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**K. Rajendraprasad Vs. Authority Under Section 41 of A.P. Shops, and Establishment Act and Assistant-commissioner of Labour, Hyd. and Another**

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**SooperKanoon Citation : [sooperkanoon.com/440324](http://sooperkanoon.com/440324)**

**Court** : Andhra Pradesh

**Decided On** : Aug-28-2000

**Reported in** : 2000(5)ALD731; 2000(5)ALT599; [2000(87)FLR690]; (2001)ILLJ485AP

**Judge** : Elip Dharma Rao, J.

**Acts** : Industrial Disutes Act, 1947 - Sections 11-A; [Constitution of India](#) - Articles 226 and 227

**Appeal No.** : WP No. 1418 of 1992

**Appellant** : K. Rajendraprasad

**Respondent** : Authority Under Section 41 of A.P. Shops, and Establishment Act and Assistant-commissioner of Labour

**Advocate for Def.** : Government Pleader for Labour

**Advocate for Pet/Ap.** : Ms. Vani, Adv.

**Judgement** :

ORDER

1. This writ petition is filed seeking a writ of mandamus declaring the judgment dated 21-10-1991 in S.A. No.99 of 1987 of the Labour Court, Hyderabad rejecting the remaining 50% of the full back wages to the petitioner's father as illegal, arbitrary and consequently direct the respondent No.2 to pay full back wages from the date of dismissal i.e., 23-11-1979 till date.

2. The petitioner's father was appointed as a low paid employee in the 2nd respondent-bank in the year 1958. He was dismissed from service on 23-11-1979 on certain allegations of misappropriation etc., after holding a regular domestic enquiry. Against the said order of dismissal, he preferred an appeal before the first respondent. By order dated 9-10-1987 the appeal was allowed holding that the enquiry against the workman was vitiated and he was directed to be reinstated into service with 50% of the back wages.

3. Aggrieved by the said order of the first respondent, the petitioner's father preferred SA No.99 of 1987 before the Labour Court, Hyderabad. By order dated 21-10-1991, the Labour Court rejected the appeal and confirmed the order of the first respondent. After the rejection of the appeal, the workman died on 6-1-1992 and the petitioner has been prosecuting the litigation.

4. It is case of the petitioner that after examining the oral and documentary evidence placed before him, the first respondent held that the enquiry conducted against his father was vitiated and, therefore, the dismissal order passed against him was set aside and he was directed to be reinstated into service forthwith with 50% of the back wages as he approached the appellate authority with a delay of 4 years 4 months and 10 days and as the matter was dragged on for a considerable period. Aggrieved by the same the workman carried the matter to the Labour Court which rejected the appeal of the workman and confirmed the order of the first respondent directing reinstatement of the workman with 50% back wages observing that the enquiry held against the workman was vitiated, and that the appellate authority (the first respondent herein) should not have condoned the delay of 4 years 4 months and 10 days in filing the appeal, as according to the 2nd respondent, the workman during the relevant time was gainfully employed.

5. It is the case of the petitioner that since both the Courts below have held that the enquiry held against the workman was vitiated and that the order of dismissal from service was disproportionate to the charges levelled against him, the workman ought to have been reinstated into service with full back wages.

6. It is contended by the learned Counsel for the petitioner, Ms. Vani that both the Courts below having found that the enquiry against the workman was vitiated, ought to have directed reinstatement of the workman with full back wages while setting aside the order of dismissal of the workman, and should not have restricted the back wages to 50% and, therefore, the order passed by the Labour Court is liable to be set aside.

7. The learned Counsel for the petitioner relies on the judgment of the Supreme Court in *Ajaib Singh v. The Sirhind Co-op. Marketing-cum-Processing Service Society Limited*, : (1999)ILLJ 1260 SC , for the proposition that the provision, of Article 137 of the Limitation Act has no application to the provisions of the Industrial Disputes Act, 1948 (the Act, for short) and that the Court can mould the relief by refusing back wages or directing payment of part of back wages. In case before the Supreme Court, the workman approached the Court with a delay of 7 years. While dealing with the question of delay, it was held that in the absence of any plea on behalf of the management and any evidence, regarding the delay, the workman could not be deprived of the benefits under the Act merely on technicalities of law and that the High Court ought not to have substituted its opinion for the opinion of the Labour Court which was not permissible in proceedings under Articles 226 and 227 of the [Constitution of India](#). It was further held that no reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the Tribunal, Labour Court or Board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct payment of part of the back wages instead of full back wages.

8. She also places reliance on another decision of the Supreme Court in M/s. Hindustan Tin Works Pvt. Ltd v. The Employees of M/s, Hindustan Tin Works Pvt. Ltd, : (1978)11LLJ474SC , in support of her proposition that a workman whose service has been illegally terminated either by dismissal, discharge or retrenchment will be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness and when the termination of services was found to be neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered services they would legitimately be entitled to the wage for the same. If the workmen were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.

9. It is clear from the above two decisions of the Supreme Court that the Court can mould the relief by granting part of back wages instead of full back wages in the cases where the workmen approached the Court with delay. The discretion is left to the Court while moulding the relief.

10. In the case on hand, as the workman has approached the Court with a delay of about 4 years 4 months and 10 days and according to the 2nd respondent as he was gainfully employed, both the Courts below directed reinstatement with 50% of the back wages. It is well settled that this Court cannot substitute its own opinion with that of the Labour Court unless it is found that the order impugned is passed without jurisdiction or based on 'no evidence' or perverse. I do not find any perversity in the impugned order of the Labour Court warranting interference by this Court. I am satisfied that the Labour Court has exercised its jurisdiction under Section 11-A of the Act.

11. The writ petition lacks merit and it is accordingly dismissed. No costs.