

(2023) 03 TEL CK 0079

In the Telangana High Court

Case No : Writ Petition Nos.32321 Of 2011 And 1964 Of 2012

A. Venkat Ram

APPELLANT

Vs

Chairman Managing Director, Apnpdcl, Warangal 3 Others

RESPONDENT

Date of Decision : 13-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 32, 226

Citation : (2023) 03 TEL CK 0079

Hon'ble Judges : A. Abhishek Reddy, J

Bench : Single Bench

Advocate : V Narasimha Goud, P Lakshma Reddy

Final Decision : Dismissed

Judgement

1) Since the issue raised in both these writ petitions is intrinsically inter connected, they are taken up and heard together and being disposed of by this common order.

2) Challenging the Memo No.CGM(HRD)/JS/AS(Estt)/PO.A/ 385-Ex.A.3/11-1, dated 15.07.2011, issued by respondent No.2 in not considering the request of the petitioner for seniority from 01.02.1993 in the post of Junior Lineman, the petitioner has filed Writ Petition No.32321 of 2011.

3) Aggrieved by the action of the respondents in proposing to go-ahead with the filling of two vacant post of Line Inspector with the Line Man without considering the representation of the petitioner dated 23.06.2011, W.P. No.1964 of 2012 is filed.

4) Heard the learned counsel for the petitioner and Sri Zakir Ali Danish, learned Standing Counsel for the respondent-Corporation.

5) Insofar as W.P. No.32321 of 2011 is concerned, learned counsel for the petitioner has stated that initially the petitioner was appointed as a Watchman on compassionate grounds vide Memo dated 23.02.1991. Thereafter, vide Memo

dated 14.03.1991, he was posted at Central Office, Medak. After joining into the services of the respondent-Corporation, the petitioner has passed SSC in the year 1992 and therefore he was absorbed as a Helper in the existing vacancy of Siddipeta Division and he joined as Helper on 01.02.1993 at 33/11 KV SS, Tukkapur, Siddipet. It is stated that as the family members of the petitioner were staying at Kothagudem, the petitioner made a representation to the authorities seeking to transfer him to Kothagudem. Thereafter, based on the said representation, the petitioner was transferred vide proceedings dated 15.06.1994 and the petitioner reported for duty as per the order dated 07.07.1994 at Bhadrachalam and thereafter he was posted at Kothagudem and joined on 05.08.1994. Subsequently, the petitioner was promoted as Assistant Lineman on 31.07.2002 and as lineman on 12.05.2004. When the petitioner came to know that his juniors were working as Senior Lineman and Foreman, he made a representation to the authorities to consider his case for promotion on par with his juniors, but the same was rejected on 15.07.2011. Thereafter, the petitioner has issued a legal notice brining it to the notice of the authorities concerned about the discrepancies in the promotions, but there was no response. Hence, left with no other option, petitioner has filed W.P. No.32321 of 2011.

6) Learned counsel has attacked the rejection order dated 15.07.2011 on the following grounds:

1) Petitioner has joined as a Junior Lineman on 01.02.1993 and his date of service and promotion should be reckoned as 01.02.1993 for all purposes, but the juniors cannot be placed above the petitioner in the seniority list.

2) When the petitioner was transferred from Siddipet to Kothagudem, he was not informed that the petitioner will be placed below his juniors and that for the first time, after passing of the rejection order dated 15.07.2011, he came to know the said position.

3) Even though the orders of transfer to Kothagudem were passed on 15.06.1994, due to the administrative delay caused by the respondent Corporation, he reported to duty on 05.08.1994 (or 07.07.1994) and the said administrative delay cannot be the basis for denying the petitioner his rightful promotion and placing him below his juniors in the seniority list and therefore prayed this Hon'ble Court to allow the Writ Petition.

