

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.27063 of 2017

*Amit Kumar Sharma*

.....

***Petitioner***

*Mr. G.N. Sahu, Adv.*

Vs.

*State of Orissa and others*

.....

***Opposite Parties***

*Mr. A.K. Mishra, AGA*

**CORAM:**

**DR. JUSTICE B.R. SARANGI**

**MR JUSTICE S.K. MISHRA**

**ORDER**

**03.08.2022**

**Order No.**

09.

This matter is taken up by hybrid mode.

2. Heard Mr. G. N. Sahu, learned Counsel appearing for the Petitioner; and Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-Opposite Parties.

3. The Petitioner has filed this Writ Petition challenging the Order dated 03.08.2017 passed in O.A. No.4281(c)/1996 under Annexure-7, by which the Odisha Administrative Tribunal, Cuttack Bench, Cuttack has dismissed the Original Application filed by the Petitioner both on merit as well as delay and laches.

4. Mr. G.N. Sahu, learned Counsel for the Petitioner contended that the Tribunal has committed error by dismissing the Original Application on the ground of delay and laches. Therefore, the Petitioner has approached this Court by filing the present Writ Petition.

5. Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-Opposite Parties contended that the Petitioner approached the Tribunal claiming the benefit in terms of the Order dated 12.12.1991 passed by this Court in OJC No.2779 of 1990, but he was not a party to the said proceeding. Subsequently, even though this Court granted leave to the Petitioner to approach the Tribunal, but the Petitioner approached the Tribunal two years thereafter, therefore, the Tribunal is well

justified in passing the Order impugned, which does not require any interference at this stage.

6. Having heard learned Counsel for the Parties and after going through the records, this Court finds that initially the Petitioner was appointed as Telephonic Attendant on DLR basis in the year 1983 and continued till July, 1990, when he was retrenched from service along with other employees. Thereafter, some retrenched employees, except the Petitioner, approached this Court by filing OJC No.2779 of 1990, wherein this Court passed Interim Order directing the Authority not to terminate the services of those employees. Since the Petitioner did not approach this Court, he was not extended with the benefit of continuance in service like other employees, who were protected by the Interim Order passed by this Court. It is the case of the Petitioner that he could not approach this Court due to financial stringency and illness of his Mother. Thereafter, he filed OJC No.7204 of 1992, which was returned to the Petitioner to approach the appropriate Forum, as per the Order dated 31.01.1994 of this Court. The Petitioner came to know such Order only on 20.03.1995 and thereafter filed the O.A. No.4281(c) of 1996. It is ascertained that the employees, who approached this Court in OJC No.2779 of 1990, have been reinstated in service, whereas even though the Petitioner is senior to such employees, he was not reinstated and has been discriminated. Therefore, the Petitioner sought for direction to Opposite Party-Authority to consider his grievance by re-engaging him following the judgment of this Court in OJC No.2779 of 1990, disposed of on 12.12.1991. But the Tribunal, taking into consideration the grievance of the Petitioner, came to hold in Paragraphs 6, 7 and 8, as follows:

*“6. The claim of the applicant has been seriously challenged being barred by limitation. Learned*

*standing counsel submitted that the applicant is not only a fence sitter but his grievance is not maintainable being barred by limitation. Admittedly the applicant was not in service since in July 1990 but he approached the Hon'ble High Court in OJC No.7204 of 1992 only after disposal of OJC No.2779 of 1990 vide order dtd.12.12.1991. Thus the applicant can be said to be a fence sitter as observed in the case of Arun Mishra vrs. State of Orissa 2014 (1) ILR-CUT 690.*

*7. Further the applicant approached the Hon'ble High court two years after the retrenchment order, if any was passed. The said OJC was returned to the applicant vide letter of the Hon'ble High court dtd.31.01.1994, which fact came to the knowledge of the applicant on 20.03.1995. Still the applicant did not file the original application in time. Thus, there has been inordinate delay in filing of the Original Application and there appears no sufficient cause for condonation of delay in preferring the O.A. The applicant failed to show any sufficient cause for not availing the remedy within the prescribed period of limitation. No hard and fast rule has been laid down for deciding an application for condemnation of delay but over the years, Hon'ble Court has advocated to give liberal approach in such matters where substantive rights of the parties are not defeated. In the present case, the applicant has failed to show any sufficient cause much less any cause for delay in filing of his case. On the other hand, the manner in which he has conducted clearly shows his negligence and there is no scope to condone the delay.*

*8. In the case of P.K. Ramachndran v. State of Kerala, reported in AIR 1998 SC 2276, it is held that this court while reversing the order passed by the High Court which had condoned 565 days in filing an appeal by the state against the decree of the Sub Court in an arbitration application, observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Court has no power to extend the period of limitation on equitable grounds.*

*As per the provisions u/s 19 of the*

*Administrative Tribunal Act, a petition is to be preferred within a period one year but in the present case, the applicant failed to approach the Tribunal within the stipulated time period. As discussed above, there being no sufficient cause, the grievance of the applicant is not entertainable.”*

7. For the above reasons, as recorded in the Order impugned passed by the Tribunal, we do not find any error apparent on the face of record, so as to warrant interference of this Court.

8. Accordingly, the Writ Petition merits no consideration and the same is hereby dismissed.

**(DR. B.R. SARANGI)**  
**JUDGE**

*Ashok/Padma*

**(S.K. MISHRA)**  
**JUDGE**

