

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

+ WRIT PETITION NO. 26718 of 2018

%07.08.2018

The Depot Manager,
APSRTC, Ongole Depot, Prakasam district

... Petitioner

Vs.

\$ K V Subba Rao S/o Narasimham
54 years Ex Conductor
APSRTC Ongole Depot
R/o 58-10-10 Santhapet, Ongole
Prakasam district and another

.... Respondents

!Counsel for the petitioner : Mr P Durga Prasad

Counsel for the Respondent No.1 : --

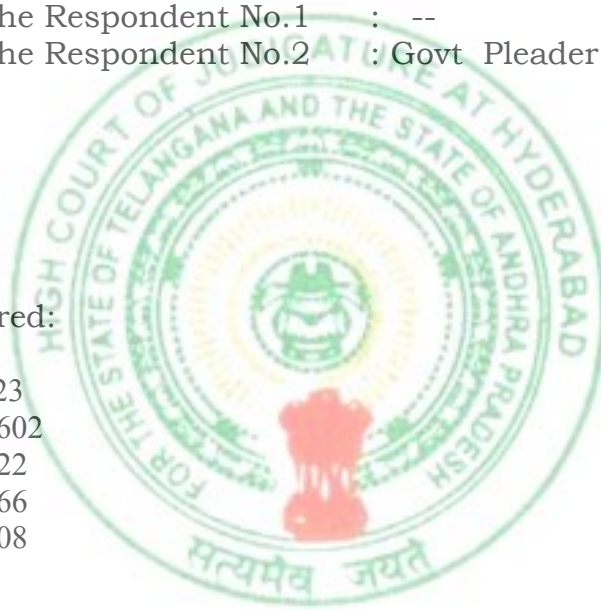
Counsel for the Respondent No.2 : Govt Pleader for Labour (AP)

<Gist :

>Head Note:

? Cases referred:

AIR 1955 SC 423
(2015) 15 SCC 602
(2006) 4 SCC 322
(1986) 4 SCC 566
(2014) 4 SCC 108



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

WRIT PETITION NO. 26718 of 2018

Between :

The Depot Manager,
APSRTC, Ongole Depot, Prakasam district

.... Petitioner

And

K V Subba Rao S/o Narasimham
54 years Ex Conductor
APSRTC Ongole Depot
R/o 58-10-10 Santhapet, Ongole
Prakasam district and another

.... Respondents

JUDGMENT PRONOUNCED ON : 07-08-2018

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may :
Be allowed to see the Judgments ? :YES
2. Whether the copies of judgment may be marked :
To Law Reporters/Journals : YES
3. Whether Their Ladyship/Lordship wish to :
See fair Copy of the Judgment ? :--No--

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 26718 of 2018

Date : 07.08.2018

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Prakasam district and another

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NO.26718 OF 2018

ORAL ORDER:

In this writ petition the Andhra Pradesh State Road Transport Corporation (for short Corporation) is challenging the award passed by the Labour Court, Guntur in I.D.No.4 of 2009 dated 3.6.2013. By the said award the Labour Court held the punishment of removal from service as illegal and issued consequential directions.

2. The facts that can be culled out from the averments made in the affidavit filed in support of the writ petition are that first respondent-workman was served with charge sheet dated 9.8.2006 alleging that while he was conducting bus service on 27.7.2006 there was shortage of tickets and certain other illegalities were noticed. Charge sheet contains three charges. The sum and substance of the allegation is that he failed to maintain record properly and correct tickets in the hand tray, shown less issue of 3/- denomination tickets, though sold the tickets and misappropriated amount of 70/- and re-issued certain tickets which were already issued. The disciplinary action resulted in imposing punishment of removal from service vide proceedings dated 5.4.2007, affirmed by Appellate and Revisional authorities. Aggrieved thereby, petitioner raised Industrial Dispute under Section 2 (A) (2) of the Industrial Disputes Act, 1947 (for short, 'Act, 1947'). The Labour Court by its award dated 3.6.2013 partly allowed the claim, set aside the order of removal and directed to reinstate the first respondent with continuity of service and all other attendant benefits but without back wages.

