

***HONOURABLE SRI JUSTICE J.SREENIVAS RAO**

+WP.No. 21861 OF 2006

% Dated 09-11-2022

Between:

N.Krishna

.... Petitioner

and

**\$ The Managing Director,
APSRTC Musheerabad,
Hyderabad & Ors..**

.... Respondents

! Counsel for the Petitioner

: Sri V. Narasimha Goud

^ Counsel for respondents

: Sri Toom Srinivas

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? Cases referred:

- 1) 2010 (1) ALD-607 (DB)
- 2) 2013 (4) ALD-386
- 3) WA.No. 606 OF 2009 DB decided on 12-7-2017
- 4) WA.No. 117 OF 2016 DB decided on 11-3-2016

SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION No.21861 OF 2006

O R D E R :

The petitioner filed this writ petition invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking to issue an appropriate writ or direction particularly one in the nature of Writ of Certiorari to quash the impugned Proceedings No.02/104(505)/83-DN, dated 06-04-1984, withholding two increments for a period of two years with cumulative effect besides treating the suspension period as not on duty as arbitrary, violation of Article 14, 16 and 21 of the Constitution of India and consequently to direct the respondents to restore the deferred increments along with all consequential benefits.

2. The facts leading to the filing of this writ petition are as follows :

The petitioner joined in the service of respondent-corporation as conductor on 22-03-1978 and he was promoted as ADC on 11-05-2006. While he was conducting the bus on 07-04-1983 from Kurmalguda to Charminar, a check was conducted by the checking officials between stage No's. 5 and 6 i.e., Kurmalguda to Nadargole and

framed charge memo pointing out cash and ticket irregularities. Basing on the same, the respondent-corporation issued charge sheet dated 15-04-1983 placing the petitioner under suspension pending inquiry into the charges. The petitioner submitted his explanation on 16-04-1983, which was found to be unsatisfactory. Thereafter, the respondent-corporation ordered regular enquiry. The Enquiry Officer conducted inquiry and submitted his report on 10-05-1983. There upon the respondent-corporation sought explanation from the petitioner by duly serving upon the enquiry report. The petitioner submitted his explanation to that effect. The second respondent after considering the explanation submitted by the petitioner and also after examining the enquiry report passed the impugned Proceedings No.02/104(505)/83-DN, dated 06-04-1984, withholding two increments for a period of two years with cumulative effect besides treating the suspension period as not on duty. Questioning the aforesaid impugned order, the petitioner filed the present writ petition.

3. The respondent-corporation filed counter-affidavit denying the averments made in the writ petition. It is stated that the petitioner was appointed as temporary conductor in APSRTC and posted to Charminar

depot on 22-3-1978. Later he was transferred to Dilsukhnagar depot and he reported to duty on 08-5-1978. Thereafter he was promoted as Assistant Depot Clerk from Hayathnagar depot and posted to Ibrahimpatnam depot, vide Office Order No.D-1/255(24)/05-HCR, dated 12-05-2006 and reported to duty on 16-5-2006. It is stated that when the petitioner was booked on 7-4-1983 on route Kurmalguda, a check was exercised at 09-05 hours at stage No.5/6. During the course of checking, certain irregularities were detected, for which a charge memo No.17696, dated 7-4-1983 was issued, later he was issued charge sheet dated 15-4-1983 duly placing him under suspension pending inquiry into the charges. It is further stated that the petitioner submitted his explanation on 16-4-1983, which was found to be unsatisfactory. As such, a regular enquiry was ordered. The Enquiry Officer conducted inquiry and submitted his report on 10-5-1983. After considering the explanation submitted by the petitioner, the suspension of the petitioner was lifted. He was issued with a show cause notice, dated 29-9-1983 calling upon him to explain as to why his two increments for a period of two years with cumulative effect shall not be stopped by treating the suspension period as not on duty. The petitioner submitted his explanation on 13-10-1983 to the show cause notice but he failed to show any new facts

to reconsider the proposed penalty and as such, a final order for reduction of pay was issued on 6-4-1984. It is averred that the petitioner did not choose to prefer any appeal against the said order dated 6-4-1984. But after a long lapse of 22 years, he preferred the present writ petition. The explanation offered by the petitioner is not convincing and cannot be believed. Therefore, the writ petition is liable to be dismissed on the ground of laches and there is no merit in the writ petition warranting interference under Article 226 of the Constitution of India.

