



WEB COPY

W.P.No.6038 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.6038 of 2019

K.Settu

... Petitioner

Vs.

1.The Management,
Metropolitan Transport
Corporation (Chennai) Ltd,
Pallavan Illam,
Anna Salai,
Chennai – 600 002.

2.The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund Trust,
Pallavan Salai, Chennai – 600 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the respondents to pay back wages from the date of dismissal to the date of retirement and pension from June 2018 and other terminal benefits to the petitioner.

For Petitioner : Mr.S.T.Varadarajulu

For R1 : Mr.R.Ramanlal
Additional Advocate General
Assisted by Mr.C.Gauthama Raj

For R2 : No Appearance



ORDER

WEB COPY

The relief sought for in the present writ petition is to direct the respondents to pay back wages from the date of dismissal to the date of retirement and pension from June 2018 and other terminal and pensionary benefits.

2. The petitioner was appointed as a Conductor in the 1st respondent Transport Corporation on 04.08.1986. His services were confirmed on 01.12.1987. The petitioner has served about 21 years in the Transport Corporation. A charge memo dated 13.03.2007 was issued regarding unauthorised absence of the petitioner from 26.02.2007. After conducting an enquiry, the petitioner was imposed with the punishment of dismissal from service on 08.01.2008.

3. The learned counsel for the petitioner mainly contended that the punishment of dismissal from service was not approved and the respondent / Transport Corporation had not filed any petition under Section 33 (2)(b) of the Industrial Disputes Act, 1947 for approval of the punishment. In this regard, the learned counsel for the petitioner referred a judgment of the



Constitution Bench of the Hon'ble Supreme Court of India in the case of ***Jaipur Zila Shakari Bhoomi Vikas Bank Limited Vs. Ram Gopal Sharma and Others*** reported in ***[2002(1) L.L.N. 639]***.

WEB COPY

4. In the present case, no Approval Petition under Section 33(2)(b) of the Industrial Dispute Act, 1947 was filed and therefore, the punishment of dismissal became inoperative and therefore, the petitioner is entitled to be reinstated in service with back wages and with continuity of service. In this regard, the petitioner's counsel sent a legal notice on 16.02.2015. Meanwhile, the petitioner attained the age of superannuation on 31.05.2018. Thus, the petitioner has now chosen to file the present writ petition seeking terminal and pensionary benefits due to him.

5. The learned counsel for the petitioner states that the petitioner served about 21 years and the Management had not filed any Approval Petition under the Industrial Disputes Act, 1947 and therefore, the petitioner is entitled for the terminal and pensionary benefits due to him.

6. The learned Additional Advocate General appearing on behalf of the 1st respondent objected the said contention raised on behalf of the



petitioner. It is contended that the petitioner was dismissed from service on 08.01.2008 and he filed the present writ petition after a lapse of 11 years from the date of punishment of dismissal. The petitioner had not approached the authorities for reporting duty or otherwise. Contrarily, he waited till his dated of superannuation and in order to get terminal and pensionary benefits, now he has chosen to file the present writ petition. Thus, the writ petitioner is to be rejected.

7. The learned Additional Advocate General appearing on behalf of the 1st respondent reiterated that the petitioner filed an application under Right To Information Act during the year 2014 itself. A reply was sent to him in letter dated 08.08.2014, wherein, the Public Information Officer of the respondent Transport Corporation clearly stated that the punishment of dismissal from service was sent to the residential address of the writ petitioner and also communicated to the depot in which the petitioner lastly served. It is further contended that the petitioner had not filed any appeal within a period of 60 days as stated in the order of punishment. However, it is admitted by the respondent Transport Corporation that no Approval Petition was filed. Though the petitioner secured the said information under the Right to Information Act in the year 2014, even thereafter, he has not



taken any steps to approach the competent authorities for reporting duty.

Thus, the petitioner had intentionally remained silent for about 11 years and after reaching the age of superannuation on 31.05.2018, he filed the present writ petition on 25.02.2019 for a direction to settle the terminal and pensionary benefits due to him.

8. An employee, who slept over his right, cannot wake up one fine morning and claim the benefits after several years. The petitioner was very much aware that he was not attending duty from the year 2007 onwards, the order of dismissal was issued in the year 2008. He was very much conscious that he had not approached the competent authorities for the purpose of reporting duty. Contrarily, he submitted an application under the Right To Information Act in the year 2014 and the Public Information Officer of the respondent Transport Corporation gave a reply in letter dated 08.08.2014, wherein, he had categorically stated that no Approval Petition under Section 33(2)(b) of the Industrial Disputes Act, 1947 was filed.

9. In such circumstances, at least during the year 2014, the petitioner ought to have approached the authorities for reporting duty. Even thereafter, he remained silent and directly he sent a legal notice through his lawyer on



WEB COPY

16.02.2015. Even after issuing the lawyer's notice, the petitioner did not reported for duty. Contrarily, he sent a representation on 15.06.2018 for the purpose of filing the present writ petition and accordingly, filed the present writ petition on 25.02.2019. Even after the representation, the petitioner had not made further attempt to report for duty. The representation itself was sent after legal notice issued by the counsel in the year 2015 and on 15.06.2018, knowing the fact that the petitioner reached the age of superannuation on 31.05.2018. Thus, the representation itself was sent by the petitioner only to get the monetary benefits from the Transport Corporation.

