HON'BLE SRI JUSTICE A.V.SESHA SAI
AND
HON'BLE SMT JUSTICE V.SUJATHA

W.P.Nos.9331 of 2022, 9352 of 2022 and 9530 of 2022

ORDER: *(per AVSS,J)*

Since these three Writ Petitions arise out of a common order passed by the Andhra Pradesh Administrative Tribunal (herein after called 'the Tribunal') and as the issues involved in these cases are also the same, this Court deems it appropriate and apposite to dispose of these Writ Petitions by way of a common order.

2. Unsuccessful respondents in O.A.Nos.3625, 3844 and 4713 of 2012 on the file of the Tribunal are the petitioners in the present Writ Petitions.

3. Departmental proceedings were initiated against as many as 11 employees in the Department of Forest, Government of Andhra Pradesh, including the applicants/respondents in these Writ Petitions on the ground of alleged irregularities committed by them in execution of SMC works in Visakhapatnam Range during the period 2003-2004. Department appointed regular Enquiry Officer and, pursuant to the report submitted by the said Enquiry Officer, the State Government issued a memo bearing No.3881/ For.IV/A1/2009-5, dated 12.04.2012, exonerating 7 employees, censuring one and

inflicting the punishment on 3 individuals, who are the applicants/respondents in these Writ Petitions.

4. Assailing the validity and the legal sustainability of the said memo dated 12.04.2012, issued by the State Government, the applicants/respondents herein, by invoking the provisions of Section 19 of the Administrative Tribunal Act, 1985, filed the aforesaid Original Applications. The Tribunal by way of the orders impugned in these Writ Petitions, allowed the Original Applications, setting aside the memo dated 12.04.2012 and consequently directed the authorities to release all withheld benefits to the applicants within a period of eight (8) weeks from the date of said orders. In these three Writ Petitions, challenge is to the said orders.

5. Heard Sri N.Ashwartha Narayana, learned Government Pleader for Services-I, for the petitioners and Sri G.Tuhin Kumar, learned counsel for the 1st respondent/applicant in all these Original Applications, apart from perusing the material available on record.

6. According to the learned Government Pleader for Services-I, the common order passed by the Tribunal which is the subject matter of the present Writ petitions is highly erroneous and contrary to law, besides being opposed to the very spirit and object of the provisions of the Andhra

Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991. In elaboration, it is further contended by the learned Government Pleader that the reasons assigned by the Tribunal for allowing the Original Applications are neither sustainable nor tenable having regard to the nature of allegations leveled against the applicants. It is further contended that the Tribunal erroneously applied the principle of discrimination and allowed the Original Applications. It is further submitted that having regard to huge loss sustained by the Government in view of the conduct of the applicants, the Tribunal ought not to have interfered with the orders and punishments.

7. Per contra, Sri G.Tuhin Kumar, learned counsel for the 1st respondent/applicant, contends that there is no illegality nor there exists any infirmity in the impugned order nor the impugned order suffers from any jurisdictional error, as such, the impugned order does not warrant any interference of this Court under Article 226 of the Constitution of India. It is further contended by the learned counsel that the present Writ Petitions are also liable to be dismissed on the ground of unexplained and exorbitant delay and the reasons assigned in the affidavit filed in support of the Writ Petitions are not sufficient to entertain the present Writ Petitions. It is further contended

that the Tribunal, after thoroughly considering the entire material available on record, allowed the Original Applications, as such, the interference of this Court under Article 226 of the Constitution of India, is unwarranted. In support of his submissions and contentions, learned counsel for the applicant relies upon the judgment of the Hon'ble Apex Court in the case of ***University of Delhi vs. Union of India and others***[1].

8. The material available before this Court reveals that for the alleged irregularities committed in execution of SMC works in Visakhapatnam Range, enquiry was ordered against 11 employees of the Department of Forest. A regular enquiry was conducted and after submission of the report by the Enquiry Officer, the State Government issued a memo dated 12.04.2012, dropping further action against the Assistant Conservator of Forest and censured one Forest Range Officer and inflicted punishments on the applicants (technical officers) in the instant Original Applications. Eventually, the issue landed before the Tribunal by way of the present Original Applications and the Tribunal by way of the orders under challenge, allowed the Original Applications.

[1] 2020 (13) SCC 745

9. Admittedly, a common order which is impugned in these Writ Petitions came to be passed on 10.11.2014 and the present Writ Petitions came to be filed in the month of December, 2021. As observed supra, one of the objections of the learned counsel for the applicant is that the present Writ Petitions are liable to be dismissed on the ground of exorbitant delay. In the affidavit, filed in support of the Writ Petitions, the authorities seek to justify their action in filing the present Writ Petitions, showing obviously the reason of internal correspondence between the authorities.

10. In the considered opinion of this Court, the said reasons sought to be pressed into service for condoning the exorbitant delay of eight (8) years are neither sufficient nor convincing. In this context, it may be appropriate to refer to the judgment of the Hon'ble Apex Court in the case of ***University of Delhi vs. Union of India and others***, wherein the Hon'ble Supreme Court, at para Nos.23 to 26, held in the following manner:

> "23. From a consideration of the view taken by this Court through the decisions cited supra the position is clear that, by and large, a liberal approach is to be taken in the matter of condonation of delay. The consideration for condonation of delay would not depend on the status of the party, namely, the Government or the public bodies so as to apply a different yardstick but the ultimate consideration should be to render even-handed justice to the parties. Even in such case the condonation of long delay should not be automatic since the accrued right or the adverse consequence to the opposite party is also to be kept in perspective. In that background while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating "sufficient cause" to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the courts based on the fact situation. In Katiji the entire conspectus relating to condonation of delay has

been kept in focus. However, what cannot also be lost sight of is that the consideration therein was in the background of dismissal of the application seeking condonation of delay in a case where there was delay of four days pitted against the consideration that was required to be made on merits regarding the upward revision of compensation amounting to 800%.