4. Heard Sri V. Narsimha Goud, learned counsel for the petitioner and the learned standing counsel, Sri Thoom Srinivas for the respondents.

5. The learned counsel for the petitioner contended that the Enquiry Officer without properly considering the evidence of the passengers of the bus submitted his report. The Second Respondent passed the impugned proceedings solely basing upon the inquiry report submitted by the Enquiry Officer, even without considering the explanation submitted by the petitioner on 13-10-1983 to the show cause notice dated 29-09-1983.

6. The learned counsel for the petitioner further contended that imposition of stoppage of two increments for a period of two years with cumulative effect is highly disproportionate and the petitioner sustained huge financial loss.

7. In support of his contentions, he relied upon the following judgments:

- i) GOVT.OF A.P. & ANR. V/s. N. SUBRAHMANYAM & ANR.
- ii) P.V.NARAYANA & ORS. V/s. APSRTC & ORS.
- iii) THE REGIONAL Manager, APSRTC Karimnagar V/s. K. Laxmana Chary.,
(WA.No.606 Of 2009, dated 12-07-2017)
- iv) APSRTC V/s. J.B. REDDY (WA.No.117 OF 2016, dated 11-03-2016).

8. On the other hand, the learned standing counsel for the respondent-corporation would contend that the respondent-corporation after following due procedure as prescribed under the TSRTC regulations and also by following the principles of natural justice conducted the departmental inquiry by affording reasonable opportunity to the petitioner to submit his explanation. During the course of inquiry also, the Enquiry Officer has given all opportunities to the petitioner and the

enquiry officer submitted his report on 07-4-1983 to the respondent-corporation. Thereafter the respondent-corporation had issued show cause notice to the petitioner on 29-9-1983 calling upon him to submit his explanation as to why the penalty of reduction of two increments with cumulative effect for a period of two years shall not be inflicted. The petitioner submitted his explanation to the show cause notice. After considering the explanation submitted by the petitioner on 13-10-1983 passed the impugned order and there is no illegality or irregularity in the impugned order passed by the second respondent.

9. The learned standing counsel vehemently contended that the petitioner filed the present writ petition questioning the impugned order passed by the second respondent, dated 06-04-1983 that too after a lapse of 22 years without giving any reasons and the same is liable to be dismissed on the ground of delay and laches only. The learned standing counsel during the course of arguments further contended that the petitioner without availing alternative remedy of preferring an appeal as per the regulations approached this Court and filed the present writ petition and the same is not maintainable under law.

10. In support of his contention, he relied upon the following judgments :

i) **THE REGIONAL MANAGER V/s. SYED YOUSUF** in W.A.No's.1660 OF 2018 AND W.A. No.593 OF 2016, decided on 13-12-2021.

ii) **P. VENKAT REDDY V/s. DEPOT MANAGER, APSRTC. Warangal & ORS.** in W.P. No. 692 OF 2007, decided on 23-01-2020.

11. The following issues arises for consideration :

i) Whether the petitioner is entitled to maintain the writ petition, which is instituted after more than 22 years challenging the impugned proceedings dated 06-04-1984 ? and

ii) Whether the petitioner is entitled to any relief as claimed for in the writ petition?

12. The undisputed facts reveals that the petitioner filed the present writ petition questioning the impugned order passed by the second respondent, dated 06-04-1984 after a lapse of 22 years. The petitioner has not given any reasons in the affidavit filed in support of the writ petition. In Para No.8 of the affidavit, the petitioner stated that due to loss of relevant documents he could not approach this court immediately and he secured the documents in the month of August 2006 only. The reasons assigned by the petitioner is not convincing on the ground that the petitioner is an employee and he continued in service in the

respondent-corporation and that if any document or documents are misplaced the petitioner is entitled to make an application to the respondent-corporation requesting to furnish the required documents so as to enable him to take appropriate steps. Though there is no prescribed period of limitation for filing the writ petition, the parties have to approach the court within a reasonable period of limitation. In the instant case, the petitioner approached this court after a lapse of long period of more than 22 years and the said period cannot be treated as reasonable period in the absence of valid reasons.