3. Heard Sri Durga Prasad, learned standing counsel for petitioner Corporation.

4. Learned standing counsel for petitioner corporation sought to contend that the Labour Court erred in not appreciating the contentions urged on behalf the petitioner and without assigning reasons passed award and award is liable to be set aside on the sole ground that it is bereft of reasons in support of the decision.

5. Before appreciating this contention, having regard to the fact that the award was passed on 3.6.2013, learned counsel for petitioner was asked to satisfy the reasons for delay in instituting the writ petition. Learned counsel for petitioner would fairly submit that no reasons are assigned in the affidavit filed in support of the writ petition. The first respondent has instituted Execution Petition before the Labour Court and persisting for compliance of the award and at that stage the writ petition is filed. He would submit that as award is ex-facie vitiated, the Court may condone the delay and entertain the writ petition.

6. As fairly submitted by the learned standing counsel appearing for petitioner Corporation, there is no whisper in the affidavit filed in support of the writ petition on various steps taken by the petitioner corporation after the award was received by them, but contentions are raised on merits.

7. 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 of the Constitution of India is an extraordinary remedy and equitable. Grant of relief to an aggrieved person is discretionary in the hands of writ Court. Though there is no fetters imposed on writ Court to entertain the writ petition, ordinarily writ Court do not entertain the writ petitions on stale matters; more so, where rights accrued to opposite party and entertaining a writ petition after long lapse of time would have adverse consequences on such person. In a given case, writ Court may ignore the inordinate delay in instituting the writ petition, provided it has wider ramification or cause public mischief requiring court interference and laying down law or when the order is ex-facie unsustainable warranting exercise of extraordinary jurisdiction by the writ Court. However, the minimum that is expected from the petitioner seeking to litigate before this court by invoking extraordinary jurisdiction under Article 226 of the Constitution of India, when the delay is long, is to explain steps taken by it after the Award copy was received or whether any mischief was played by officials concerned keeping it in dark about the award passed by the Labour Court and allowed it to lie over till the notice in Execution Petition is received.

8. In **Sangram Singh v. Election Tribunal**¹, 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

¹ AIR 1955 SC 423

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)

9. 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.

10.1. In **State of Jammu and Kashmir v. R.K. Zalpuri and others²**, the very issue of delay in instituting the writ petition after long lapse of time was considered. It was a case of dismissal and 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 holding that Rule 34 of the Classification, Control and Appeal Rules was not

² (2015) 15 SCC 602

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 and held:

"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, MANU/SC/8250/2008 : (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." (emphasis supplied)

11. In this regard reference to a passage from **Karnataka Power Corpn. Ltd. v. K. Thangappan**³ would be apposite:

"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."

(emphasis supplied)

12. After so stating the Court by referring to the authority in **State of M.P. v. Nandlal Jaiswal**⁴ restated the principle articulated in earlier pronouncements to the following effect:

"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

³ (2006) 4 SCC 322

⁴ (1986) 4 SCC 566

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."

(emphasis supplied)

13. In **Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu**⁵, it is ruled thus:

"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)

14. Supreme Court further 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)

15. The claim of petitioner is stale. Petitioner was in deep slumber for 5 years and woke up only when EP was pressed. There is no whisper of steps taken and cause for delay. As held by Supreme Court in **Chennai Metropolitan Water Supply and Sewerage Board v. Murali Babu** (supra): *'law does not permit one*

⁵ (2014) 4 SCC 108

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 5 years. Having regard to inordinate delay of 5 years the Court declines to exercise discretionary and equitable jurisdiction.

16. However, the Court has also considered the submissions of learned standing counsel for petitioner Corporation on the merits of the award to test whether Court can relax the rigors of delay in invoking the extra-ordinary jurisdiction.

