

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.4314 OF 2016

APSRTC. Rep by its Joint Managing Director,
Bus Bhavan, Musheerabad, Hyderabad and two others

....Petitioner

VERSUS

R. Sadana, E.675454,
Aged 47 years, Conductor,
APSRTC Banswada Depot,
C/o. P. Naveen, H.No.5-11-664,
RCT Colony, Yellammagutta,
Nizamabad – 503 003 and another

... Respondents

DATE OF JUDGMENT PRONOUNCED: 12.10.2023

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

- | | | |
|----|--|--------|
| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

J. SREENIVAS RAO, J

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

+ WRIT PETITION No.4314 OF 2016

% Dated 12.10.2023

APSRTC. Rep by its Joint Managing Director,
Bus Bhavan, Musheerabad, Hyderabad and two others

....Petitioner

VERSUS

\$ R. Sadana, E.675454,
Aged 47 years, Conductor,
APSRTC Banswada Depot,
C/o. P. Naveen, H.No.5-11-664,
RCT Colony, Yellammagutta,
Nizamabad – 503 003 and another

... Respondents

! Counsel for the Petitioner : Sri Thoom Srinivas.

^ Counsel for the Respondent : V. Narasimha Goud.

< GIST:

> HEAD NOTE:

? CITATIONS:

1. 2008 5 ALD 745
2. 2010 14 SCC 176
3. 1991 Supp(1) SCC 504
4. 2012 SCC OnLine Del 3900

THE HONOURABLE SRI JUSTICE J.SREENIVAS RAO**WRIT PETITION No.4314 of 2016****O R D E R:**

‘APSRTC’ presently ‘TSRTC’ filed this Writ Petition for seeking Writ of Certiorari, calling for records relating to the Award in I.D.No.40 of 2012 dated 17.02.2014 on the file of the Labour Court-II, Hyderabad which was published in the Telangana Gazette vide G.O.Rt.No.510 dated 01.05.2014 and quash the same.

02. Heard Sri Thoom Srinivas, learned Standing Counsel for the petitioners-corporation and Sri V.Narasimha Goud, learned counsel for the respondent No.1 and learned Assistant Government Pleader for Labour on behalf of respondent No.2.

03. Learned counsel for the petitioner submits that the respondent No.1 was appointed as a daily wage casual contract conductor on 07.04.1996 and her services were regularized on 01.01.1998. During her service, the petitioners-corporation issued punishment orders imposing

deferment of annual increments on four occasions and censure on three occasions for her misconduct.

3.1. He further submits that the Respondent No.1 while performing her duties on 17.01.2001 with Bus bearing No.AP 10 Z 6720 TMS on route Bhokar Bodhan, a check was exercised by the checking officials of RES/Nizamabad at about 11.10 Hours at Stage No.17 i.e. Golegoan and that during the course of check, the checking officials have detected certain serious cash and ticket irregularities. Basing on the same, the checking officials issued a charge memo bearing No.195170 dated 17.01.2001 and thereafter, petitioner-corporation issued charge sheet on 22.01.2001 and also placed the respondent No.1 under suspension.

3.2. Pursuant to the same, respondent No.1 submitted the explanation on 27.01.2001 and thereafter, the petitioners-corporation ordered for a domestic enquiry by appointing Enquiry Officer. Enquiry Officer gave all the opportunities to the respondent No.1 to defend her case and after conducting detailed enquiry, he submitted

enquiry report on 17.03.2001. Petitioners-corporation had issued show cause notice on 27.03.2001 by enclosing the above said report directing the respondent No.1 to submit objections, if any, as to why the proposed punishment of removal from service should not be imposed against her. Accordingly, respondent No.1 submitted her explanation on 30.03.2001 and the disciplinary authority-petitioner No.2 after considering the said explanation and after due verification of her record, passed an Order of removal from service on 07.04.2001.

3.3. Aggrieved by the above said order, the respondent No.1 preferred an Appeal before the Appellate Authority and the same was rejected on 21.06.2001 and thereafter, a Review Petition filed before the petitioner No.3. Reviewing authority modified the punishment on humanitarian grounds by setting aside the removal order and reinstating the respondent No.1 into service and imposed a punishment of postponing her annual increments for a period of 2 years which will have effect on future increments and the period of suspension shall be treated "not on duty" by the Order dated 12.10.2001.

