

(2002) 02 AP CK 0050

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1984 of 2001

R. Tata Rao and Another

APPELLANT

Vs

Andhra Pradesh Small Scale Industries Development
Corporation Ltd. and Others

RESPONDENT

Date of Decision : 11-02-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 32

Citation : (2002) 2 ALD 589 : (2002) 2 ALT 244 : (2002) 94 FLR 463 : (2002) 3 LLJ 328

Hon'ble Judges : Ar. Lakshmanan, C.J;I. Venkatanarayana, J

Bench : Division Bench

Advocate : P. Venugopal, for the Appellant; G.P., for the Respondent

Final Decision : Dismissed

Judgement

1. Heard all parties.
2. This Writ Appeal is directed against the order of the learned single Judge dismissing the Writ Petition No.18372 of 1993 on ground of laches.
3. The appellants are the petitioners in the Writ Petition. The appellants who are the retrenched employees of the Andhra Pradesh Small Scale Industries Development Corporation Ltd., -1st respondent herein filed the above writ petition for a writ a mandamus declaring the action of the respondents in not treating them as employees of the Corporation as being violative of Articles 14 and 16 of the Constitution of India and consequently to direct the respondents to treat them as if they were in service and to pay them all benefits till they attain the age of superannuation including the pensionary benefits.
4. According to the appellants, they joined the service of the Government Glass Factory, Gudur as workmen in the years 1960 and 1963 respectively. Pursuant to G.O.Ms.No.1128, Industries and Commerce Department dated 19.7.1962; they were promoted as operators in the year 1967 and were given proper pay scale.

Subsequently, the factory was taken over by the 1st respondent-Corporation. The appellants were asked to give their option and accordingly they gave their option to be absorbed as the employees of the Corporation. According to the appellants, though they were absorbed in the Corporation nevertheless continued to be Government servants. This being the position, the appellants submit that in spite of the fact that the Corporation was closed down, it is incumbent on the part of the Government to accommodate them in any other organisation of the Government. However, the Corporation, contrary to the regulations, treated them as workmen and retrenched them from service by paying retrenchment compensation, which they claim to have received under protest. Subsequently, the appellants came to know that persons similarly situated like them made representations and their representations were considered and the retrenchment orders were set aside and subsequently they were absorbed into Government service. Another person who is similarly situated like them approached this Court and pursuant to the directions of this Court, he was also taken into Government service and he had retired as Government servant. The appellants made several representations continuously and vexed with the inaction on the part of the respondents and the discriminatory attitude adopted by the authorities, they filed the present writ petition.

5. A counter-affidavit was filed by the Corporation. According to the Corporation, since the factory was running with heavy losses, and as the appellants and others have exercised their options to stay with the Corporation and also accepted the service conditions of the Corporation, they were treated only as workmen at the time of transfer of the said factory. Therefore, the question of changing their status does not arise. It was further stated that the appellants were retrenched on 23.7.1984 and they were paid all the terminal benefits upto that period before retrenchment as detailed below:

1. Terminal benefits (retrenchment compensation. gratuity and leave salary Rs.23,889.00	2. One month net salary in lieu of notice: Rs.979.60	3. Net salary for duty period from 1.7.84 to 23.7.84. Rs. 673.60	4. Bonus for the year 1984-85. Rs.296.40	_____	Total: Rs.25,799.13	_____
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6. The Corporation has also denied that the appellants have received the terminal benefits under protest.

7. Insofar as the cases of Sri N. Buthaiah and N.V. Subbaiah are concerned, it was stated that their cases were different because they worked with the 1st respondent- Corporation on deputation and they did not exercise their option for accepting the service conditions of the Corporation and hence they were treated as the employees of the State Government and they were granted pension and the same cannot be made applicable to the case of the appellants because they stand on a different footing since they opted for the service conditions of the Corporation.

8. Therefore, the question of payment of pension on par with Mr. Buthaiah and

N.V. Subbaiah does not arise.

9. Respondents 2 and 3 filed a separate counter-affidavit stating that in G.O.Ms.No.16 Industries and Commerce (IV) Department dated 8.1.1976 read with Govt.Memo.No.1745/IV/76-3 Industries and Commerce dated 20.7.1976 the Government have ordered the transfer of ownership of the Government Ceramic Factory, government Glass Factory, Government Enamel Ware Unit at Gudur to the A.P. State Small Scale Industries Development Corporation Ltd. with effect from 1.4.1976 and in the process of absorption of staff and workers in the above three units in the 1st respondent-Corporation, the workers of the above three units have been requested to exercise their option to serve in the corporation.