7) Per contra, the learned Standing Counsel Sri Zakir Ali Danish has vehemently opposed the very maintainability of the Writ Petition and has stated that the petitioner was very well aware of his seniority wayback in the year 1997 itself when his probation was declared and subsequently vide memo dated 24.05.1997 the provisional seniority list of the Junior Linemen was communicated to all the staff, including the petitioner herein. In the said provisional seniority list, the petitioner was placed at Sl.No.63, but the petitioner has not raised any objection at that point of time with regard to his seniority, but as a matter of fact, the petitioner has raised an objection in the said seniority list with regard to SSC

qualification being wrongly shown as 'Fail' and based on the objection raised by the petitioner, the same has been corrected by the respondent Corporation as 'Passed'. Except the above objection, the petitioner has not raised any other objection with regard to his seniority or probation. Therefore, after a lapse of more than fifteen years, the petitioner cannot approach the Court seeking to unsettle the settled things. Learned Standing Counsel has further stated that as per the Services Regulations governing the respondent Corporation, more particularly clause 10 (i)(iv) thereof, whenever an employee seeks transfer on his own request from one unit to another, he shall have seniority fixed in the latter unit with reference to the date of his first appointment in that unit. In the case on hand, as per the request of the petitioner, he was transferred from Siddipet to Kothagudem and therefore he was placed below the persons who are already working there in connection with clause 10 (i)(iv) of the Regulations of the Corporation. Learned Standing Counsel has stated that the judgments relied by the petitioner are not applicable to the facts of the present case. It is further urged that in case any relief is granted to the petitioner, the same will unsettle the settled things and the promotions of the other employees, who are not arrayed as respondents in the writ petition, will be affected. Further, by the time, the petitioner had filed the present writ petition, he was already promoted twice. Considering all the above, learned counsel has prayed to dismiss the writ petition.

8) In reply, the learned counsel for the petitioner has stated that grounds taken by the respondents with regard to the delay has not been taken in the counter filed by them and there cannot be any improvement now in the absence of any pleadings to that effect. That the petitioner is being subjected to punishment for no fault of his only due to the administrative delay caused by the respondent Corporation and therefore prayed to allow the writ petition. Learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court in *Narender Singh v. The State of Haryana* (2022) 3 SCC 286 and the unreported order dated 15.01.2007 passed by a learned Single Judge of this Court in W.P. No.9745 of 2000.

9) Perused the record.

10) In the present case, the petitioner was initially appointed as a Watchman on 23.02.1991. Subsequently, on acquiring SSC qualification, he was promoted as a Helper/Junior Lineman w.e.f.01.02.1993. Thereafter, the petitioner made a request for transfer from Siddipet to Kothagudem and the same was accepted by the respondent Corporation and orders were issued on 15.06.1994. The petitioner, following the transfer order, has reported at Bhadrachalam on 07.07.1994 and thereafter he was posted at Kothagudem on 05.08.1994. Subsequently, the petitioner was promoted as Assistant Lineman on 31.07.2002 also as a Lineman on 12.05.2004. Even though the petitioner has stated that for the first time vide rejection order dated 15.07.2011, he came to know that his juniors are working as Senior Lineman and Foreman. A perusal of the seniority list dated 25.04.1997 a copy of which has also been communicated to the

petitioner shows that a copy of the same was served on the petitioner and the name of the petitioner is figuring at Sl.No.63 and the date of joining of the petitioner is shown as 05.08.1994. A perusal of the said order shows that initially as against the name of the petitioner at Sl.No.63 he was shown as having failed 'SSC', but the same was subsequently corrected to 'Pass' ostensibly on the basis of the representation made by the petitioner. In the said list, the date of joining of the petitioner was also shown as 05.08.1994. If the petitioner had any grievance with regard to the said seniority list, he ought to have immediately filed his objections to the said seniority list. But, for reasons best known to the petitioner, he kept quiet for nearly about 16 years and thereafter filed the present writ petition in the year 2011.

