

[3167]

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

TUESDAY, THE TWENTY EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION NO: 38794 OF 2012

Between:

S.Shanker Goud, S/o.Raja Goud, Occ: Conductor, E.302391, R/o.1-4, Rajampet
Post & village, Dandepalli Mandal, Adilabad District

...PETITIONER

AND

1. The APSRTC, rep. by its Managing Director, Musheerabad, Hyderabad.
2. The Regional Manager, APSRTC, Adilabad Region, Adilabad District.
3. The Depot Manager, APSRTC, Mancherla Depot, Adilabad District.

...RESPONDENTS

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 call for the records from the respondents herein and issue a writ order or direction particularly one in the nature of writ of mandamus by declaring inaction of the respondents in not regularizing petitioner services on par with petitioner colleagues with effect from 1.7.1988 in terms of proceedings No.E1/232(6)/88 DVM ADB dated 20.12.1988 in pursuance of award dated 19.2.21990 in ID.No.703 of 1989 on the file of Hon'ble Labour Court, Godavarikhani, Karimnagar District as illegal, unjust contrary to law arbitrary, and also inviolation of Article 14 & 21 of Constitution of India consequently direct the respondents to grant the relief of regularization with effect from 1.7.1988 on par with my colleagues by taking into consideration award datd 19.2.1990 in ID.No.703 of 1989 by setting aside letter No.LC/785(ID-2)/2010-RM ADB dated 18.9.2010.

I.A. NO: 1 OF 2012(WPMP. NO: 49211 OF 2012)

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 direct the respondents herein to consider petitioner services for regularization with effect from 1.7.1988 in pursuance of proceedings No.E1/232(6)/88 DVM ADM dated 20.12.1988 without reference to letter No.LC/785(ID-2)/2010-RM ADB dated 18.9.2010 of the 2nd respondent.

Counsel for the Petitioner: SRI. P. SRIDHAR RAO

Counsel for the Respondents: SRI A. SRINIVAS REDDY (SC FOR TSRTC)

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION No.38794 of 2012

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed questioning the action of the respondents in not regularizing the services of the petitioner on par with his colleagues w.e.f.01.07.1988 in terms of proceedings No.E1/232(6)/88 DVM ADB, dated 20.12.1988 in pursuance of the Award dated 19.02.1990 in I.D. No.703 of 1989 on the file of the Labour Court, Godavarikhani.

2) Heard the learned counsel for the petitioner and Sri A. Srinivas Reddy, learned Standing Counsel, for the respondent Corporation.

3) Learned counsel for the petitioner has stated that the petitioner was appointed as a conductor on 02.02.1988 in the respondent-Corporation. Thereafter, on the ground of misconduct, the petitioner was removed from service on 23.11.1998. Aggrieved by the same, the petitioner has approached the Labour Court by filing Industrial Dispute No.703 of 1989. *Vide* Award, dated 19.02.1990, the Labour Court has allowed the I.D. filed by the petitioner. Learned counsel for the petitioner has drawn the attention of the Court

to the operative portion of the Award dated 19.02.1990 and contended that *in spite* of specific direction given by the Labour Court, the official respondents instead of regularizing the services of the petitioner from 02.02.1988 have regularized the services of the petitioner from 01.07.1990. Even the representation dated 13.05.2010 made by the petitioner to respondent No.2 was rejected *vide* order dated 18.09.2010.

4) Learned counsel for the petitioner has further stated that the services of the other employees, who were appointed along with the writ petitioner, and of some other juniors were regularized from the date of their joining into service. Learned counsel for the petitioner has stated that under similar circumstances, this Hon'ble Court in W.P. No.8002 of 2011 dated 09.07.2012, W.P. No.9677 of 2011 dated 05.06.2012, and W.P. No.24410 of 2012 dated 03.10.2012, has allowed the writ petitions and therefore prayed this Hon'ble Court to allow the present Writ Petition.

5) Per contra, the learned Standing Counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the Writ Petition and has stated that even though regularization orders were passed regularizing the services of the petitioner w.e.f.01.07.1990, the petitioner has

not chosen to file the writ petition within a reasonable time and after a lapse of more than 22 years the petitioner has approached this Hon'ble and filed the present writ petition and therefore the writ petition is liable to be dismissed solely on the ground of laches. Further, the learned Standing Counsel has stated that the services of the writ petitioner were regularised from 01.07.1990 and he was not working at the relevant point of time whereas the other colleagues who were appointed along with the petitioner were continuously working in the Corporation. Learned Standing counsel has also stated that the orders of this Court, on which reliance has been placed by the petitioner, are distinguishable on facts, as in those cases, the employees were continuously working whereas in the case on hand the petitioner was not working during the relevant point of time. Learned Standing Counsel has placed reliance on the judgment of the Hon'ble Supreme Court in ***The Regional Manager, APSRTC v. N. Satyanarayana***¹ in support of his submissions.