13. In **GOVT. OF ANDHRA PRADESH & ANR. V/s. N. SUBRAHMANYAM AND ANR¹**., wherein the Division Bench of this Court held at Para No's.38, 43 and 46 as hereunder :

38. *The other contention of the appellants is that the present writ petition is hit by laches, inasmuch as, the layout was sanctioned in the year 1984 and the present writ petition is filed in the year 2006 i.e., after a lapse of 22 years, and since the writ petitioner is not the original owner of the land and having purchased the same in the year 2005 with full knowledge of the implications of the Master Plan, the writ petitioner cannot seek any relief in respect of the land of Acs:5-80 cents and the writ petition is liable to be dismissed.*

43. *Further, the Division Bench of this Court in Scholars case (supra), while referring to the decisions of the apex Court in Ramchandra Shankar Deodhar case (supra), State of Madhya Pradesh v. NandalalJaiswal, AIR 1987 SC 251), M/s. DehviRohtas Light Railway Company Ltd. V. District Board Bhojpur, 1992 (2) SCC 598 etc., held*

¹) 2010 (1) ALD-607 (DB)

that the question of delay is not a rule of law but a rule of practice based on sound and proper exercise of discretion; that there is no upper or lower limit for the delay and no period or limitation is prescribed for filing a writ petition and that the delay in filing the writ petition may be overlooked where the writ petition is admitted and the petitioner has positively a good case on merits.

46. *Therefore, the view taken, the reasoning thereof and the eventual conclusion arrived at by the learned single judge, which is fortified by the decision of the apex Court in RAMACHANDRA SHANKAR DEODHAR case (5 supra) and the Division Bench of this Court in SCHOLARS case (6 supra), insofar as the issue that there is no specific period for invoking Article 226 of the Constitution of India, the delay can be overlooked if the petitioner has positively a good case, on merits, are right and cannot be interfered with.*

14. In **P.V. NARAYANA AND ORS. V/s. A.P. STATE ROAD TRANSPORT CORPORATION & ORS²**., wherein Full Bench of this Court held at Para No.55 as hereunder :

55. Therefore, in our considered opinion, Kulwant singh Gill's case 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, 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.

15. In **REGIONAL MANAGER, APSRTC Karimnagar V/s. K. LAXMANA CHARY** (W.A. No.606 OF 2009, dated 12-07-2017) and in **APSRTC V/s. J.B. REDDY** (W.A. No.117 OF 2016, dated 11-03-2016) the Division Bench of this Court held that imposition of withholding increments with cumulative

effect is a major punishment and dismissed the Writ Appeals filed by APSRTC.

16. In **THE REGIONAL MANAGER V/s. SYED YOUSUF³**, wherein the Division Bench of this Court held as follows:

The delay of 5 to 18 years was held to be inordinate delay in preferring a writ petition under Article 226 of the Constitution of India.

In the considered opinion of this Court, on the issue of delay and laches, as has been considered by the Full Bench, as there was certainly an inordinate delay of 17 years in approaching this Court, the order passed by the learned Single Judge is hereby set aside. Accordingly, the writ appeals are allowed.

17. In **P.VENKAT REDDY V/s. DEPOT MAHNAGER, APSRTC., Warangal-I DEPOT⁴** ., this Court after considering the judgments of the Hon'ble Supreme Court (2015) 15 SCC : 602, (2006) 4 SCC: 322, (1986) 4 SCC : 108 held at Para Nos.8 to 11 as follows :

8. Though there is no time limit prescribed for institution of a Writ Petition by invoking Article 226 of the Constitution of India, it must be availed within a reasonable time. Merely because no time limit is prescribed a person cannot knock the doors of this Court whenever he feels convenient to come to this Court. What is a reasonable time within which a person can avail the extra-ordinary jurisdiction of this Court depends on facts of a given case.

