

*** HONOURABLE SRI JUSTICE P. NAVEEN RAO**

+ WRIT PETITION No.1374 OF 2020

% 24.01.2020

M.A.Abdul Rasheed S/o Mahabub
Ali, aged 57 years, Occ:Nil,
R/o H.No.31-131/5, Bhagath Singh
Nagar, Wanaparthi, Mahabubnagar and another

.. Petitioners

And

\$ The State of Telangana,
rep. by its Principal Secretary,
Department of Registration and Stamps,
Government of Telangana, Secretariat,
Hyderabad and others.

.. Respondents

! Counsel for the petitioners : Ms.Vladimeer Khatoon

Counsel for respondents : Learned Government Pleader
for Stamps and Registration
for the respondents

< Gist :

> Head Note :

? Citations:

1. (2015) 15 SCC 602
2. (2006) 4 SCC 322
3. (1986) 4 SCC 566
4. (2014) 4 SCC 108

IN THE HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.1374 of 2020

Between :

M.A.Abdul Rasheed S/o Mahabub
Ali, aged 57 years, Occ:Nil,
R/o H.No.31-131/5, Bhagath Singh
Nagar, Wanaparthi, Mahabubnagar and another

..... Petitioners

And

The State of Telangana,
rep. by its Principal Secretary,
Department of Registration and Stamps,
Government of Telangana, Secretariat,
Hyderabad and others.

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 24.01.2020

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers : Yes
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

THE HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.1374 OF 2020

DATE : 24.01.2020

Between :

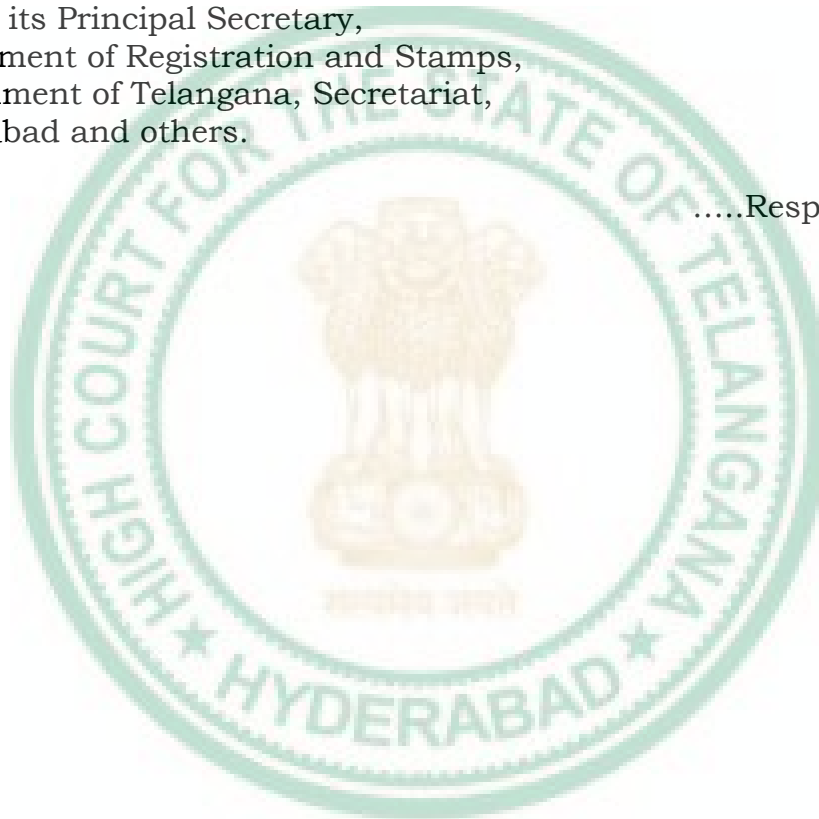
M.A.Abdul Rasheed S/o Mahabub
Ali, aged 57 years, Occ:Nil,
R/o H.No.31-131/5, Bhagath Singh
Nagar, Wanaparthi, Mahabubnagar and another

..... Petitioners

And

The State of Telangana,
rep. by its Principal Secretary,
Department of Registration and Stamps,
Government of Telangana, Secretariat,
Hyderabad and others.

.....Respondents



The Court made the following:

THE HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.1374 of 2020

ORDER :

The 1st petitioner claims that he was appointed as Lower Divisional Clerk (LDC) in Registration and Stamps Department *vide* proceedings, dated 02.12.1975. While so, *vide* letter, dated 15.11.1976, he was asked to appear before the District Collector for an oral test to be held on 16.11.1976. Thereafter, by proceedings, dated 03.12.1976, he was removed from service. The order of removal was challenged before the Hon'ble Administrative Tribunal in R.P.No.152 of 1977. The Tribunal heard R.P.No.152 of 1977 along with R.P.No.230 of 1976 and batch on 14.11.1978 and issued directions to the respondents therein for reinstatement of the applicants therein.

2. The 1st petitioner alleges that those directions are yet to be complied. Subsequently, orders were passed on 09.10.2000 rejecting the request of the 1st petitioner for appointment as Junior Assistant. In this Writ Petition, the 1st petitioner challenges the said decision.

3. In other words, this Writ Petition is instituted challenging the order of rejection of claim of the 1st petitioner for appointment as Junior Assistant after more than 19 years. In the affidavit filed in support of the writ petition, except narrating the factual background and earlier litigation, there is no pleading as to why the 1st petitioner could not institute O.A before the then Hon'ble Administrative Tribunal challenging the order of rejection. By the time the order was passed, the Hon'ble A.P. Administrative

Tribunal constituted under the Administrative Tribunals Act, 1985 (for short, 'the Act') was vested with exclusive jurisdiction to deal with service matters. As per Section 21 of the Act, the aggrieved person has to avail the remedy provided by Section 19 of the Act within one year from the date of decision, by which he is aggrieved. Thus, the petitioner had one year time from the date of rejection order, dated 09.10.2000 to institute an O.A challenging the said order. The petitioner did not avail the said remedy. The Tribunal is since abolished and an aggrieved person can institute Writ Petition before this Court under Article 226 of the Constitution of India.

