

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

Writ Petition Noo.26739 of 2010

ORDER: {Per Hon'ble Sri Justice Ramesh Ranganathan }

The relief sought for in this writ petition is for a mandamus to declare the action of the 1st respondent in not fixing the seniority of the petitioner above that of the 2nd respondent, by treating the date of appointment of the petitioner by promotion to the post of Telugu Typist as on 28.03.1988 and to the post of Senior Assistant as on 02.07.2010, as arbitrary and illegal; and to, consequently, alter the annual gradation list as on 01.07.2009 by granting all consequential benefits attached to the post of Senior Assistant.

The petitioner's case, in short, is that the 2nd respondent was appointed as an Attender on 01.04.1986; two posts of Telugu Typists fell vacant, one at Nizamabad and the other at Bodhan; the 2nd respondent was illegally appointed as a Telugu Typist on 06.04.1988; the petitioner was appointed as a Telugu Typist on 27.01.1989; in terms of the amendment to the Rules, notified in G.O.Ms.No.517 dated 29.10.1987, those candidates, who were appointed prior to 29.10.1987, were eligible for appointment, on recruitment by transfer, to the post of Telugu Typist only if they had put in not less than five years of regular service; as the 2nd respondent was appointed as an Attender only on 01.04.1986, he did not put in 5 years of regular service by the time he was appointed as a Telugu Typist on 06.04.1988; and though the petitioner had raised this objection, in his representation dated 05.05.2010, the respondents have not acted thereupon.

On the specific plea taken by the respondents, in the counter-affidavit, that the writ petition, as filed, suffers from inordinate delay and laches, and the petitioner has belatedly invoked the jurisdiction of

this Court 22 years after the 2nd respondent was appointed as a Telugu Typist on 06.04.1988, Sri B.Vijaysen Reddy, learned counsel for the petitioner, would submit that the initial appointment of the 2nd respondent is contrary to the Rules, made under the proviso to Article 309 of the Constitution of India, and is illegal; no right is conferred on the 2nd respondent to continue in service on the basis of such an illegal appointment; and, since the petitioner became aware of these facts only in the year 2009, he cannot be faulted for the delay in invoking the jurisdiction of this Court, soon thereafter, questioning the illegal appointment of the 2nd respondent as a Telugu Typist.

As noted hereinabove, the relief which the petitioner seeks in this writ petition is only to fix his seniority over and above the 2nd respondent treating his date of appointment to the post of Telugu Typist as 28.03.1988, prior to 06.04.1988 when the 2nd respondent was appointed to the said post. The appointment of the 2nd respondent as a Telugu Typist has not been directly put in issue in the Writ Petition. The challenge is only to his seniority by way of a collateral attack on the validity of his initial appointment as a Telugu Typist. The petitioner has not even explained, in the writ affidavit, why he did not invoke the jurisdiction of this Court earlier questioning the appointment of the 2nd respondent as a Telugu Typist on 06.04.1988. This plea of lack of knowledge has been raised for the first time in the reply affidavit.

It is well settled that the power of the High Court to issue an appropriate writ, under Article 226 of the Constitution, is discretionary and the High Court, in the 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 in filing a writ petition, and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ

jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not, ordinarily, permit a belated resort to the extra-ordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience, and bring in its train new injustices. When the writ jurisdiction of the High Court is invoked, unexplained delay, coupled with the creation of third party rights in the meanwhile, is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. Where there is inordinate and unexplained delay, and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal. (**State of M.P. v. Nandlal**¹; **Ramanna Dayaram Shetty v. International Airport Authority of India**²; and **Ashok Kumar Mishra v. Collector Rajput**³). This rule of laches or delay is not a rigid rule which can be cast in a straitjacket formula, for there may be cases where, despite delay and creation of third party rights, the High Court may still, in the exercise of its discretion, interfere and grant relief to the petitioner. But such cases, where the demand of justice is so compelling that the High Court would be inclined to interfere inspite of delay, or creation of third party rights, would, by their very nature, be few and far between. Ultimately it would be a matter within the discretion of the Court. Ex-hypothese every discretion must be exercised fairly and justly so as to promote justice and not to defeat it. (**Nandlal**¹). In the present case, the unexplained delay is more than 22 years. We see no reason, therefore, to entertain a belated challenge to the seniority of the 2nd respondent being fixed above the petitioner, as his appointment as a Telugu Typist was on

¹ AIR 1987 SC 251

² [1979] 3 SCR 1014

³ [1980] 1 SCR 491

06.04.1988 which is prior to the date on which the 2nd respondent was appointed to the post.

The Writ Petition fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(N.BALAYOGI, J)

25th July, 2018
JSU



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Date: 25.07.2018