10. The appellants were working as workers at the time of transfer of the three units to the Corporation and they have exercised their option for absorption into the Cooperation with effect from 1.4.1976. In pursuance of the options exercised by them, orders were issued in the Director of Industries Proceedings No.263/Desk.22/C3/72 dated 6.4.1978 to the effect that the workers including the appellants who have exercised their options to serve the Corporation are ceased to be the government employees of Andhra Pradesh w.e.f. 1.4.1976 for all purposes. In the circumstances, the appellants have severed all connections with the government and have become the employees of the Corporation and therefore, neither the 2nd respondent-State of A.P. nor the 3rd respondent-Commissioner of Industries are in no way connected with the developments taken place after they have been permanently absorbed in the service of the Corporation as per the options exercised by them on their own volition.

11. In view of the above, respondents 2 and 3 prayed that the writ petition be dismissed with costs.

12. A reply affidavit was filed by the appellants stating that they had exercised their option to stay with the State with the 1st respondent Corporation and it is a fact that an amount of Rs.25,799.13 was paid to them towards retrenchment compensation, but they have received the same under protest. It was also stated that they have made several representations bringing to the notice of the 1st respondent Corporation that they are not workmen within the meaning of industrial Disputes Act and that even on the date on which they exercised their option, they were shift incharges and not workmen. It was further stated that Sri N. Buthaiah and N.V., Subbaiah were also discharging the same duties like them.

13. The learned single Judge on a consideration of the material places before him dismissed the writ petition observing as follows:

It is not in dispute that the petitioners were retrenched in the year 1984 by paying retrenchment compensation as applicable to the workmen according to the service rules of the 1st respondent Corporation. Having accepted the retrenchment compensation in the year 1984, the present wit petition is filed in the year 1993 claiming certain benefits. Therefore, the writ petition cannot be

entertained on the ground of laches itself. Mere making representations continuously will not enure any benefit to the petitioners. Moreover, by efflux of time the claim of the petitioners has become stale and no relief can be granted at this distance of time.

14. The learned counsel for the appellant has made two-fold contentions at the time of hearing. Firstly, it was contended that the writ petition ought not to have been dismissed on the ground of laches and that once the writ petition is admitted, learned single Judge ought to have decided the matter on merits and should not have dismissed the writ petition on the ground of laches. Secondly, the learned single Judge ought to have seen that the appellants have been meted out with discrimination in that while the appellants were not extended the benefits of various Government orders, the other workers namely Sri Buthaiah and Suubbaiah who are similarly situated like them were given the benefit of various Government orders and were absorbed in Government service but the appellants were denied such benefits.

15. We have carefully considered the submissions of the parties. We have perused the pleadings, annexures filed along with the writ petition, counters filed by the respondents and the reply filed by the appellants as also the order passed by the learned single Judge impugned in this Appeal.

16. Insofar as the first contention is concerned, it is true that once the Writ Petition is admitted, the learned single Judge ought not to have dismissed on the ground of laches but should have disposed of the same on merits.

17. A perusal of the entire order passed by the learned single Judge would clearly reveal that the learned Judge has considered all the aspects of the matter and the rival claims of both the parties with reference to the documents on record and disposed of the same on merits. Insofar as the contention of the appellants that the similarly placed employees were given the benefit of absorption into Government service and they were denied such benefit, it may be noticed that the appellants are covered by Employees Provident Fund Scheme (EPF) as per the service conditions of the Corporation but not pension whereas in the case of Sri Buthaiah and Subbaiah as they have not exercised their option accepting the service conditions of the Corporation, they continued to be the employees of the State Government. Therefore, the appellants cannot claim parity with them having exercised option accepting the service conditions of the Corporation.

