

(2016) 11 KAR CK 0079

In the Karnataka High Court

Case No : Writ Petition No. 56938 of 2016 (L-TER)

Principal Secretary

APPELLANT

Vs

Marashetty

RESPONDENT

Date of Decision : 21-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(4-A)

Citation : (2017) 2 KantLJ 148

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Sri. D. Ashwathappa, AGA, for the Petitioner

Final Decision : Dismissed

Judgement

B. Veerappa, J.—The petitioners-State Government filed the present writ petition against the award dated 9-8-2010 made in I.I.D. No. 217 of 1999 on the file of the Labour Court, Mysuru, allowing the petition filed by the respondent-workman under Section 10(4-A) of the Industrial Disputes Act, 1947 (for short, T.D. Act"), directing the Government to reinstate the respondent into service to the same post, which he has held as on the date of his termination, that is, on 1-10-1999, with 50% back wages from the date of 1-10-1999 till he is reinstated.

2. The respondent raised an industrial dispute under Section 10(4-A) of the I.D. Act, contending that, he was appointed as a watcher in the Office of the Project Director, Dry Land Development Board, Nanjanagud Taluk on daily wage basis on 1-9-1988 and while working in the said office, without any complaint he was illegally terminated on 1-10-1999 that is after lapse of ten years. It was his contention that, before his termination, no notice was issued and according to him he has worked continuously for more than 240 days. The termination was in violation of Section 25-F of the I.D. Act. In the Government Circulars dated 13-10-1992 and 6-1-1999 the concerned Officer was instructed not to retrench any daily wager appointed after 1-7-1984.

3. After contesting, the Tribunal recorded a finding of fact that the State Government was not justified in terminating the services of the respondent and therefore, he is entitled to 50% of back wages with reinstatement. Accordingly, the Tribunal passed the impugned award on 9-8-2010. Hence, the present writ petition is filed.

4. The Additional Government Advocate has contended that the Labour Court was not justified in passing the impugned order without considering the law laid down by the Hon"ble Supreme Court in *Secretary, State of Karnataka and Others v. Umadevi and Others* 2006 (4) SCC 1 and contended that the provisions of the Industrial Disputes Act are not applicable and there is no violation of law in discontinuing his services. Therefore, he sought to allow the writ petition.

5. I have given my anxious consideration to the arguments advanced by the learned Additional Government Advocate appearing for the petitioner-State Government.

6. It is an undisputed fact that the respondent has appointed on daily wage basis on 1-9-1988 and he has worked up to his termination i.e. till 1-9-1999 and it was his case that he has worked more than 240 days continuously, therefore, the termination of respondent was without notice, is in utter violation of the provisions of Section 25-F of the I.D. Act. Admittedly, the award passed by the Tribunal is on 9-8-2010 and the present writ petition is filed on 3-11-2016, that is, after lapse of more than six years. In the writ petition at para 4, the petitioners have explained that the impugned award was passed on 9-8-2010 and the same was not communicated by the District Government Pleader and they received the communication only in the year 2014 and the new Government Pleader has taken charge in 2015. Therefore, there was delay in filing this writ petition. Absolutely there is no explanation for the delay from 9-8-2010 till 2014 and 2014 to 2015 in the writ petition.

7. The Hon"ble Supreme Court while considering the delay in the case of *Chennai Metropolitan Water Supply and Sewerage Board and Others v. T.T. Murali Babu* (2014) 4 SCC 108 has held at paras 16 and 17 as under:

"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 scrutinise 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 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.

17. In the case at hand, though there has been four years' delay in approaching the Court, yet the Writ Court chose not to address the same. It is the duty of the Court to scrutinise whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A Court is not expected to give indulgence to such indolent persons - who compete with "Kumbhakama" or for that matter "Rip Van Winkle". In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the Writ Court should have thrown the petition overboard at the very threshold."

8. Without adverting to the merit and demerits of the case, the writ petition is liable to be dismissed only on the ground of delay and laches on the part of State Government. Since the explanation offered by the petitioners at para 4 of the writ petition is not sufficient to condone the inordinate delay of more than 6 years. Therefore, writ petition is dismissed on the ground of delay and laches.