

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HONOURABLE SMT JUSTICE P. MADHAVI DEVI

Between:

WRIT PETITION NO: 20750 OF 2002

B. Pentalah, S/o.Late Balarajalah, Aged about 47 years, Occ: Conductor E.No.92457,
H.No.6-13-88, Namdev Wada, Nizamabad.

AND

...PETITIONER

A.P.S.R.T.C., rep. by its Depot Manager, Bus Depot,
Kamareddy, Nizamabad.

...RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ or direction particularly one in the nature of WRIT OF CERTIORARI and quash the impugned proceeding No.T2/104[81]/86-KMR, dated 06.01.1987 as arbitrary, unjust and violation of Article 14, 16 & 21 of the Constitution of India and consequently direct the respondent's corporation to restore the deferred increment along with its consequential benefits.

WPMP. NO: 25972 OF 2002

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the impugned order dated 6.1.1987 pending disposal of the W.P. in the interest of justice and fair play.

Counsel for the Petitioner: SRI. V. NARASIMHA GOUD

Counsel for the Respondent: SRI N. PRAVEEN REDDY (SC FOR TSRTC)

The Court made the following: ORDER

THE HONOURABLE SMT. JUSTICE P. MADHAVI DEVI

WRIT PETITION NO.20750 OF 2002

ORDER

This Writ Petition has been filed by the petitioner under Article 226 of the Constitution of India seeking of a Writ of Certiorari to quash the impugned proceeding No.T2/104(81)/86-KMR, dt.06.01.1987 as arbitrary, unjust and in violation of Articles 14, 16 and 21 of the Constitution of India.

2. Brief facts of the case are that the petitioner joined the respondent organisation as a Conductor in the year 1980 and in the year 1986, while he was conducting bus service from Yerrapadu to Kamareddy, a check was exercised and certain cash and ticket irregularities were noticed. Accordingly, a charge sheet was issued to the petitioner and after due enquiry, the impugned order of stoppage of one annual increment, which next falls due, for a period of two years with cumulative effect, was passed. The petitioner has challenged this order by way of the present Writ Petition which is filed in the year 2002.

3. Learned counsel for the petitioner, Sri V. Narasimha Goud, submitted that withholding of increment with cumulative effect was a major punishment and imposition of a major penalty without proper enquiry is not legal. In support of his contentions, he placed reliance

upon a decision of this Court in the case of **P.V.Narayana and others Vs. A.P. State Road Transport Corporation rep., by its Managing Director and others**¹ and a decision of the Hon'ble Supreme Court in the case of **Kulwant Singh Gill Vs. State of Punjab**² and also a decision of a Division Bench of this Court in W.A.No.606 of 2009 dt.12.07.2017.

4. Learned counsel for the respondent, Sri N. Praveen Reddy, on the other hand submitted that this Writ Petition has been filed after a lapse of 15 years from the date of the impugned order and therefore, the Writ Petition is not maintainable. In support of his contention, he placed reliance upon the latest decision of a Division Bench of this Court in W.A.Nos.1660 of 2018 and 593 of 2016 dt.13.12.2021, wherein after considering the decision of the Hon'ble Supreme Court in the case of **Kulwant Singh Gill Vs. State of Punjab** (2 supra), the Hon'ble Division Bench held that the delay of 5 to 18 years is inordinate delay in preferring a Writ Petition under Article 226 of the Constitution and therefore, the Writ Petition is not entertainable.

5. The learned counsel for the petitioner submitted that the petitioner was pursuing the matter with a labour union and therefore only after the labour union has reported their failure, the petitioner has filed this Writ Petition. He drew the attention of this Court to the averments in the writ affidavit to this effect.

¹ 2013 (3) ALT 711 (F.B.)
² 1991 Supp(1) SCC 304

6. Having considered the rival contentions and the material on record, this Court finds that though the petitioner has stated that he had approached a labour union for redressal of his grievance and the labour union has returned the papers to him only in 2002, no evidence to this effect has been filed before this Court. Therefore, it appears to be an after-thought to get over the period of delay of nearly 15 years in filing of this Writ Petition challenging the punishment order.

7. A Division Bench of this Hon'ble Court in W.A.Nos.1660 of 2018 and 593 of 2016, dt.13.12.2021, has considered similar issue and has held as under:

"The undisputed facts reveal that a writ petition was preferred by the respondent/workman being aggrieved by order dated 03.02.1990 confirmed in review by order dated 16.09.1992 by which a punishment of stoppage of annual increment for a period of two years with cumulative effect was inflicted upon the employee. The learned Single Judge has allowed the writ petition keeping in view the judgment delivered in the case of Kulwant Singh Gill vs. State of Punjab¹.