9. The law on this aspect is elucidated succinctly in the following decisions :

³) WA.Nos. 1660 of 2018 & 593 of 2016, decided on 13-12-2021

⁴) W.P.No. 692 OF 2007, decided on 23-01-2020

9.1. In **State of Jammu and Kashmir v. R.K. Zalpuri and others**, the very issue of delay in instituting the writ petition after long lapse of time was considered. It was a case of dismissal and challenge was on the ground of violation of procedural safeguards incorporated into the Jammu & Kashmir Civil Services 1 AIR 1955 SC 423 2 (2015) 15 SCC 602 - 7 - (Classification, Control and Appeal) Rules. Disciplinary action resulted in imposing punishment of dismissal from service by order dated 6.9.1999. This was challenged by filing writ petition in the High Court on 18.2.2006. There was a delay of 7 years in filing writ petition.

9.2. The State Government raised objection on maintainability of writ petition on the ground of delay and laches. Without accepting this plea, punishment was set aside holding that Rule 34 of the Classification, Control and Appeal Rules was not complied. Even in the appeal the Division Bench has not considered objection on delay in filing writ petition. Hence, appeal before Supreme Court. Supreme Court held that the delay and laches were not satisfactorily explained and, therefore, writ petition was not maintainable.

9.3. Supreme Court reviewed the precedent decisions and held:

"20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla [City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla, MANU/SC/8250/2008 : (2009) 1 SCC 168], wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus: (SCC p. 175, para 30) "30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors."

(emphasis supplied)

10. In this regard reference to a passage from Karnataka Power Corpn. Ltd. v. K. Thangappan³ would be apposite:

"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." (emphasis supplied).

10.1. After so stating, the Supreme Court, by referring to the authority in **State of M.P. v. Nandlal Jaiswal** restated the principle articulated in earlier pronouncements to the following effect :

"9.... the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the

High Court in deciding whether or not to exercise such jurisdiction." (emphasis supplied)

11. In Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu, it is ruled thus :

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite 3 (2006) 4 SCC 322 4 (1986) 4 SCC 566 5 (2014) 4 SCC 108 - 9 - disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant--a litigant who has forgotten the basic norms, namely, 'procrastination is the greatest thief of time' and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis." (emphasis supplied)

Supreme Court further held,

"26. In the case at hand, the employee was dismissed from service in the year 1999, but he chose not to avail any departmental remedy. He woke up from his slumber to knock at the doors of the High Court after a lapse of five years. The staleness of the claim remained stale and it could not have been allowed to rise like a phoenix by the writ court." (emphasis supplied).

18. Having regard to the fact that the writ petition is filed after lapse of more than 22 years and the petitioner has failed to explain the reasons for the inordinate delay. Moreover, in the affidavit filed in support of the

writ petition, the petitioner has not offered any satisfactory explanation as to why he did not invoke the jurisdiction of this Court within a reasonable time after the impugned order was passed. The records disclose that the respondent-corporation after following due procedure as prescribed under the TSRTC regulations and also by following the principles of natural justice conducted the departmental inquiry by affording reasonable opportunity to the petitioner to submit his explanation. It further reveals that the Enquiry Officer conducted the inquiry by giving opportunity to the petitioner during the course of enquiry and he submitted his report on 07-4-1983 to the respondent-corporation. The respondent-corporation issued show cause notice to the petitioner on 29-9-1983 calling upon him to submit his explanation as to why penalty of reduction of two increments with cumulative effect for a period of two years shall not be inflicted. The petitioner submitted his explanation to the show cause notice. After considering the explanation submitted by the petitioner on 13-10-1983 passed the impugned order. The petitioner filed the present writ petition questioning the impugned order passed by the second respondent, dated 06-04-1983 after a lapse of more than 22 years without giving any reasons and the same is liable to be dismissed on the ground of delay and laches only.

19. The Division Bench of this Court in **D. GOPALA KRISHNAM RAJU V/s. UNION OF INDIA & ORS⁵**, wherein it was held at Para Nos.13 and 14 as follows :

13. Dealing with these aspects in M.J. James (supra), the Hon'ble Supreme Court observed that:

"30. ... A right not exercised for long time is non-existent. Doctrine of delay and laches as well as acquiescence are applied to non-suit the litigants who approach the court/appellate authorities belatedly without any justifiable explanation for bringing action after unreasonable delay. In the present case, challenge to the order of dismissal from service by way of appeal was after four years and five months, which is certainly highly belated and beyond justifiable time."

