



W.P.No.3200 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.3200 of 2017

Sam Sudharsan David

... Petitioner

Vs.

1.The Managing Director,
State Express Transport Corporation,
(Tamil Nadu) Ltd.,
Anna Salai,
Chennai – 600 002.

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

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to pay pension from July 2016, back wages from the date of dismissal to the date of retirement and other terminal benefits to the petitioner.

For Petitioner : Mr.S.T. Varadarajulu

For Respondents : Mr.K. Kathiresan [R1]
Mr.C.S.K. Sathish [R2]

ORDER



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WEB COPY While serving as an Assistant Tradesman in the respondent/Corporation, the petitioner had remained absent unauthorizedly from 15.10.2001 onwards. In consequence to the same, charges were framed against him and a show cause notice was issued against him on 15.12.2001. Thereafter, the domestic inquiry was conducted on 20.02.2002 wherein, the petitioner did not participate. The inquiry came to be adjourned on 06.03.2002 and 03.04.2002 and in view of the petitioner's absence in the inquiry, he was set exparte and the charges were held to be proved. Further explanation was called for from the petitioner on 24.04.2002 to which, the petitioner had also given his explanation. After the second show cause notice, he was dismissed from service on 22.05.2003. As against the order of punishment, he had preferred an appeal to the first respondent herein on 30.06.2003, which was rejected on 14.07.2003. No further challenge was made to the order passed in the appeal. In this background, the petitioner now seeks for issuance of a Writ of Mandamus, to direct the respondents to pay pension from July 2016, together with back wages and other terminal benefits.

2. The learned counsel for the petitioner submitted that since there



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was an Industrial Dispute pending at the time of dismissal of the petition, the respondents ought to have sought for an approval of the Authority under Section 33(2)(b) of the Industrial Disputes Act, 1947. He further submitted that the dismissal order itself was not served on time.

3. On the other hand, the learned counsel for the first respondent submitted that the dismissal order was duly served on the petitioner and it on this account that he had also chosen to challenge the same before the Appellate Authority. When the order of dismissal has been confirmed in appeal and the petitioner has not challenged the same, the ground that the Approval Petition was not filed, cannot be sustained.

4. The learned counsel for the second respondent submitted that the Writ Petition deserves to be dismissed on the ground of delay and laches. According to him, though the petitioner was dismissed from service in the year 2003, he had sought for the pensionary benefits in the year 2017, which cannot be sustained.

5. The plea of the petitioner that he was not aware of the order of



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dismissal, has been negated by the first respondent herein, by production of the order of appeal filed by the petitioner himself on 30.06.2003. When the petitioner was of the view that the order of dismissal should be supported along with an application for approval under Section 33(2)(b) of the Industrial Disputes Act, 1947, he ought to have raised this ground before the Appellate Authority at the time of filing this appeal. Even otherwise, this ground could have further taken when the Appellate Authority had rejected the petitioner's appeal on 14.07.2003. Having failed to do so, the present Writ Petition seeking for the pensionary benefits, when the dismissal order has been affirmed by the Appellate Authority, has no legal standing.

6. This apart, the Writ Petition also deserves to be dismissed on the ground of delay and laches. The order of dismissal was passed on 22.05.2003 and the present Writ Petition has been filed after about 14 years in the year 2017. The only reason assigned by the petitioner for the delay is that he had been giving representations from 15.10.2003 till 2016 and thereafter sought for condonation of delay.



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7. The Hon'ble Supreme Court in the case of '**Shankara Co-operative Housing Society Limited Vs. M. Prabhakar**' reported in '**(2011) 5 SCC 607**', had have set forth the relevant considerations, in determining whether the delay or laches should be put against a person who approaches a Writ Court under Article 226 of the Constitution of India. One of such considerations is that the representations made by the petitioner would not be an adequate explanation to take care of the delay.

8. The modus and the effect of representations of this nature being given to the Government and the effect thereof, has also been dealt with, in the case of '**C. Jacob Vs. Director of Geology and Mining & another**' reported in '**(2008) 10 SCC 115**', as follows:-

.... “8. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation



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requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation.

9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The



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Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding 8 the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 9 'acknowledgment of a jural relationship' to give rise to a fresh cause of action.



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12. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for purpose of pension. That will be a travesty of justice.

13. Where an employee unauthorizedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/ removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back-wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such 10 matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine



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order for back-wages.

14. We are constrained to refer to the several facets of the issue only to emphasize the need for circumspection and care in issuing directions for 'consideration'. If the representation is on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing 'consideration' of such claims.

15. The present case is a typical example of 'representation and relief'. The petitioner keeps quiet for 18 years after the termination. A stage is reached when no record is available regarding his previous service. In the representations which he makes in 2000, he claims that he should be taken back to service. But on rejection of the said representation by order dated 9.4.2002, he filed a writ petition claiming service benefits, by referring the said order of rejection as the cause of action. As noticed above, the learned Single Judge examined the claim, as if it was a live claim made in time, finds fault with the respondents for not producing material to show that termination was preceded by due enquiry and declares the termination as illegal. But as the appellant has already reached the age of superannuation, the learned Single Judge grants the relief of pension with effect from 18.7.1982, by deeming that he was retired from service on that day. We fail to understand how the learned Single Judge could declare a termination in 1982 as illegal in a writ



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petition filed in 2005. We fail to understand how the learned Single Judge could find fault with the department of Mines and Geology, for failing to prove that a termination made in 1982, was preceded by an enquiry in a proceedings initiated after 22 years, when the department in which appellant had worked had been wound up as long back as 1983 itself and the new department had no records of his service.

16. The appellant neither produced the order of termination, nor disclosed whether the termination was by way of dismissal, removal, compulsory retirement or whether it was a case of voluntary retirement or resignation or abandonment. He significantly and conveniently, produced only the first sheet of a show cause notice dated 8.7.1982 and failed to produce the second or subsequent sheets of the said show cause notice in spite being called upon to produce the same. There was absolutely no material to show that the termination was not preceded by an enquiry. When a person approaches a court after two decades after termination, the burden would be on him to prove what he alleges. The learned Single Judge dealt with the matter as if he the appellant had approached the court immediately after the termination. All this happened, because of grant of an innocuous prayer to 'consider' a representation relating to a stale issue.....”

9. Apart from the ground that the petitioner had given representations



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as an explanation for the delay, no other reason has been assigned. By applying the ratio laid down in the aforesaid decisions of the Hon'ble Supreme Court, a mere representation would not be a proper explanation for the delay. On this ground of delay and laches also, the Writ Petition does not deserve consideration.

10. Accordingly, the Writ Petition stands dismissed. No costs.

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Speaking/Non-speaking Order
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M.S.RAMESH,J.

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