Learned counsel appearing for the appellant/Corporation has argued before this Court that the employee in question has approached this Court after a lapse 1 1991 Supp (1) SCC 504 2 of 17 years from the date of order of punishment and therefore in the light of the judgment delivered by the Full Bench of this Court in the case of P.V. Narayana vs. APSRTC, Hyderabad and others², the order passed by the learned Single Judge deserves to be set aside.

This Court has carefully gone through the judgment delivered by the Full Bench. Before the Full Bench, the employees

¹ (1991 Supp (1) SCC 504

came up before this Court has relied upon the judgment delivered in the case of Kulwant Singh (1) *supra* and the Full Bench in paragraphs 71 to 77 has held as under:

"71. On the basis of the decisions of the Supreme Court referred to above, the relevant considerations that may be taken into account in determining the issue of delay and laches may be summarized thus:

- (1) Though no period of limitation is prescribed for the writ Courts to exercise their powers under Article 226 of the Constitution of India or to file a writ petition, a person aggrieved should approach the Court without loss of time. In appropriate cases, where there is delay and the same has properly been explained with cogent reasons, Court may condone the delay as an exception to meet the ends of justice. But, it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.
- (2) Courts have evolved rules of self-imposed restraints or fetters where the High Court may not enquire into belated or stale claim and deny relief to a party if he is found guilty of laches. One who is tardy, not vigilant and does not seek intervention of the Court within a reasonable time from the date of accrual of cause of action or alleged violation of the constitutional, legal or other right, is not entitled to relief under Article 226.
- (3) No hard and fast rule can be laid down for universal application and every case shall have to be decided on its own facts.
- (4) There is no unvariable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.
- (5) There is no lower limit or upper limit and it will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose.
- (6) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.
- (7) Where there is recklessness or negligence on the part of a party approaching the Court for relief after an inordinate and unexplained delay, in such cases, it would not be proper to enforce the fundamental right. As a general rule if there has been unreasonable delay the Court ought not ordinarily to lend its aid to a party in exercise of the extraordinary power of mandamus.
- (8) There is no waiver of fundamental right. But while exercising discretionary jurisdiction Court can take into

account delay and laches on the part of the applicant in approaching a writ Court.

- (9) Though the High Court in exercise of the power under Article 226 in its discretion grant relief in cases where the fundamental rights are violated, but, in such cases also, High Court, to meet the ends of justice, shall refuse to exercise its high prerogative jurisdiction in favour of a party who has been guilty of laches and where there are other relevant circumstances which indicate that it would be inappropriate to exercise the discretionary jurisdiction.
- (10) The maximum period fixed by the Legislatures as the time within which the relief by a writ in a writ Court must be brought may ordinarily taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured.
- (11) If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Courts have applied the rule of delay with greater rigour in service matters.
- (12) The benefit of a judgment cannot be extended to a case automatically. The Court is entitled to take into consideration the fact as to whether the petitioner had chosen to sit over the matter and wake up after the decision of the Court. If it is found that the petitioner approached the Court with unreasonable delay, the same may disentitle him to obtain a discretionary relief. Long delay disentitles a party to the discretionary relief under Articles 22 and 226 and persons who had slept over their rights for long and elected to wake up when they had the impetus from the judgment of similarly placed persons.
- (13) Where during the intervening period rights of third parties have crystallized, it would be inequitable to disturb those rights at the instance of a person who has approached the Court after long lapse of time and where there is no cogent explanation for the delay.
- (14) Where the appellate authority acting within its jurisdiction condoned the delay after being satisfied with the facts stated in relation thereto, the High Court in exercise of its powers under Article 226 or 227 of the Constitution should not ordinarily interfere with the order.

72. An analysis of the case law discussed above would amply make it clear that issue of a writ of a mandamus or certiorari is largely a matter of sound discretion and will not be granted if there is negligence or omission on the part of the person to assert his right as, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. Therefore, burden lies on the workman who has to establish that in spite of his best efforts and diligence he was prevented from approaching the authority within the period of limitation provided for or the writ Court within a reasonable period of time. If the workman is not able to satisfactorily explain with cogent reasons for the delay he is not entitled to seek for condonation of the delay. It is true that the punishment imposed cannot be sustained in law because of the illegality crept in it in not conducting a prior enquiry. But, still the workman is under a statutory obligation to challenge the same within the time provided by the statutory rules or regulations or within a reasonable period of time before the writ Court, if delay of

5 to 18 years is condoned, for no reason or fault on the part of the authority, the proceedings which had attained finality are to be set aside. Setting aside of such order at a belated stage and allowing of a stale claim may, as rightly held by the Division Bench in *Esa Ali's case (supra)*, inspire the workman to seek for consequential benefits of promotion as well, in which event, the rights of the third parties would adversely be affected for no fault of theirs. A workman who is tardy and not diligent for years in availing a statutory remedy or in approaching the Court of law, in our view, cannot be encouraged or permitted to contend that in view of the decision of the Supreme Court the punishment cannot be sustained in law, therefore, delay to any extent is to be condoned automatically in exercise of the power conferred on the appellate or revisional authorities or by the writ Courts in exercise of the discretionary powers under Article 226 of the Constitution of India. Courts can come to the aid of a person who is diligent and vigilant but unable to approach the authority or Court of law for redressal of his grievance in spite of his best efforts and reasons beyond his control but not to a person who is tardy and negligent or slept over the matter in availing the statutory or legal remedies.