24. As against the same, the delay in the instant facts in filing the LPA is 916 days and as such the consideration to condone can be made only if there is reasonable explanation and the condonation cannot be merely because the appellant is public body. The entire explanation noticed above, depicts that casual approach unmindful of the law of limitation despite being aware of the position of law. That apart when there is such a long delay and there is no proper explanation, laches would also come into play while noticing as to the manner in which a party has proceeded before filing an appeal. In addition in the instant facts not only the delay and laches in filing the appeal is contended on behalf of the respondents seeking dismissal of the instant appeal but it is also contended that there was delay and laches in filing the writ petition itself at the first instance from which the present appel had arisen. In that view, it would be necessary for us to advert to those aspects of the matter and notice the nature of consideration made in the writ petition as well as the LPA to arrive at a conclusion as to whether the High Court was justified.

25. The entire explanation for the inordinate delay of 916 days is twofold i.e. the non-availability of the Vice-Chancellor due to retirement and subsequent appointment of new Vice-Chancellor, also that the matter was placed before the Executive Council and a decision was taken to file the appeal and the said process had caused the delay. The reasons as stated do not appear very convincing since the situation was of availing the appellate remedy and not the original proceedings requiring such deliberation when it was a mere continuation of the proceedings which had already been filed on behalf of the appellant herein, after due deliberation. Significantly, the Vice-Chancellor who was at the helm of affairs when the writ petition was filed, prosecuted and disposed of on 27-4-2015 was available in the same office till 28-10-2015, for about six months which was a long enough period as compared to 30 days limitation period for filing appeal. In that circumstance when the said Vice-Chancellor who had prosecuted the writ petition was available, the submission of the learned Senior Counsel for the appellant that unseen hands are likely to have prevented the filing of the appeal also cannot be accepted. Secondly, the reason sought to be put forth about the decision required to be taken by the Executive Council is also not acceptable when it was just the matter of filing the appeal. In fact, in the writ petition an affidavit was filed referring to Resolutions 56 and 173 of Academic Council and Executive Council authorising for filing writ petition. When the writ petition was filed based on such authorisation and the stand of the appellant, as the writ petitioner was put forth and had failed in the writ petition, it cannot be accepted that the appellant with all the wherewithal was unable to file the appeal, that too when the same Vice-Chancellor was available for six months after dismissal of the writ petition. Hence the reasons put forth cannot in our opinion constitute sufficient cause.

26. That apart, as rightly noticed by the Division Bench in the LPA, the approval from the Executive Council was obtained on 28-2-2017/7-3-2017, the appeal was ultimately filed on 1-3-2018 after an year from the said date which only indicates the casual approach which is now sought to be overcome with the plea of public interest despite there being no explanation for the delay at every stage. It is true that as held in Katija that every day's delay need not be explained with such precision but the fact remains that a reasonable and acceptable explanation is very much

> necessary. The Division Bench apart from noticing these aspects had also noted that the learned Single Judge too found the writ petition to be hit by delay and laches."

11. The Tribunal on the basis of the material available, categorically found that the infliction of punishment on the petitioners while excluding identically situated individuals is discriminatory. A perusal of the impugned order passed by the Tribunal demonstrates, in candid and vivid terms shown that for arriving at such conclusion, the Tribunal not only placed reliance on the judgment of the common High Court in Writ Petition Nos.11294, 10307, 10441 and 10448 of 2013, dated 25.06.2013, but also assigned valid and convincing reasons. The justification offered and recorded by the Tribunal in that regard, by any stretch of imagination, cannot be said to be untenable and perverse. A reading of the order of the Tribunal further demonstrates that the Tribunal also found fault with the mode and manner adopted during the enquiry. Therefore, the contentions sought to be pressed into service by the learned Government Pleader are neither sustainable nor tenable in the eye of law. In this context, it may be appropriate and apposite to refer to the judgment of the Hon'ble Supreme Court in the case of ***Syed Yakoob vs. K.S.Radhakrishnan***

and others[2], wherein the Supreme Court at para 7 held in the following manner.

> "7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the 69 dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of tact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the. Tribunal had. erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was' insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque(1), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam(2), and Kaushalya Devi v. Bachittar Singh(3).

12. It is very much clear from the above judgment that the writs in the nature of certiorari can be issued only in the cases where the impugned orders/actions suffer from jurisdictional infirmities, patent perversity or where such

[2] AIR 1964 SC 477

orders are passed in violation of principles of natural justice. In the orders impugned in the instant cases, this Court does not find existence of such contingencies. It is also pertinent to note that the Tribunal, only after thoroughly analyzing all the issues, arrived at the conclusions.

13. In view of the above reasons, this Court is not inclined to interfere with the well articulated orders passed by the Tribunal.

14. For the aforesaid reasons, Writ Petitions are dismissed. There shall be no order as to costs.

Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE A.V.SESHA SAI

JUSTICE SMT V.SUJATHA

Date:22.06.2022

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