10. No doubt, an employee is entitled for terminal and pensionary benefits. However, in the present case, the petitioner was dismissed from service on 08.01.2008. A dismissed employee is not eligible for the terminal benefits and the dismissal was not approved by the competent authorities under Section 33(2)(b) of the Industrial Disputes Act, 1947. Thus, the order of dismissal became inoperative and therefore, the petitioner ought to have approached the competent authorities in the year 2008 or within a reasonable period of time, permitting him for reporting duty. However, the petitioner had failed in his duty to approach the authorities for reporting



duty. Contrarily, he remained silent for more than 11 years and thereafter, sent a representation and filed the writ petition for terminal and pensionary benefits.

11. Thus, the writ petition is liable to be rejected on the ground of laches.

12. The judgment of the Hon'ble Supreme Court of India in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Limited's*** case (cited *supra*), the Hon'ble Supreme Court of India held that in the absence of any approval by the authority under Section 33(2)(b) of the Industrial Disputes Act, 1947, the order of dismissal became inoperative. In the present case, the order of dismissal became inoperative on expiry of the period of limitation prescribed for filing an Approval Petition under Section 33(2)(b) of the Industrial Dispute Act, 1947. Thus, on expiry of the period of limitation for filing Approval Petition under Section 33(2)(b) of the Industrial Dispute Act, 1947, the petitioner as a workman, has to approach the competent authority seeking permission to report for duty. However, in the present case, the petitioner miserably failed to approach the competent authorities for the purpose of reporting duty, but waited for about 11 years and



submitted a representation after reaching the age of superannuation for the purpose of pensionary benefits. Such an approach of a workman, at no circumstances, could be appreciated.

13. The respondent Transport Corporation is a 'State' within the meaning of Article 12 of the Constitution of India and performing public duties. Thus, the petitioner being the public servant, is expected to perform his duties by approaching the authorities during the relevant period of time. Even after securing information under Right To Information Act in the year 2014, the petitioner did not join duty and thereafter waited for about 5 years and filed the present writ petition in the year 2019.

14. Thus, the writ petition is hit by the principles of laches.

15.(a) In the case of ***Chairman / Managing Director, Uttar Pradesh Power Corporation Limited and Others Vs. Ramgopal*** reported in ***[(2020) SCC Online SC 101]***, the Three Judges Bench of the Hon'ble Supreme Court of India held as follows:

“Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless,



such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced.”

(b) In the case of ***P.S. Sadasivaswamy Vs. State of Tamil Nadu***, reported in ***[(1975) 1 SCC 152]***, held as follows:

“2. ... One cannot sleep over the matter and come to the Court questioning that relaxation. In effect he wants to unscramble a scrambled egg. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of



time. 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.....”

(c) In the case of ***SS Balu Vs. State of Kerala***, reported in ***[(2009) 2 SCC 479]***, the Court observed thus:

“17. It is also well-settled principle of law that “delay defeats equity”. ...It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.”

(d) In the case of ***Vijay Kumar Kaul Vs. Union of India***, reported in ***[(2012) 7 SCC 610]***, held as follows:



“27. ...It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time.”

It is also pertinent to mention that neither has it been pleaded nor is it apparent from the material on record that the Respondent was unable to approach the court-of-law in time on account of any social or financial disability. Had such been the case, he ought to have availed free legal aid and should have ventilated his grievances in a timely manner.”

16. (a) In the case of ***State of Uttar Pradesh and Others Vs. Arvind Kumar Srivastava and Others*** reported in ***[(2015) 1 SCC 347]***, the Hon'ble Supreme Court of India held as follows:

“(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their



cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

(b) In the case of ***Rushibhai Jagdishbhai Pathak Vs. Bhavnagar Municipal Corporation*** reported in [2022 SCC Online SC 641], held as follows:

“The courts have expressed the view that the law of limitation rests on the foundations of greater public interest for three reasons

(a) that long dormant claims have more of cruelty than justice in them

(b) that a Defendant might have lost the evidence to disapprove a stale claim

(c) that persons with good causes of action should pursue them with reasonable diligence

The normal Rule is that when a particular set of employees is given relief by the court, all



WEB COPY

W.P.No.6038 of 2



other identically situated persons need to be treated alike by extending that benefit. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence.

“Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim””

17. Though the order of dismissal was not approved, the petitioner on account of his own conduct, slept over his rights and thereafter, he cannot get any relief in the present writ petition after a lapse of several years from the date of dismissal from service on 08.01.2008.



18. For the reasons stated above, the Writ Petition stands dismissed.

No costs.

WEB COPY

28.11.2022

Jeni/Kak

Index : Yes

Speaking order

To

1.The Management,
Metropolitan Transport
Corporation (Chennai) Ltd,
Pallavan Illam,
Anna Salai,
Chennai – 600 002.

2.The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund Trust,
Pallavan Salai, Chennai – 600 002.



WEB COPY



W.P.No.6038 of 2

S.M.SUBRAMANIAM, J.

Jeni/Kak

W.P.No.6038 of 2019

28.11.2022