73. No doubt in the present cases the punishment awarded cannot be sustained in law in view of the law laid down by the Supreme Court in *Kulwant Singh Gill's case (supra)* and in the light of the Regulations, but a specific period having been prescribed in the Regulations of the S Corporation, as stated earlier, the same need to be adhered to. The proviso under Regulation 23 empowers the appellate authority to entertain an appeal even after expiry of the period of limitation provided if it is satisfied that the applicant had sufficient cause for not submitting the appeal in time. A similar power may also be exercised under Regulation 39. If the authority is not satisfied with the explanation offered by the workman in challenging the orders of punishment, this Court, in exercise of the jurisdiction under Article 226, cannot interfere unless the conclusion arrived at by the authority that the explanation offered by the workman is not justified or germane or no prudent person would have come to such a conclusion. In appropriate cases where the appeal or revision is filed within a reasonable period of delay, it is always open to the appellate or revisional authority to condone the delay on valid explanation pro furnished by the workman in not approaching the authorities within the time specified in which event, the writ Court should not interfere with the order. In our opinion, when Regulations provided a period of two months for filing an appeal and six months for a revision, delay of 5 to 18 years in approaching the authority would certainly be fatal in the case of a workman unless properly explained with *valid reasons*.

74. It is true that in some cases where the delay is five years or so the Supreme Court inclined to condone the delay but under different circumstances when the fundamental rights are violated or where the delay is not directly attributable to the party seeking the relief or where the rights of the third parties are not intervened or in matters where seniority of employees is not finalized, the Court, would be justified to grant the relief, but not as a general rule of practice. Therefore, in our considered opinion, *Kulwant Singh Gill's case (supra)*, does not confer or clothe an automatic right with the employee to challenge the order of the authority at any time or whenever he wishes. The principles laid down by the Apex Court governing the condonation of delay will certainly and equally have application even in cases where challenge is made to an order imposing the punishment contrary to the Regulations or the ratio in *Kulwant Singh Gill's case (supra)*, where the employee had slept over the matter and had not chosen to challenge it within a reasonable period of time. It may also be noticed that in service matters, the Courts have applied the rule of delay with greater rigor.

75. We, therefore, agree with the view taken by the Division Bench in *Sd. Esa Ali's case (supra)*.

76. We answer the reference accordingly:

77. As already noted, in some cases, it was urged that no orders are passed on the appeals or revisions filed by the petitioners. In the light of the conclusions drawn above, the writ appeal and the respective writ petitions are to be disposed of by the appropriate Benches. Registry may place the matters before the appropriate Benches for disposal in accordance with law and in the light of the principles laid down in this judgment."

The delay of 5 to 18 years was held to be inordinate delay in preferring a writ petition under Article 226 of the Constitution of India.

In the considered opinion of this Court, on the issue of delay and laches, as has been considered by the Full Bench, as there was certainly an inordinate delay of 17 years in approaching this Court, the order passed by the learned Single Judge is hereby set aside.

Accordingly, the writ appeals are allowed.

This Bench in some of the cases has taken a contrary view on the issue of delay and laches, but the fact remains that the judgment of the Full Bench has been brought to our notice for the first time today and therefore, the order has been passed in the light of the judgment delivered by the Full bench.

Miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs."

8. Respectfully following the same and as the facts and circumstances in this case are similar, this Writ Petition is dismissed on the ground of inordinate delay of 15 years. No order as to costs.

9. Pending miscellaneous petitions, if any, in this Writ Petition shall also stand dismissed.

SD/-R.KARTHIKYAN
ASSISTANT REGISTRAR
SECTION OFFICER

//TRUE COPY//

- To,
1. One CC to Sri V. Narasimha Goud Advocate [OPUC]
 2. One CC to Sri N. Praveen Reddy, (SC FOR TSRTC) [OPUC]
 3. Two CD Copies
 4. One Spare Copy

CHR
NPJ

HIGH COURT

DATED:31/12/2021

ORDER

W.P.No.20750 of 2002



**DISMISSING THE WRIT PETITION
WITHOUT COSTS**

32/1/22
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