18. On the question of laches, the learned single Judge has held that the appellants were retrenched in the year 1984 and they were given retrenchment compensation as applicable to the workmen according to the service rules and the appellants having accepted the retrenchment compensation in the year 1984 cannot file the writ petition in the year 1993 claiming certain benefits. We are in entire agreement with the learned single Judge. Since the appellants have exercised their option consequent to the closure of the factory where they were

working to stay with the Corporation and since they became the employees of the Corporation and they were also paid the retrenchment compensation and other terminal benefit etc. including bonus, they cannot now be permitted to contend that they should be treated as Government servants. The appellants in their reply affidavit have categorically admitted that they have exercised the option to stay with the Corporation and that they have received the retrenchment compensation but under protest. Except the bald statement in the petition that they have received the terminal benefits under protest, the appellants have not placed any material either before the learned single Judge or even before us that they accepted the terminal benefits under protest. Even assuming that the appellants have received the terminal benefits under protest, we are of the opinion that the appellants having received the terminal benefits in the year 1984 cannot maintain the writ petition in the year 1993 ie nearly after ten years.

19. It is settled law that repeated representations may be indicative of the appellants persistence to optimism but cannot provide an excuse for the delay as held by one us - Dr. Justice AR. Lakshmanan, (as his Lordship then was) in CANARA BANK STAFF UNION v UNION OF INDIA¹.

20. In RAHINDRA NATH v UNION OF INDIA² the Apex Court observed as follows:

No relief can be given to petitioner who, without any reasonable explanation approach Supreme Court under Article 32 of the Constitution after inordinate delay.

21. The highest Court in this land has been given Original Jurisdiction entertain petitions under Article 32 of the Constitution.

22. It could not have been the intention that Supreme Court would go into stale demands after a lapse of years. Though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution makers that Supreme Court should discard all principles and grant relief in petitions filed after inordinate delay. (19969 SCC (1)110) and Laxmanappa Hanumantappa Jamkhandi Vs. The Union of India (UOI) and Another, .

23. Where the changes were made in the seniority list of Income Tax Officers Class I Grade II as a result of change in the 1952 Seniority Rules and the petition attacking the changes was filed fifteen years after the 1952 Rules were promulgated and effect given to them in the seniority list prepared on 1.8.1953, it will be unjust to deprive the officers of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years.

24. The fact that in respect of those matters representations were being received by the Government all the time was not sufficient to explain the delay. There is a limit to the time which can be considered reasonable for making representations. If the government has turned down once representation, the making of another

representation on similar lines will not explain the delay. In this connection, we may notice the following decisions of the Supreme Court.

25. In *J.N. MALTAR v. STATE OF BIHAR*³, the Supreme Court observed: Where the petitioner a dismissed Government servant after being informed that his services were terminated for misconduct spent about three years in sending memorials to the Government, a remedy not appointed by law, the High Court was justified in rejecting his writ petition filed thereafter against his dismissal on ground of delay.

26. In *AMRIT LAL v. COLLECTOR, C.E.C. REVENUE*⁴ the Apex Court held: Promotions made in 1959 on basis of rules made in 1959 challenged in 1971. Petition is liable to be dismissed on ground of inordinate delay.

27. Further, merely by filing repeated or delayed representations, petitioner cannot get over the obstacles which delay in approaching the Court creates because equitable rights of others have arisen.

28. In *STATE OF ORISSA v. ARUN KUMAR*⁵, THE apex Court held:

Where the appointment of K was gazetted on 14.3.1962 and notification dated 15.11.1968 showed K's confirmation as of 27.2.1961 and that of petitioners on 2.5.1962 and till 29.5.1973, when writ petitions were filed, petitioners did nothing except to file a representation to Government on 19.6.1970 and a memorial to Governor on 16.4.1973.

29. Held that there was long and inexplicable delay and the grievance was too stale to merit redress.

30. In *STATE OF ORISSA v. V. SAMANTARAY*⁶, The Supreme Court held: On rejection of his representation against his supersession by his juniors in select list, the petitioner allowed some 11 years to go by before filing the writ petition for quashing that list-Petition is liable to be dismissed on ground of inordinate and unexplained delay-Making of repeated representations after rejection of one representation cannot be said to be a satisfactory explanation of delay.

31. In *GIAN SINGH v. P & H HIGH COURT*⁷, the Supreme Court held: The Writ Petition was filed in this Court in 1978, about eleven years after the dates from which the promotions are claimed. There is no valid explanation for the delay. That the petitioner was making successive representations during this period can hardly justify our overlooking the inordinate delay. Relief must be refused on that ground.

32. For the reasons aforesaid, we are of the opinion that the appellants have not made out any case for interference. The order of the learned single Judge is confirmed.

33. The Writ Appeal fails and it is accordingly dismissed. There shall be no order as to costs.