*"34. The questions of prejudice, change of position, creation of third party rights or interests on the part of the party seeking relief are important and relevant aspects as delay may obscure facts, encourage dubious claims, and may prevent fair and just adjudication. Often, relevant and material evidence go missing or are not traceable causing prejudice to the opposite party. It is, therefore, necessary for the court to consciously examine whether a party has chosen to sit over the matter and has woken up to gain any advantage and benefit, which aspects have been noticed in Dehri Rohtas Light Rly. PNR, J W.P.No.17239 of 2005 - 8 - Co. Ltd. v. District Board, Bhojpur ((1992) 2 SCC 598) and State of Maharashtra v. Digamber ((1995) 4 SCC 683). These facts, when proven, must be factored and balanced, even when there is delay and laches on the part of the authorities. These have bearing on grant and withholding of relief. Therefore, we have factored in the aspect of prejudice to the appellants in view of the relief granted in the impugned judgment."
(emphasis supplied).*

⁵) MANU/TL/1063/2021(WP.No.17239 of 2005) Decided on 22-11-2021

14. Thus, the writ petition is liable to be dismissed on the aspect of delay and laches and also on non-joinder of necessary and proper parties.

20. It is pertinent to mention herein that when there is an inordinate delay of 22 years in filing writ petition, the petitioner must explain the delay by giving bonafide reasons. In the case on hand, the petitioner simply stated in his affidavit that due to misplace of record, he could not file the writ petition within a reasonable time. If that be so, the petitioner has not specifically stated the steps he has taken in acquiring the required documents from his employer when admittedly he is continuing in service and attending his duties as Asst. Depot Clerk in the respondent-corporation and he being well versed with the procedure. The petitioner ought to have made efforts to obtain those documents from the management of the respondent-corporation for taking necessary steps on the ground of misplace of the record. But the petitioner is not diligent enough in taking steps and he had slept over the matter throughout his service for more than two decades and has miserably failed to explain the inordinate delay of 22 years in filing the present writ petition. Unless the petitioner satisfies the abnormal delay, he is not entitled to claim the equitable relief as envisaged under Article 226 of the Constitution of India to invoke the jurisdiction of this Court.

21. Taking due note of the principles enunciated by the Division Bench of this Court and also the judgment in **D. GOPALA KRISHNAM RAJU** and **P. VENKAT REDY**, this Court has noticed that the petitioner being an employee of respondent-corporation, who had been in service kept quiet and now the question looms large as to why he did not raise his little finger in tracing out the record or acquiescence of record from the respondent-corporation and at a belated stage with undue delay and laches approached this Court invoking the writ jurisdiction and filed this Writ Petition after a long period of 22 years. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains this type of writ petition, for no employee, who had grievance as has been raised in this writ petition have genuinely waited more than two decades; but suffice it to say that the very conduct of not tracing out the record and not acquiring the same from the respondent-corporation appears to be quite illusory. This, Court do not see any tangible grounds as well as any bonafides in prosecuting the matter, after a lapse of 22 years from the date of passing the impugned order.

22. For the reasons mentioned hereinabove, the petitioner has miserably failed to explain the inordinate delay of 22 years and the said laches cannot be considered on a mere submission that the record is not traceable and that too he did not make any efforts in securing the record from the management of the respondent-corporation. In my considered view, there is no merit in the writ petition and the same is liable to be dismissed.

23. In the result, the writ petition is dismissed without costs.

In view of the dismissal of main writ petition, interlocutory applications pending if any, shall stand closed.

JUSTICE J. SREENIVAS RAO

09-11-2022
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HONOURABLE SRI JUSTICE
J. SREENIVAS RAO

PD ORDER
IN
WRIT PETITION No.21861 OF 2006

RESULT : (DISMISSED. NO COSTS)

CIRCULATION No.
Date: 09-11-2022
PS/COURT MASTER: ISL

* NB : LR OPY TO BE MARKED.
// B/o. ISL //