Pursuant to the same, she was reinstated into service. After a lapse of more than 10 years, she raised a dispute before the Labour Court - II, Hyderabad in I.D.No.40 of 2012. He further contended that the Labour Court without properly considering the contentions of the petitioner-corporation and documentary evidence on record, passed impugned Award dated 04.02.2014, modifying the punishment of the respondent No.1 with that of stoppage of one increment with cumulative effect and also granted the relief of continuity of service and attendant benefits.

3.4. He vehemently contended that respondent No.1 raised a dispute after more than 10 years, in such circumstances, the Labour Court should have dismissed the ID on the ground of delay and laches, and also ought not to have passed the impugned Award while holding that domestic enquiry conducted by the petitioners-corporation is valid under law.

3.5. In support of his contention, he relied upon a Judgment in **Regional Manager, TSRTC and another v. Syed Yousuf**¹.

04. Per contra, learned counsel for the respondent No.1 submits that the Labour Court after considering the pleadings and contentions of the respective parties and documentary evidence on record, and also after hearing both parties, passed the impugned Award by giving cogent reasons modifying punishment imposed by the petitioners-corporation and there is no illegality, irregularity or error in the said Award. Respondent No.1 rendered more than 5 years of unblemished service as on the date of removal from services.

4.1. He further contended that at the instance of Union, the Government referred the dispute to the Labour Court invoking the provisions under Section 10 of the Industrial Disputes Act, 1947 (for brevity 'the Act') and the Labour Court rightly passed the impugned Award and the same is in accordance with law and the scope of judicial

¹ Common Judgment dated 13.12.2021 of this Court passed in Writ Appeal Nos.1660 of 2018 & 593 of 2016.

review under Article 226 of the Constitution of India is very limited and the writ petition is liable to be dismissed. Learned counsel further contended that the Labour Court is not having power to refuse to answer the reference made by Government.

4.2. In support of his contention, he relied upon following Judgments:

*i. Divisional Manager, APSRTC, Khammam v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Warangal and another*².

*ii. Kuldeep Singh v. General Manager, Instrument Design Development and Facilities Centre and another*³.

05. Having considered the rival submissions made by respective parties, and after perusal of material available on record, it reveals that the respondent No.1 while performing her duties on 17.01.2001 a check was exercised by the checking officials of the petitioners-corporation and found certain cash and ticket irregularities and thereafter, petitioners-corporation placed the respondent No.1 under suspension pending enquiry and

² 2008 (5) ALD 745

³ (2010) 14 Supreme Court Cases 176

issued charge sheet dated 17.01.2001, which reads as follows:

“i. For having failed collected requisite ticket fare of Rs.28-00 each and Rs.84-00 in total from a batch of (3) three passengers towards their journey from Nagthana to Bodhan ex-stages 19 to 01 and issued Rs. 18-00 each and Rs.54-00 in total value tickets to them bearing Nos. 970/304998,999,970/305000 of Rs.10-00 deno. E.3 and 137/198633 to 635 of Rs.8-00 deno E.3 total worth Rs.54/-. Thus you had issued less tickets of Rs.10-00 each and Rs.30-00 in total, even after collecting the exact fare amount from the passengers – while you were performing duty on route Bhokar-Bodhan on 17.01.2001”

(ii) For having closed the ticket tray Nos. of all denomination in the SR upto stage No.17.

The above charges comes under misconduct in terms of Regulation 28, Sub clause (xxv) and (xxxi) of APSRTC Employees Conduct Regulations, 1963.”