4. In the following decisions, Supreme Court succinctly put the scope of exercise of power of judicial review when there is delay in knocking the doors of the High Court under Article 226 of the Constitution of India.

4.1. In **State of Jammu and Kashmir v. R.K. Zalpuri and others**¹, 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 06.09.1999. This was challenged by filing writ petition in the High Court on 18.02.2006. There was a delay of 7 years in filing writ petition.

¹ (2015) 15 SCC 602

4.2. 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 complied. Even in appeal the Division Bench has not considered objection on delay in filing writ petition. Hence, appeal before Supreme Court. Supreme Court held that the delay and laches were not satisfactorily explained and, therefore, Writ Petition was not maintainable.

4.3. 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)

5.1. In this regard reference to a passage from **Karnataka Power Corpn. Ltd. v. K. Thangappan**² 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)

² (2006) 4 SCC 322

5.2. After so stating, the Supreme Court, by referring to the authority in **State of M.P. v. Nandlal Jaiswal**³, 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 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)

6. In **Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu**⁴, 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)

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)

³ (1986) 4 SCC 566

⁴ (2014) 4 SCC 108

7. Though there is no limitation prescribed to entertain the writ petition under Article 226 of the Constitution of India, the Court certainly would look into the *bona fides* of agitating the claim and the reasons for not invoking the Administrative Tribunal within a reasonable time, to entertain the Writ Petition instituted after long lapse of arising cause of action. In this case, more particularly, at the relevant time the jurisdiction was vested with A.P. Administrative Tribunal under the Administrative Tribunals Act, 1985, which prescribed limitation as one year. As no case was filed within one year, the cause to avail legal remedy extinguished. Merely because subsequently Tribunal is abolished and no limitation is prescribed to file writ petition is not a ground to revive the cause of action. Further, independently also unless satisfactory explanation is offered on delay to institute the writ petition challenging the order of rejection of employment dated 09.10.2000, the Court would not entertain writ petition as a matter of course.

8. Learned counsel for the writ petitioners sought to contend that the 1st petitioner is a poor person and due to financial constraints, he sought for Legal Aid for filing petition before the High Court Legal Services Committee, High Court of Judicature at Hyderabad, but, the request to provide Legal Aid was rejected and on appeal filed before the Chairman, High Court Legal Services Committee, Hyderabad, the same was also rejected in the year 2017. It is seen that for the first time request to grant Legal Aid was made in the year 2014 and request was rejected on 30.11.2017. This writ petition is filed three years later to the

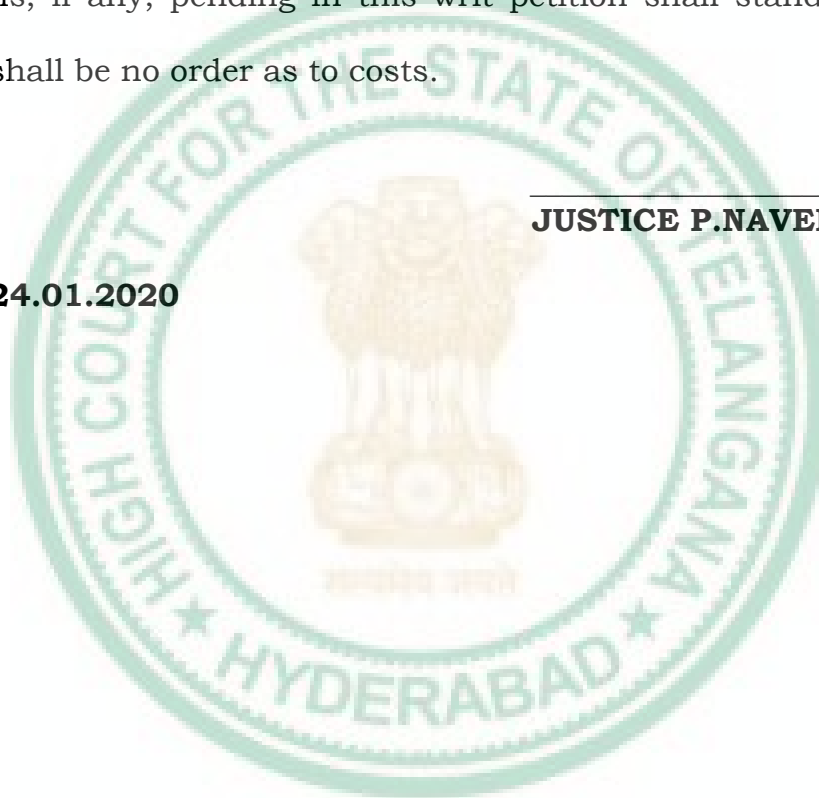
rejection of the Legal Aid. No reasons are stated why he kept quiet till 2014 and merely because Legal Aid was sought is no ground to condone the laches otherwise palpable. No sufficient cause is shown to file writ petition after 19 years from the date of decision of the competent authority. On a stale claim, Court is not inclined to go into merits. Writ Petition is liable to be dismissed on the ground of delay and laches even assuming what is claimed is valid.

9. Accordingly, the Writ Petition is dismissed. Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 24.01.2020

YVL



THE HONOURABLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION No.1374 OF 2020

DATE : 24.01.2020

YVL