Article 32 of the Constitution, the Constitution Bench of the Supreme Court in the case of *Ramchandra Shankar Deodhar v. The State of Maharashtra* reported in (1974) 1 SCC 317 : AIR 1974 S.C page 259 condoned the delay of about more than 10 or 12 years in filing the writ petition since the accrual of



the cause of action. (See paragraph 9 of the said judgment). This case was cited by the petitioners' Counsel.

25. While overruling the preliminary objection raised by the respondents on the ground of delay the Hon'ble Supreme Court affirmed the principle laid down by Hon'ble Mr. Justice Hidayatullah in the case of Tilockchand Motichand v. H.B Munshi reported in (1969) 1 SCC 110 : AIR 1970 S.C page 898. The principles laid down in Tilockchand Motichand (supra) was summarised by the Constitution Bench of the Supreme Court in R.S Deodhar (supra) in the following words:—

“It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay.

(emphasis added)

26. Even though in the case of R.S Deodhar provisional promotions have taken place but the learned Judges of the Supreme Court interfered with the same after so many years on the ground that the promotion being provisional they have not conferred any right on those promotees. However, in the instant case no such parallel rights have come into existence. So the observation of the Supreme Court in R.S Deodhar (supra) applies here with stronger force. In Deodhar (supra) the Apex Court concluded in paragraph 9 as follows:



“That the claim for enforcement of the fundamental right of equal opportunity under Article 16 is itself a fundamental right guaranteed under Article 32 and this Court which has been assigned the role of a sentinel on the qui vive for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like”.”

This judgment in detail has considered the effect of delay and laches in entertainment of writ petition, the Court said that the exercise of jurisdiction under Article 226 is a wide, is untrammelled and relief cannot be deprived when the Court has found that great injustice has been done to the petitioner.

In the present case, admittedly the right has already precipitated in the shape of award passed by the Labour Court and unsuccessfully the Transport Corporation has challenged the order, the award partly implemented and for implementation of rest part of the ward, this writ petition has been filed. It is high time that the Corporation, being a State under Article 12 of the Constitution of India, which obligates that the Corporation should not take advantage of the weakness of the employee as the Corporation has a great bargaining power whereas the employee has none and, that too, a widow who is clamoring for justice in the shape of granting the benefit of back wages which till date has been negated.



In that view of the matter, this Court directs the Corporation to calculate the amount which the husband of the petitioner would be entitled and make payment within a period of three months from the date of receipt/production of a copy of this order and this Court is not giving direction for any interest on the reason that the application has been filed after a long delay.

With the aforementioned observation and direction, this writ application is disposed of.

(Shivaji Pandey, J)

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CAV DATE	NA
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