06. Respondent No.1 submitted her explanation dated 27.01.2001, and not satisfying with the same, the petitioner No.2 ordered for a domestic enquiry by appointing enquiry officer. The enquiry officer had given all opportunities to the respondent No.1 and after conducting enquiry submitted enquiry report dated 17.03.2001 wherein basing on the charges leveled against her issued show cause notice on 27.03.2001 by enclosing

the enquiry report directing the respondent No.1 to give reply. After considering the representation, he passed order on 07.04.2001 removing respondent No.1 from service. Aggrieved by the same, the respondent No.1 filed an Appeal before the Appellate Authority and the same was rejected on 21.06.2001 and thereafter, a Review Petition filed before the petitioner No.2 and the said authority passed an order dated 12.10.2001 on humanitarian grounds modifying the punishment reinstating the respondent No.1 into service and imposed a punishment of postponing her annual increments for a period of 2 years which will have effect on future increments and the period of suspension shall be treated "not on duty". Thereafter, respondent No.1 made representation to the union and at the instance of the Union, the Government referred the reference after lapse of more than 10 years to the Labour Court-II, Hyderabad, and the same was numbered as I.D.No.40 of 2012, the said reference reads as under:

*“(i) Whether the action of the respondent, is justified in losing three annual increments i.e., two increments by way of punishment and one increment by way of treating the intervening period as ‘Not on duty’ ?
If not, to what relief the petitioner is entitled to ?”*

07. In the above said ID, Respondent No.1 filed claim statement on 29.01.2013 seeking to set aside the punishment order issued by petitioner No.2 imposing punishment of postponing her annual increments for a period of 2 years which will have effect on future increments and the period of suspension shall be treated "not on duty".

08. It further reveals from the record that pursuant to order dated 12.10.2011 respondent No.1 was reinstated into service and after lapse of more than 10 years at the instance of union she raised dispute, though as per the provisions of Section 2 (A) (2) of the Act, respondent No.1 is entitled to raise the dispute questioning the punishment order dated 12.10.2001 within a period of three (3) years or she is entitled to approach this Court by way of writ petition. However, she has not availed the said remedies.

09. It is also relevant to extract the provisions of Section 10 (1) of the Act, which reads as follows:

“Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in

writing, refer the dispute for promoting a settlement thereof”

Section 10 (1) (C) of the Act read as under:

“Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication.”

10. It is already stated supra that respondent No.1 without raising dispute, questioning the modified punishment order dated 12.10.2001 within stipulated time, as available under law, she raised a dispute through Union, after lapse of 10 years, to avoid the delay, by taking shelter under the provisions of Section 10 (1) (C) of the Act, which is an afterthought and the same is not permissible under law, merely because the Government is having power to refer the reference/dispute at any time.

11. The contention raised by the learned counsel for the respondent No.1, that respondent No.1 filed petition before Assistant Commissioner of Labour, Nizamabad on 21.08.2007, but she had not taken any steps, thereafter, respondent No.1 submitted another representation to the

Joint Commissioner of Labour, Rangareddy Zone, and they have not taken any action. Therefore, the dispute raised by her through Union is within the time, is not tenable under law, on the sole ground that the respondent No.1 or the Union have not taken any steps to pursue the remedies as available under law, within reasonable time, and mere submission of the applications before the above said authorities is not a ground to cover up the delay and latches.

12. It is settled proposition of law that when there is no time limit fixed under the statute, the reasonable time has to be taken into consideration basing upon the facts and circumstances of the case. Though the Labour Court cannot refuse to answer the reference made by the Government invoking provisions of the Act, the Labour Court ought to have gone into the point as to whether the reference made by the Government is in accordance with law before entertaining the dispute basing on the reference.

13. The Judgments relied upon by the learned counsel for respondent No.1 are not applicable because in

the case on hand, the Government referred the reference to the Labour Court basing on the representation made by respondent No.1 to the Union on the ground that the punishment imposed by the Revisional Authority is disproportionate, whereas respondent No.1 reinstated into service pursuant to the very same order dated 12.10.2001 and after lapse of more than 10 years she pursued her remedies through Union without availing the remedy to question the said order within the stipulated time period as per the provisions of the Act or by way of filing Writ Petition before this Court.

14. In ***Kulwant Singh Gill vs. State of Punjab***⁴ the Hon'ble Apex held that 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. 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

⁴ 1991 Supp (1) SCC 504

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.

