

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.7311 OF 2010

DATED :13.03.2018

Between :

Bandari Satyanarayana,
S/o.Bandari Sundaraiah,
Aged about 47 yrs, Occu : Driver in A.P.S.R.T.C.,
Mancheria Depot, Adilabad District.

.. Petitioner

And

The Andhra Pradesh State,
State Road Transport Corporation,
Rep., by The Depot Manager,
A.P.S.R.T.C., Mancheria Depot,
Adilabad District & others.

.. Respondents



This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.7311 OF 2010

ORDER :

While petitioner was driving bus bearing No. AP 9 Z 949 on 10.04.1992 a child was hit by the said bus. Child succumbed to grave injuries suffered by him in the accident. Disciplinary proceedings were initiated against petitioner alleging that he drove the bus in a rash and negligent manner with lack of anticipation resulting in fatal accident. The disciplinary action resulted in imposing punishment of removal from service by order dated 03.09.1992. On appeal, the appellate authority while holding the charge as valid, took lenient view on humanitarian grounds, gave petitioner one more opportunity by modifying the punishment of removal by order dated 12.01.1993, to that of with holding of two annual increments with cumulative effect. Pursuant thereto, petitioner joined duty on 15.01.1993. It appears, revision preferred by petitioner after five years was rejected. Thereafter petitioner raised industrial dispute in I.D.No.33 of 2000 on the file of Industrial Tribunal-cum-Labour Court at Godavarikhani (for short 'the Labour Court'). The Labour Court dismissed the I.D., on the ground of delay in raising industrial dispute after six years. This writ petition is filed eight years after the dismissal of Award.

2. In the affidavit filed in support of the writ petition, petitioner claimed that the Advocate on record before the Labour Court expired. Therefore, he could not know the result of I.D and only when he came to know about the death of advocate, he filed application in the year 2010 to secure a copy of the Award and thereafter, this writ petition is filed.

3. The affidavit is silent as to when the counsel on record before the Labour Court expired and when petitioner came to know about his death. The affidavit is also silent as to what petitioner was doing for more than eight years after the Award was passed. In normal circumstances, a litigant cannot be silent for eight long years to find out result of the I.D., before the Labour Court. This delay has to be seen in the background of case in raising the industrial dispute.

4. Learned counsel for the petitioner sought to contend that the criminal case ended in acquittal and therefore, the charge is liable to be declared as null and void on that ground.

5. It is seen that petitioner was acquitted in the criminal case on 20.12.1993 and after acquittal also, he kept quiet for six years in raising the industrial dispute. A reading of the order would show that issue of acquittal was also not placed before the Labour Court.

6. The principle of law is well settled that though there is no time limit prescribed in raising the industrial dispute, but the party should raise the industrial dispute within a reasonable time and if there is inordinate and unexplained delay in raising industrial dispute, the same is liable to be rejected on that ground alone.

7. Similar issue has come up for consideration before the Supreme Court in **Prabhakar v. Joint Director, Sericulture Department and others**¹. In the said case, the appellant services were terminated on 1.04.1985, whereas industrial dispute was raised in the year 1999 i.e., after a period of more than fourteen years. The Labour Court passed award directing reinstatement of appellant. The said award was upheld by the learned single Judge of Karnataka High Court. On appeal, the Division Bench of Karnataka High Court reversed the decision of the learned single Judge and set aside the award on the ground of raising the industrial dispute after a long delay. The Division Bench of the High Court held that no live dispute survived for adjudication even though no period of limitation is prescribed in Industrial Dispute Act and provisions of the Limitation Act are not applicable to disputes under the Industrial Disputes Act. There could not have been reference at such belated stage and after lapse of abnormal delay, appropriate Government has no jurisdiction or power to make a reference of non-existent dispute. Supreme Court also observed that between 1.4.1985 and till 1999, appellant did not approach any judicial or quasi-judicial authority; not even any notice or legal notice was served on the management. Only in the year 1999, he approached the appropriate Government alleging illegal termination and violation of the provisions of Section 25(F) of the Industrial Disputes Act. He did not give satisfactory explanation on the delay.

8. The Supreme Court extensively considered the scope of relevant provisions and precedent decisions. The Supreme Court

¹ 2015 LawSuit(SC) 1178

held that there was inordinate, unexplained delay in referring the dispute. It is useful to extract the observations of Supreme Court as under:

“8. It maybe stated that the question is of utmost importance as it is seen that many times, as in the instant case, the workers raise dispute after number of years of the cause of action. Whether the dispute can still be treated as surviving? Or whether it can be said that dispute does not exist when the concerned workmen after his say termination kept quiet for number of years and thus acquiesced into the action?

(9) to (35) xxxxx

36. It is now a well recognized principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases Courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity “delay defeats equities”.

38. Likewise, if a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while the act is in progress he cannot afterwards complain. This principle is based on the doctrine of acquiescence implying that in such a case party who did not make any objection acquiesced into the alleged wrongful act of the other party and, therefore, has no right to complain against that alleged wrong.

42. To summarise, although there is no limitation prescribed under the Act for making a reference Under Section 10(1) of the Act, yet it is for the 'appropriate Government' to consider whether it is expedient or not to make the reference. The words 'at any time' used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to proceedings under the Act. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers' financial arrangement and to avoid dislocation of an industry. "

9. Pursuant to orders of appellate authority petitioner joined duty on 15.01.1993. Long before petitioner had undergone modified punishment. He preferred revision after five years. Thereafter petitioner raised industrial dispute in I.D.No.33 of 2000. The Labour Court dismissed the I.D., on the ground of delay in raising industrial dispute after six years. Having regard to the facts of this case, I do not see any error in the decision of the Labour Court nor can the decision be called perverse to exercise power of judicial review to nullify the decision of Labour Court. This writ petition is filed eight years after the dismissal by labour court. There is no satisfactory explanation for the delay in filing the writ petition. Even assuming petitioner is entitled to relief of complete exoneration, granting of such relief would put the respondent

corporation to inconvenience and hardship for no fault of the corporation.

10. The appellate authority exercised appellate jurisdiction more as compassion to grant limited relief of reinstatement to duty to give one opportunity to employee and on humanitarian grounds imposed less severe punishment. Mere acquittal in a criminal case is not a ground to seek nullifying the departmental proceedings. The nature of evidence required in departmental proceedings is based on the principle of preponderance of probabilities to establish a charge and the conduct of employee. The driver of the respondent-Corporation is expected to be very alert in performing his duties and any amount of negligence can result in fatal accident. In the case on hand, a child lost his life at a young age. Admittedly, petitioner was not found at the scene of incident, where accident occurred. It is not a case of exoneration of the charges levelled against him. Thus, in the facts of this case, even on merits it cannot be said that the appellate authority erred in modifying the punishment.

11. Thus, in the facts of this case it is not just and equitable to grant the prayer sought by the petitioner. I do not see any merit in the writ petition and is dismissed. Pending Miscellaneous Petitions stand closed.

P.NAVEEN RAO,J

13th March, 2018
Rds