

Apsrtc and ors. Vs. M. Narasaiah

Apsrtc and ors. Vs. M. Narasaiah

SooperKanoon Citation : sooperkanoon.com/443227

Court : Andhra Pradesh

Decided On : Oct-17-2000

Reported in : (2000)IIILLJ858AP

Judge : M.S. Liberhan, C.J. and ;Goda Raghuram, J.

Appeal No. : W.A. No. 989/2000

Appellant : Apsrtc and ors.

Respondent : M. Narasaiah

Disposition : Appeal dismissed

Judgement :

M.S. Liberhan, CJ.

1. This appeal by the appellants-Corporation arises out of an order dated June 20, 2000 of the learned single Judge inter alia allowing the writ petition filed by the workman and directing the Corporation to pay the arrears of his salary after fixation of pay by granting notional increments in terms of the award passed by the Labour Court in favour of the respondent-workman.

2. The facts are not in dispute, The respondent-workman was removed from service on June 17, 1981 and he was reinstated in service in the month of January, 1989 subsequent to an award dated December 17, 1988 of the Labour

Court directing the Corporation to reinstate workman into service within thirty days from December 6, 1988. However, as the records are not available, the Corporation could not fix his pay. Finally, the Corporation fixed his pay in January, 1994.

3. The workman preferred a writ petition in the year 1997 seeking the benefit of fixation of notional increments during the period of removal viz., from June 17, 1981 to the date of reinstatement. The learned single Judge while allowing the writ petition directed the Corporation to refix the pay of the workman and consequently pay the arrears.

4. The grievance of the learned counsel for appellants-Corporation is that the workman having been reinstated in service in the year 1989 and taking the arrears of pay and accepting the scale of pay fixed by the Corporation cannot now seek the relief of refixation of his pay belatedly by filing a writ petition and the writ petition suffers from laches as it is barred by limitation and the learned single Judge has erred in allowing the writ petition. In support of his contention the learned counsel relied on the decision of this Court in WA No. 1458 of 1999 dated October 14, 1999.

5. Keeping in view the judicial restraint, before deciding the case on merit, we are of the considered view that it would be expedient to clarify the observations made by the learned single Judge against the Division Bench Judgment of this Court in WA No. 1458 of 1999 dated October 14, 1999 while allowing the writ petition filed by the workman. The observation made by the learned single Judge in the impugned order reads thus;

'Therefore, the statutory provision itself has self dynamic proportion to the effect that the award gets automatically enforced after expiry of thirty days. It is immaterial whether the workman raises the dispute or the management fails to implement the award. The benefits arising out of the award would automatically accrue by virtue of the statutory provisions. As this provision was intended to protect the interest of the workmen wherein even though he gets award in his favour still if it is not implemented it should be treated as if it has been implemented and gets statutory enforceability. This aspect was not considered by

the Division Bench while dealing with the matter in Writ Appeal No. 1458 of 1999. The Division Bench was carried away by the only fact that the workman did not make any grievance about the fixation of pay duly taking into account the notional increments that had accrued to him on the reinstatement with continuity of service. Obviously the Court's attention was not drawn to the relevant statute, per consequens, the decision of the Division Bench was rendered without reference to the relevant statutory provisions. Under those circumstances, the decision has to be treated per incuriam and I respectfully do so. Therefore, on the facts the judgment of the Division Bench is deemed to cover the situation arising in the said writ appeal and it did not intend to lay down the law having binding precedent. Hence I am of the considered view that the petitioner is entitled for the arrears of re-fixation duly taking into account the notional increments. The learned counsel, however, relied upon the judgment of the Supreme Court which states that the delay defeats the purpose but that will not be of much help to the Corporation. The statutory protection is given to the award in the Act and therefore it automatically gets enforceability after expiry of thirty days. Therefore, the decisions of the Supreme Court are not applicable to the present case.'

6. With due respect to the learned single Judge, we are of the considered view that there is no principle of law laid down as observed by the learned single Judge to be per incuriam in the judgment rendered by a Division Bench of this Court. The Division Bench has rendered judgment depending upon the facts of its own case holding that there were no laches in the case before it. It is not disputed at the Bar that the principle of laches would be applicable as such even to an award or industrial dispute. It is well established now that laches in labour matters can be taken into consideration only in moulding a relief depending upon the facts and circumstances of each case. As a principle of law laches cannot be ignored as the same even defeats the rights of a person, including fundamental rights. While granting a relief or before declaration of a relief on the principle of laches innumerable factors have to be taken into consideration viz., the financial implication, intervening circumstances, working of the institution and its resources, so on and so forth. There are no set limits, neither the upper limit nor the lower limit, for deciding the matter on laches. In the peculiar facts and circumstances of a case 15 days delay may act as fatal laches whereas few years delay may not be

fatal in deciding the claim of a person in some other case. Thus, the principle of laches cannot be totally denuded of its application or to a State exchequer in labour matters, howsoever, beneficiary or pro labour the laws may be. Therefore, in the absence of any statutory limitation, while invoking the discretionary writ jurisdiction each case has to be judged on its own merit before granting a reliefer declining the same. Totality of the facts and circumstances have to be balanced between the employer and the employee together with the public interest as well as the public exchequer involved, including the conduct of the parties during this period. Similarly granting of arrears shall also be governed on the same principle. With all due respect to the learned Judge we do not agree with the observations made by him, as extracted supra. Thus, in our considered view, the observations made or the law laid down above in such terms cannot be sustained and to that extent the order of the learned single Judge has to be set aside and the same is accordingly set aside.

7. Coming to the case on hand, reliance placed by the learned counsel for the appellants-Corporation on the principle of laches to deny the just relief to the respondent-workman cannot be accepted. Concedingly the workman's pay was fixed in 1994 and the arrears were paid in the year 1995 and subsequently in the year 1997 he approached this Court for an appropriate relief, which is well within limitation. Though the constructive principles of limitation would not be applicable for invoking the writ jurisdiction, even if the principle of equity and good conscience is taken to be the guiding factor to decide what should be the laches in the peculiar facts and circumstances, then it does not fall within the four corners of the laches and therefore, the just relief to the workman cannot be denied.

8. The appellants, as observed supra, have fixed the pay of the workman in the year 1994 and have paid the arrears in 1995. It can be reasonable for us to presume that an illiterate ordinary worker not having adequate knowledge of law would come to know that he has been denied his just due by wrong fixation of pay and in order to claim his pay he has to approach the Court. Thus, in the totality of the circumstances, we find no force in the contention of the learned counsel for the appellants-Corporation that the relief granted in favour of the workman by the learned single Judge has to be denied on the ground of laches.

9. In view of the observations made supra, we find no force in the appeal and the same is dismissed. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com