

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.12412 of 2022
and
W.M.P.No.11873 of 2022

The Management,
Tamil Nadu State Transport Corporation (VPM) Ltd.,
Kancheepuram Region,
Ponnerikarai Near Karapettai Post,
Chennai-Bangalore Highways,
Kancheepuram District - 631 552. ...Petitioner

Vs.

1. Mr.S.Palani
2. The Special Deputy Commissioner for Labour,
Chennai - 600 006. ...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to the order dated 12.09.2017 made in A.P.No.187 of 2014 passed by the 2nd respondent herein and quash the same.

For Petitioner : Mr.T.Chandrasekaran

For R2 : Mr.T.Arun Kumar
Additional Government Pleader

O R D E R

This writ petition has been filed seeking to issue a Writ of Certiorari, calling for the records relating to the order dated 12.09.2017 made in A.P.No.187 of 2014 passed by the 2nd respondent herein and quash the same.

2. The petitioner has challenged the impugned order dated 12.09.2017 made in A.P.No.187 of 2017 passed by the 2nd respondent by setting aside the dismissal order passed by the petitioner against the 1st respondent. According to the petitioner, the 1st respondent has joined as Conductor in the

petitioner/Corporation and he remained unauthorised absence for the duty from 16.10.2013. However, the petitioner/corporation taking a lenient view and permitted him to join duty on 21.01.2014. But the 1st respondent once again remained absent from 02.02.2014. Thereafter, the 1st respondent was dismissed from service by the petitioner/Corporation by the order dated 25.08.2014. Thereafter, the petitioner/Corporation has filed A.P.No.187 of 2014 under Section 33(2)(b) of the Industrial Dispute Act, 1947 before the 2nd respondent seeking approval for the order of dismissal passed against the 1st respondent. But the same was rejected by the 2nd respondent by the impugned order dated 12.09.2017. Hence, this writ petition.

3. The learned counsel appearing for the petitioner would submit that during his service in the petitioner/corporation has committed various misconduct and he committed 31 misconducts out of which he was punished on 18 occasions for unauthorised absence. The said fact has not been considered by the 2nd respondent in proper perspective and consequently, the 2nd respondent set aside the punishment imposed by the petitioner/corporation.

4. The petitioner/Corporation has also raised grounds that the 2nd respondent has not followed the guidelines issued by the Hon'ble Supreme Court in interfering with the impugned punishment order imposed by the petitioner/Corporation.

5. On a perusal of the impugned order passed by the 2nd respondent, it reveals that both the parties are not examined the witnesses on their side. On the side of the petitioner/Corporation, nine documents were marked and the 1st respondent has not marked any documents before the 2nd respondent. There is no satisfactory explanation has been given by the petitioner/Corporation by adducing any oral and documentary evidence.

6. According to the petitioner, the instant writ petition has been filed after a delay of four years. In the affidavit filed in support of the writ petition, wherein it has been stated that a certified copy of the impugned order dated 12.09.2017 passed by the 2nd respondent was not furnished to the petitioner/corporation. The petitioner/Corporation received the said order by a letter dated 28.02.2018 from the 2nd respondent. Therefore, according to the petitioner, there is no delay on the part of the petitioner to challenge the impugned order.

7. It is an admitted fact that the petitioner has received the copy of the impugned order on 28.02.2018. Even thereafter, there is a delay of more than four years in approaching the Court to challenge the said order. Further, there is no

satisfactory explanation has been given by the petitioner/Corporation for delay and laches in approaching this Court.

8. At this juncture, it is useful to refer to the judgments of the Hon'ble Apex Court and the Hon'ble Division Bench of this Court. The Hon'ble Apex Court, in a case, reported in 1994 SCC, Supl.(2) 195 [Ex-Capt. Harish Uppal vs. Union of India), has held as follows;

'8. The petitioner sought to contend that because of laches on his part, no third party rights have intervened and that by granting relief to the petitioner no other person's rights are going to be affected. He also cited certain decisions to that effect. This plea ignores the fact that the said consideration is only one of the considerations which the court will take into account while determining whether a writ petition suffers from laches. It is not the only consideration.

It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of Constitution of India and that is what precisely the Delhi-High Court has done. We cannot say that the High Court was not entitled to say so in its discretion."

9. The Hon'ble Division Bench of this Court, in the case of S.Vaidhyanathan Vs.Government of Tamil Nadu reported in 2018 SCC OnLine, in para 14, it is held as under ;

"14. There is an inordinate delay and laches on the part of the appellant. What is laches is as follows:

"Laches or reasonable time are not defined under any statute or Rules. "Laches" or "Lashes" is an old french word for slackness or negligence or not doing. In general sense, it means neglect to do what in the law should have been done for an unreasonable or unexplained length of time. What could be the laches in one case might not constitute in another. The laches to non-suit, an aggrieved person from challenging the acquisition proceedings should be inferred from the conduct of the land owner or an interested person and that there should be a passive

inaction for a reasonable length of time. What is reasonable time has not been explained in any of the enactment. Reasonable time depends upon the facts and circumstances of each case."

In para 16 of the judgment cited supra, it is held as under;

16. Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting into depriving of the remedy, is a principle based on public policy and utility and not equity alone....."

10. In Karnataka Power Corpn. Ltd. v. K.Thangappan reported in (2006) 4 SCC 322, the Hon'ble Supreme Court, at Paragraph 6, held as follows:

"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'.....

16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time Delay and laches are relevant factors for exercise of equitable jurisdiction.

11. In the case on hand, the petitioner has not approached the court within the reasonable time. Keeping in mind the ratio laid down in the above cited decisions, this Court is of the view that there is no merit in the present writ petition and the same is liable to be dismissed on the ground of delay and latches.

12. Accordingly, this writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

dm

To

The Special Deputy Commissioner for Labour,
Chennai - 600 006.

+1cc to M/s.T.Chandrasekaran, Advocate, S.R.No.32475

+1cc to the Government Pleader, S.R.No.33125

W.P.No.12412 of 2022

(CO)
RGA(14/07/2022)