17. It was the forcible contention of learned standing counsel that the award is bereft of reasons; except narrating the respective contentions, no reasons are assigned in support of the decision and after extracting precedent decisions straight-away conclusions are recorded by the Labour Court and therefore the award is vitiated on that ground.

18. I see no merit in the said contention. On going through the award, it is seen that the Labour Court has recorded the charges leveled against the petitioner; the procedure followed thereon; recorded the contentions urged by the first respondent-workman and the contentions urged on behalf of petitioner Corporation in their counter affidavit and then the Labour Court proceeded to formulate the following points for its consideration:

1. Whether, the punishment of removal of the petitioner from the service is justified?
2. If not, to what relief, the petitioner is entitled?

19. Under Point No.1, the Labour Court went on to discuss the evidence brought on record and the contentions of Law Officer of the petitioner Corporation and the contentions of learned counsel for first respondent and then proceeded to discuss about the charges and the evidence.

20. It is useful to extract relevant portions of the award, which reads as under:

“A perusal of Charge Memo Ex.M4 shows that the checking officials have mentioned the irregularities committed by the petitioner with regard to Charge No.1 only. But subsequently, the first respondent framed charges 2 and 3.

In Ex.M5 check sheet also, there was no mention with regard to Charges 2 and 3 by the checking officials.

Ex M20 is Domestic Inquiry Statement of Sri L.K.Murthy, TTI who conducted check on the petitioner. He confined his statement with regard to Charge No.1 only. The said witness has not stated anything with regard to charges 2 and 3. Except, this witness, either the Inquiry Officer or the respondents have not produced any witnesses in support of the charges 2 and 3. Even the first respondent who framed charges 2 and 3 has also not examined during the course of inquiry. However, without examining any witnesses in support of charges 2 and 3, the Inquiry Officer held that the charges 2 and 3 were also proved against the petitioner.”

21. It is, therefore, seen from the above extracted paragraphs that the Labour Court observed that statement of Mr L.K.Murthy confines to charge no.1 only and that he has not stated anything with regard to charge nos. 2 and 3. The Labour Court further held that except said witness, the Enquiry Officer or the respondents have not produced any witnesses in support of charges 2 and 3. The Labour Court further observed that even without examining the witnesses in support of charges 2 and 3 the Enquiry Officer held the charges as proved. Labour Court went on to discuss the contentions of learned counsel for petitioner therein/workman and decisions relied upon by him and then went on to add that the said decisions of the Hon'ble Supreme Court

would aptly apply to the case. It is thus seen that the Labour Court has not directly jumped to the conclusion after recording the respective submissions, as sought to be contended but applied its mind, assessed the evidence on record and then recorded its findings and held that punishment of removal is shockingly disproportionate to the gravity of the first charge and held that the facts of the case require the Labour Court exercise discretion vested under Section 11-A of the Act, 1947 and accordingly answered the first point. Thus, it is not a case of non-application of mind or mechanical disposal. It's a reasoned order.

22. Since the findings recorded by the Labour Court are on merits, the jurisdiction of this Court to interfere on the award passed by the Labour Court in exercise of power of judicial review is very limited. The Court can entertain a writ petition only if there is perversity in the decision of the Labour Court or *ex facie* violation of principles of natural justice or award is bereft of reasons but writ Court cannot act as appellate authority, re-appreciate the evidence on record and come to conclusion different from the conclusion arrived at by the Labour Court. Further, writ court do not interfere in the discretion exercised by the Labour Court vested in it by Section 11-A of the Act, 1947 unless perversity in the reason to exercise is palpable.

23. Having regard to these parameters and fact that the Labour Court has assessed the evidence on record and has recorded its findings in support of the decision rendered, no case is made out even on merits.

24. Thus, writ petition is liable to be dismissed and it is accordingly dismissed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 07.08.2018
tvk/kkm



HONOURABLE SRI JUSTICE P. NAVEEN RAO



WRIT PETITION NO.26718 OF 2018

Date: 07.08.2018

Tvk/kkm

