

(2007) 11 MAD CK 0127
In the Madras High Court
Case No : W.A. No. 990 of 2005

G. Boopalan

APPELLANT

Vs

The Executive Engineer and Administrative Officer, Tamilnadu
Housing Board and The Presiding Officer, Labour Court

RESPONDENT

Date of Decision : 16-11-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2007) 11 MAD CK 0127

Hon'ble Judges : R. Regupathi, J; P.D. Dinakaran, J

Bench : Division Bench

Advocate : T. Ananthi, for the Appellant; K. Chelladurai, for 1st Respondent, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—This appeal is filed by the unsuccessful writ petitioner in W.P. No. 39598 of 2002, wherein he sought for issue of a

writ of Certiorarified Mandamus to quash the order of the 2nd respondent in connection with the award dated 24.1.1997 in I.D. No. 156 of 1995

and to direct the respondents to reinstate the petitioner into service as Nigh Watchman and to grant all consequential and monetary benefits.

2. The appellant lost the industrial dispute in I.D. No. 156 of 1995 wherein he sought for a direction to the first respondent to reinstate him with

continuity of service and backwages on the grounds that:

(i) the appellant was working only as a nominal muster roll workman and not a permanent employee;

(ii) the appellant deserted his job even as a nominal muster roll workman from 25.12.1986 and absented himself unauthorisedly; and

(iii) the appellant had not rendered proper explanation for raising the industrial dispute, belatedly, after lapse of six years, which attracts laches.

3. When a challenge was made to the said award dated 24.1.1997 in I.D. No. 156 of 1995 by way of a writ petition in W.P. No. 39598 of 2002,

the learned Single Judge, by order dated 9.8.2004, satisfied with the reasons that weighed the second respondent/Labour Court in the award

dated 24.1.1997, dismissed the writ petition. Hence, the present appeal.

4. Ms. T. Aananthi, learned Counsel for the appellant, placing reliance on the decision of the Apex Court in *Steel Authority of India Ltd. v.*

Presiding Officer 1995 Supp (4) SCC 109, contends that the appellant ought to have been heard before being removed from service and in the

absence of any such opportunity given to the appellant, he is entitled to reinstatement and he may be reinstated without backwages.

5. We are unable to appreciate the above contention of the learned Counsel for the appellant. In *Steel Authority of India Ltd. Vs. Presiding Officer*

and Another, the service of the employee was terminated on 23.8.1980 as he remained absent to avoid being apprehended by the Police, of

course, without any leave application and thereafter, he approached the Labour Court for adjudication after nearly 10 years. The Labour Court

directed reinstatement with full backwages. The management challenged the same in the High Court, which was dismissed in limine. Against which,

the management preferred a SLP and the Apex Court, finding that the employee was terminated without giving an opportunity, directed the

management to reinstate the employee and held that the management cannot be asked to pay backwages for the default of the employee in not

taking action for over a decade and set aside the order directing payment of full backwages and substituted it by ordering 25 per cent backwages.

6. In our considered opinion, the decision of the Apex Court in *Steel Authority of India Ltd. v. Presiding Officer* referred supra, is not applicable to

the facts and circumstances of the case on hand, as the employee in *Steel Authority of India Ltd. case*, referred supra, was a permanent employee,

whose service should not have been terminated without an enquiry, but in the case on hand, the appellant is not a permanent employee of the first

respondent/Board at all. On the other hand, the fact remains that he was only working as a nominal muster roll workman on daily wages.

7. It is well settled that the term "temporary employee" is a general category which has under it several sub-categories, viz., casual employee, daily-rated employee, ad hoc employee, etc. A daily-rated or casual worker is only a temporary employee, and it is well settled that a temporary employee has no right to the post, or to be continue in service, to get absorption, far less of being regularised and getting regular pay. A casual or temporary employment is not an appointment to a post in the real sense of the term. There is vast distinction between a temporary employee and a permanent employee. A permanent employee has a right to the post, whereas a temporary employee has no right to the post. Similarly, no direction can be given that a daily wage employee should be paid salary of a regular employee. If an employee is not appointed against a sanctioned post, he is not entitled to any scale of pay. vide Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd.,

8. In the case on hand, the second respondent/Labour Court held that the dispute raised by the appellant suffers from laches, as the appellant, apart from remaining absent unauthorisedly even as a nominal muster roll workman had also failed to approach the Labour Court for nearly six years and the learned Single Judge, upheld the same. Concededly, there is no explanation on behalf of the appellant for the lapse of six years in raising the industrial dispute, which, in our considered opinion would attract laches, and at this juncture, a reference to the decision of the Apex Court in Karnataka Power Corporation Limited through its Chairman and Managing Director and Another Vs. K. Thangappan and Another, , is 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. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad Vs. Chief Controller of Imports and Exports, . Of course, the discretion has to be

exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd* [1874] 5 PC 221 was approved

by this Court in *Moon Mills Ltd. v. M.R. Meher* AIR 1967 SC 1450 and *Maharashtra State Road Transport Corporation Vs. Balwant Regular*

Motor Service, Amravati and Others, . Sir Barnes had stated:

Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy

either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and

neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the

remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against

relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the

validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of

the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the

one course or the other, so far as it relates to the remedy.

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the

Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in *Rabindranath*

Bose and Others Vs. The Union of India (UOI) and Others, that no relief can be given to the petitioner who without any reasonable explanation

approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow

from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after

inordinate delay.

9. It was stated in *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, that 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.

9. Moreover, it is well settled that the power of judicial review is limited to the deficiency in the decision-making process and not the decision. In

this regard, a reference to the decision of the Apex Court in *Jayrajibhai Jayantibhai Patel v. Anilbhai Nathubhai Patel* [2006] 8 SCC 200 is

beneficial:

it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural

impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula,

universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises

the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society.

Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant

considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it

on the given material, may be struck down. In other words, when a court is satisfied that there is an abuse or misuse of power, and its jurisdiction

is invoked, it is incumbent on the court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the

decision-making process and not the decision.

10. In the instant case, there is no complaint made by the appellant to

substantiate that the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards, furthermore, it is the appellant, a nominal muster roll workman, who had absented himself unauthorisedly and approached the Court after a lapse of six years. Under such facts and circumstances of the case, finding no reason to interfere with the order of the learned Single Judge dated 9.8.2004 made W.P. No. 39598 of 2002, this appeal is dismissed. No costs.