6) In reply, the learned counsel for the petitioner has stated that the petitioner was diligent in pursuing his remedies and to that effect he has been making representations to the

¹ MANU/SC/8097/2007

authorities concerned. Learned counsel has stated that the petitioner has given a representation on 13.05.2010 and immediately after receiving the rejection order dated 18.09.2010, he has filed the present writ petition. Therefore, the learned counsel has stated that the writ petition filed is well within time. Learned counsel has further stated that the official respondents are expected to implement the Award of the Labour Court in toto, but the Award of the Labour Court has not been implemented in true spirit. That *in spite* of there being a specific direction to reinstate the petitioner and give him the benefit of continuity of service, the official respondents have not done so. Further, it is contended by the learned counsel for the petitioner that even if the authorities regularize the services of the petitioner from the date of his initial appointment, no prejudice would be caused to any other employees and it is only for the purpose of extending some retirement benefits and the Corporation will not be put to any loss. Learned counsel has also stated that in W.P. No.8002 of 2011, W.P. No.9677 of 2011 and W.P. No.24410 of 2012 the writ petitioners therein have approached this Hon'ble Court after a gap of almost ten years and the said writ petitions were allowed by this Court and the said orders have also attained finality. Therefore, the petitioner is also entitled for the very same benefit.

7) Perused the record.

8) A perusal of the material on record shows that pursuant to the orders passed by the Labour Court in I.D. No.703 of 1989 the petitioner was reinstated into services on 01.07.1990 and thereafter his services were also regularized w.e.f.01.07.1990. But, the petitioner for the first time has made a representation on 13.05.2010 to the authorities for regularizing his services from the date of his initial appointment and the said representation was after a gap of almost 20 years from the date of his regularization on 01.07.1990, the said representation was rejected on 18.09.2010. Even though the learned counsel for the petitioner has stated that the petitioner has been pursuing his case diligently, since inception, no material is placed on record except the representation dated 13.05.2010. In the absence of any material placed by the petitioner to show that he has been diligently pursuing his case with the authorities concerned, approaching the Court after a gap of 22 years has to be considered as a lapse on the part of the petitioner. Merely because the petitioner has given a representation on 13.05.2010 and the same was rejected on 18.09.2010, the same does not give any cause of action to the petitioner to file the present writ petition. The petitioner was well aware of the order passed by

the Labour Court in I.D. No.703 of 1989 and that his services were regularized w.e.f.01.07.1990, but for reasons best known to him, he has kept quiet for a period of two decades till he made a representation on 13.05.2010. The delay of 20 years cannot, by any stretch of imagination, be called as reasonable, which can be condoned by this Court, as a matter of course.

9) Even the reliance placed by the learned counsel for the petitioner on the orders passed by this Court in W.P. No.8002 of 2011 dated 09.07.2012, W.P. No.9677 of 2011 dated 05.06.2012, and W.P. No.24410 of 2012 dated 03.10.2012, is also misplaced for the reason that the petitioners therein have approached the Court within a period of ten years whereas in the present case there is a delay of 22 years in approaching the Court, which cannot be countenanced.

10) A Full Bench of the erstwhile High Court of Andhra Pradesh in ***P.V. Narayana v. APSRTC, Hyderabad***², 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:

² 2013 SCC Online AP 729

(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)

(4)

(5)

(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 remiss 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)

(10)

(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 rigor 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 32 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)

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 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 appellant had sufficient cause for not submitting the appeal in time. A similar power may also be exercised under Regulation 29. 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 put forth 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 to the case of a workman unless properly explained with cogent 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."

11) Relying on the settled proposition of law, a Division Bench of this Court had dismissed the Writ Appeal Nos.1660 of 2018 and 593 of 2016 *vide* common judgment dated 13.12.2021 holding that there was inordinate delay in approaching the Court.

12) Having regard to the law laid down by the Hon'ble Supreme Court as well as the Division Bench of this Court, in the above referred judgments, this Court is not inclined to entertain the present writ petition and the same is accordingly dismissed on the ground of laches.

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

SD/- P. PADMANABHA REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

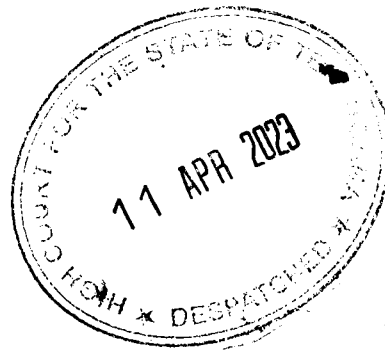
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2. One CC to SRI. A SRINIVAS REDDY (SC FOR TSRTC) [OPUC]
3. Two CD Copies

CHR
GJP

es

HIGH COURT

DATED:28/02/2023



ORDER

W.P.No.38794 of 2012

**DISMISSING THE WRIT PETITION
WITHOUT COSTS**

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28/3/23
[Signature]