11) Even though it is contended by the learned counsel for the petitioner that the petitioner came to know that he was placed below his juniors in the seniority list dated 15.07.2011, the same cannot be believed in view of the fact that a copy of the said list was communicated to the petitioner way back in the year 1997. Moreover, admittedly, the petitioner has been promoted as Assistant Lineman on 31.07.2002 and thereafter as Lineman on 12.05.2004 duly taking into consideration his date of joining as a Lineman on 05.08.1994, to which, the petitioner did not raise any objection.

12) Having regard to the same, it has to be held that the petitioner was having the knowledge of the factum that he was placed below his juniors in the seniority list, at the earliest point of time i.e. in the year 1997 itself. Therefore, it has to be necessarily held that the petitioner was not diligent enough in approaching this Court at the earliest point of time. The petitioner, for reasons best known to him, has kept quiet for a period of more than 16 years before approaching this Court by way of the present Writ Petition. The explanation submitted by the petitioner that he made a representation and the same was rejected vide order dated 15.07.2011, cannot be a ground for filing the present writ petition. Moreover, the petitioner has not challenged the Regulations of the Corporation, more particularly Regulation 10 (i)(iv) thereof.

13) Regulation 10 (i)(iv) reads as under:

"A member of a service, who is transferred at his own request from one unit to another, shall have his seniority fixed in the latter unit with reference to the date of his first appointment in that unit."

14) Further, in the letter dated 08.04.2011 addressed by the Divisional Engineer, Electricity Operation, Bhadrachalam, to The Superintending Engineer Electricity, Operation Circle: NPDCL, Khammam, it is clearly mentioned that the petitioner shall forego his line and seniority. Relevant portion of the said letter reads as under:

"As per service register on Page No: 10 it was clearly mentioned that he shall forego his lien and seniority in his parent circle and take last rank among the helpers in the division."

15) Even in the letter dated 19.04.2011 addressed by the Superintending Engineer, Operation, N.P.D.C.L., Khammam, to the Chief General Manager (HRD), N.P.D.C.L., Warangal, also it is clearly mentioned that the petitioner was placed below the emergency employee who was joined before him in the JLM seniority list issued as on 31.03.1997.

16) Admittedly, the petitioner on his own volition has applied for transfer from Siddipet to Kothagudem. Therefore, as per the said clause 10 (i) (iv) of the Regulations and as evident from the letters dated 08.04.2011 and 19.04.2011, the seniority of the petitioner has been fixed below the emergency employee who was joined before him in the JLM seniority list as on 31.03.1997.

17) Admittedly, in the present case, the petitioner has filed his objections with regard to his educational qualifications and has taken an objection that in the seniority list it is shown as if he has failed SSC, but as a matter of fact, he has passed SSC and basing on his report, his objection was considered and necessary correction was made in the said seniority list. There is no explanation forthcoming as to what prevented the petitioner from taking objection with regard to fixation of his seniority below his juniors at the earliest point of time i.e. in the year 1997, as claimed by him in the present writ petition.

18) Even the judgments relied by the learned counsel for the petitioner have no application to the facts of the present case. The case in Narender Singh (referred supra) pertains to issuance of 'No-objection certificate' for applying to the post of Assistant Professor by the State Government, whereas the order dated 15.01.2007 in W.P. No.9745 of 2000 was passed where without considering the objections filed by the candidate to the provisional seniority list, when the final seniority list was sought to be prepared. Thus, the reliance placed by the learned counsel for the petitioner on the above referred judgments is misplaced.

19) Further more, a Full Bench of the erstwhile High Court of Andhra Pradesh in P.V. Narayana v. APSRTC, Hyderabad 2013 SCC Online AP 729, 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:

(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."

20) Relying on the above 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 an inordinate delay in approaching the Court.

21) For the afore-stated reasons and in view of the law laid down by the Full Bench of this Court in P.V. Narayana's case (referred supra), W.P. No.32321 of 2011 is liable to be dismissed.

22) Consequent to the dismissal of W.P. No.32321 of 2011, no orders can be passed in Writ Petition No.1964 of 2012 and the same is also liable to be dismissed.

23) Accordingly, both the writ petitions are dismissed.

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