15. It is relevant to place on record that the Hon'ble Delhi High Court in ***University of Delhi v. Om Prakash and another***⁵, held that under Section 10 of the Act, there is no specific time limit prescribed for the appropriate Government to exercise its powers in making a reference for the adjudication of industrial disputes. However, the exercise of this power should be reasonable and rational. Additionally, it is emphasized that disputes that have become stale or settled for a long time should not be revived through a reference under Section 10. The judgment suggests that the appropriateness of such a reference depends on the facts and circumstances of each

⁵2012 SCC OnLine Del 3900

case. Furthermore, the delay alone should not be a sufficient ground to dismiss a reference; it must be proven that the delay caused real prejudice in paragraph Nos. 6,7 and 8.

6. Law does not prescribe any time limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years of order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising industrial dispute was ex facie bad and Incompetent.

7. However, this plea of delay and latches was never taken by the Petitioner before the Industrial Tribunal. In *Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Limited* (1999) 6 SCC 82 their Lordships held:

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand

regarding his illegal retrenchment/termination or dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. Reliance of the learned counsel for the respondent management on the Full Bench judgment of the Punjab and Haryana High Court in *Ram Chander Morya v. State of Haryana* [(1999) 1 SCT 141 (P&H); ILR (1999) 1 P&H 93 (FB)] is also of no help to him. In that case the High Court nowhere held that the provisions of Article 137 of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held “neither any limitation has been provided nor any guidelines to determine as to what shall be the period of limitation in such cases”. However, it went on further to say that:

“reasonable time in the cases of labour for demand of reference or dispute by appropriate Government to labour tribunals will be five years after which the Government can refuse to make a reference on the ground of delay and laches if there is no explanation to the delay”.

We are of the opinion that the Punjab and Haryana High Court was not justified in prescribing the limitation for getting the reference made or an application under Section 33-C of the Act to be adjudicated. It is not the function of the court to prescribe the limitation where the legislature in its wisdom had thought it fit not to prescribe any period. The courts admittedly interpret law and do not make laws. Personal views of the Judges presiding over the Court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left over by the legislature. The judgment of the Full Bench of the Punjab and Haryana High Court has completely ignored the object of the Act and various pronouncements of this Court as noted hereinabove and thus is not a good law on the point of the applicability of the period of limitation for the purposes of invoking the jurisdiction of the courts/boards and tribunal under the Act.

8. In *Nedungadi Bank Ltd.* (supra) their Lordships were dealing with a claim at the stage of reference itself. It was thus held that no dispute existed as the workman belatedly came up with the plea that since two other employees dismissed from service were reinstated, he was also entitled to reinstatement and sought a reference. It was observed that in the absence of facts showing in what circumstances the other two employees were dismissed and subsequently reinstated, the demand raised was *ex facie* bad and incompetent. In the present case admittedly this plea of delay was not taken by the Petitioner before the Tribunal and thus Respondent No. 1 had no opportunity to prove the reasons for his belated action. Thus, this Court will not permit the Petitioner to raise this plea at this stage in view of the law laid down in *Ajaib Singh* (supra).

16. In the case on hand, the removal order passed by petitioner No.3 was set aside by the petitioner No.2 in review petition on humanitarian grounds reinstating the respondent No.1 into service and imposed a punishment of postponing her annual increments for a period of 2 years which will have effect on future increments and the period of suspension shall be treated as "not on duty" and pursuant to the said order the respondent No.1 is reinstated into service and after a long lapse of more than period of 10 years, she raised the dispute through Union, by taking shelter under Section 10 (1) (C) of the Act and the same is not permissible under law, when respondent No.1 has not utilized the remedies as available under the provisions of the Act, or by way of Writ Petition.

17. For the foregoing reasons as well as the principle laid down in the above judgments the impugned award dated 17.02.2014 is modified holding that respondent No.1 is not entitled for attendant benefits. However, taking into consideration the length of service rendered by respondent No.1, she is entitled for continuity

of service for the purpose of claiming terminal benefits only and rest of the award is confirmed.

18. With the above modification, the Writ Petition is allowed in part accordingly. There shall be no order as to costs.

As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

Date: 12.10.2023
KHRM

J.SREENIVAS RAO, J