

(1999) 02 AP CK 0047

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19359 of 1998

M. Yellaiah

APPELLANT

Vs

Managing Director, APSRTC, Musheerabad, Hyderabad and
others

RESPONDENT

Date of Decision : 11-02-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (1999) 2 ALD 245 : (1999) 2 ALT 247 : (1999) 1 APLJ 285

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : Mr. V. Narasimha Rao, for the Appellant; Mr. K. Harinath, SC for APSRTC, for the Respondent

Judgement

1. The petitioner herein, who is employed as a Driver in the APSRTC from 1989, was subjected to a disciplinary enquiry on certain charges of misconduct and he was removed from service by an order dated 7-2-1993. However, on appeal, the appellate authority, by order dated 20-8-1994, modified the punishment and ordered a fresh appointment to be given to him. As per the said order of the appellate authority, the petitioner was reinstated in service as a fresh appointee in the month of September, 1994. After nearly four years, the petitioner has filed the present writ petition seeking to question the order of the appellate authority insofar as he was denied backwages and continuity of service as being illegal, unjust and violative of Articles 14, 16 and 21 of the Constitution.

2. The learned Counsel for the petitioner strenuously contended that the alleged irregularities on the basis of which action was taken against the petitioner mainly related to the conduct of the Conductor and that the only charge against the petitioner, who is the driver, is that he unnecessarily interfered with the duties of the Conductor and also used offensive and abusive language against the checking officials that the charge is not duly established and that the same does not in any case warrant the extreme punishment of removal from service. He

also submitted that the denial of backwages and continuity of service to the petitioner for the alleged misconduct is not justified. I am afraid, I do not find any substance in the said contentions of the learned Counsel for the petitioner. It is the settled position that the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, does not normally interfere with the quantum of punishment unless the punishment imposed is shockingly disproportionate to the misconduct alleged and proved. The High Court also does not act as a Court of appeal and reappraise the evidence on record and substitute its opinion to that of the disciplinary authority or the appellate authority, as the case may be. In the instant case, the appellate authority, taking a lenient view reduced the punishment and ordered reinstatement of the petitioner, but as a fresh appointee. It cannot be said that the denial of backwages and continuity of service is shockingly disproportionate to the proved misconduct. If at all, the appellate authority erred in favour of the petitioner, for which the petitioner has to thank his stars. I do not, therefore, find any valid grounds to interfere with the order passed by the appellate authority. That apart, the petitioner, having accepted the punishment and joined the post, it is not open to him to question the order, that too after the lapse of four years.

3. In *State of Punjab and others Vs. Krishan Niwas*, , the Apex Court held that the delinquent after accepting the punishment and after joining the post would be debarred from filing the application in civil Court to declare the imposition of reduced punishment and denial of backwages as improper.

4. The learned Counsel for the petitioner, placing reliance on the judgments in *Sushil Kumar Yadunath Jha Vs. Union of India (UOI) and Others*, , *Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others*, and *S.G. Constable, A.K. Mandal CISF, Unit Visakhapatnam, Port Trust Vs. Union of India (UOI) and Others*, , however, sought to content that delay is not a ground for denying relief and that in appropriate cases even the delay of ten years is condoned.

5. It is true that no period of limitation is prescribed for filing a writ petition under Article 226 of the Constitution and that there is no hard and fast rule with regard to the length of delay. It is a matter of discretion to be judiciously exercised on the facts and circumstances of each case. The Court will be inclined to overlook and condone the delay where the applicant has a good case on merits and the ends of justice require that relief should be granted. But in the instant case, I do not find any valid reasons to condone the inordinate delay of four years in approaching the Court, moreso having regard to the fact that the petitioner has chosen to accept the fresh appointment order and continued in service all these four years. I do not, therefore, find any merit in this writ petition and it is accordingly dismissed. No costs.