

**IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI**

\* \* \* \*

**W.P. No. 15757 of 2019**

**Between:**

Smt.K.Sulochana

**.....Petitioner**

AND

The State of Andhra Pradesh and others

**.....Respondents**

DATE OF JUDGMENT PRONOUNCED : 03.05.2024

SUBMITTED FOR APPROVAL

**HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

1. Whether Reporters of Local Newspapers  
may be allowed to see the Judgments ? Yes/No
2. Whether copies of Judgment may be  
marked to Law Reporters/Journals ? Yes/No
3. Whether Your Lordships wish to see the  
fair copy of the Judgment ? Yes/No

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**VENKATA JYOTHIRMAI PRATAPA, J**

**\* HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**+ W.P. No. 15757 of 2019**

% 03.05.2024

**Between:**

# Smt.K.Sulochana

**.....Petitioner**

AND

\$ The State of Andhra Pradesh and others

**.....Respondents**

! Counsel for the Petitioner : Sri P.V.Raghuram

^ Counsel for the Respondents : Sri K.Narsi Reddy Standing Counsel

< Gist :

> Head Note:

? Cases Referred:

1. (2006) 4 SCC 322
2. (2014) 4 SCC 108
3. (2008) 12 SCC 481

APHC010324322019



IN THE HIGH COURT OF ANDHRA PRADESH  
AT AMARAVATI  
(Special Original Jurisdiction)

[3396]

FRIDAY ,THE THIRD DAY OF MAY  
TWO THOUSAND AND TWENTY FOUR  
**PRESENT**

**HONOURABLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**WRIT PETITION No: 15757/2019**

**Between:**

Smt.K.Sulochana

**...PETITIONER**

**AND**

The State Of Andhra Pradesh and Others

**...RESPONDENT(S)**

**Counsel for the Petitioner:**

1.P V RAGHU RAM

**Counsel for the Respondent(S):**

1.GP FOR TRANSPORT (AP)

2.K NARSI REDDY ( SC FOR APSRTC RAYALASEEMA )

3.N SRIHARI

**The Court made the following:**

**ORDER:**

This Writ Petition is filed under Article 226 of the Constitution of India, seeking *Mandamus*, for the following relief:

*“...to declare the action of the respondents in particular respondent No.3 in not giving any appointment order to the writ petitioner on par with one G.Anitha Rani who is working as helper/shramik in the APSRTC Chittoor Depot No 2 though there is an order from this Honourable Court to also appoint the writ petitioner herein as Shramik vide notification No R3/ 68423/ 2011HRDdt 23122011 issued by the Respondent no 1 as illegal arbitrary and unconstitutional and consequently direct the respondents herein to forthwith give appointment to the petitioner as shramik/helper in any depots of Chittoor district by considering her representations or else to give any suitable appointment/posts in the Respondent Organisation.....”*

**2. The facts of the case, as projected in Writ Affidavit in brief, are as follows:**

**a.** Respondent/APSRTC, *vide* Proceedings No.R3/684 (23/ 2011-HRD) dated 23.12.2011, called for applications from eligible persons for the post of Shramik. Petitioner passed Class-X in 1999 and did ITI Diesel Mechanic course from the Government ITI Chittoor, in 2003 and did two years apprenticeship in Chittoor Depot. Petitioner and one Ms. Anitha Rani applied to the post of Shramik, under the Notification in 2011, since Diesel Mechanic trade was sufficient to apply for the said post. Respondent No.2 did not receive applications of the petitioner and Ms.Anitha Rani on the ground that they were women and the said post is not meant for women.

**b.** The case of the petitioner is that the notification is silent about the fact that it is meant only for men. It is further stated that women can perform any duty including the harsh and cumbersome duties. Ventilating this grievance, petitioner and Ms. Anitha Rani filed W.P. No. 3348 of 2012 before the then Composite High Court of Andhra Pradesh, wherein an interim stay was granted. Since the order of the Court was not implemented, a contempt case was filed. *Vide* a common order dated 27.06.2013, W.P. was allowed, directing the respondent/APSRTC to consider the case of the petitioner for the post of Shramik.

**c.** As per the order of this Court, Ms.Anitha Rani was given employment as Shramik and she joined as such in Mechanic Garage

Chittoor-II Depot, vide order dated 25.11.2013, and has also got promotion, whereas, the case of the petitioner was not considered.

d. The petitioner made several representations to the respondent authorities, but they did not consider the same. The Petitioner having two children is not able to eke out livelihood and her husband is a school bus driver. Therefore, petitioner filed the present W.P. seeking indulgence of this Court for appointment as Shramik in respondent - APSRTC.

e. Hence W.P.

**3. The key averments stated in the counter affidavit filed by the Respondent Nos., 2 and 3 are;**

a. Petitioner and Ms. Anitha Rani are similarly placed persons, but the Petitioner has not attended the medical examination though a letter was addressed to her residential address.

b. Vide Circular No.PD-55/2010, dated 21.10.2010 and the recruitment regulations for the post of Shramiks, the candidate should possess minimum qualification of ITI with Diesel Mechanic Trade with Class-VIII qualification. Vide Lr.No.R3/684(23)/2010-HRD, dated 02.11.2010 of the Chief Manager (HRD) referring to Circular No.37/2003, dated 26.05.2003, it was communicated to not recruit women candidates for the post of Shramiks by direct recruitment, in lieu of the directions received from the Government. Therefore, female candidates were not called for direct recruitment of Shramik post.

c. The husband of the petitioner, namely, Sri C. Somasekhar is a Driver in APSRTC, Airport Depot, with Staff No.556522.

d. As per the orders of this Court, though a call letter was sent, the petitioner did not attend the medical examination and therefore has not participated in the selection process, as per the procedure laid down by the Corporation. As such, the petitioner is not entitled to agitate that her candidature was not considered.

e. It is also stated that W.A.No.1068/2014 which was preferred by the APSRTC as against the order of the learned Single Judge in W.P. No.3348/2012 was allowed. Therefore, there is no order in the favour of the Petitioner.

f. After a lapse of several years, the petitioner once again filed the W.P., which is not maintainable either in law or on facts and is liable to be dismissed.

#### **Arguments Advanced at the Bar**

4. Heard Sri P.V. Raghuram, learned counsel for the Petitioner and Sri K. Narsi Reddy, learned Standing counsel for the Respondent-APSRTC. Perused the material on record.

5. Learned counsel for the petitioner in elaboration to what was stated in the Petition, would submit that the petitioner and Ms.Anitha Rani filed W.P.No.3348 of 2012 and obtained an order whereby a direction was given to consider them for the post of Shramik. He would submit that similarly placed person, Ms. Anitha Rani was given

appointment, whereas the representations submitted by the petitioner were not considered.

6. Learned counsel during the course of arguments would submit that against the final order passed in said W.P., respondent-Corporation preferred W.A.No.1068 of 2014, which was allowed in favour of the Respondent-Corporation holding that women are not to be appointed for the post of Shramik, however a direction may be given to the respondent/Corporation to place the petitioner in any other post.

7. Learned Standing Counsel appearing for the Respondent-Corporation would submit that the notification is of the year 2012 and the petitioner and Ms. G. Anitha Rani preferred W.P.No.3348 of 2012 and obtained an interim direction and thereafter filed a contempt case. It is fairly conceded that a learned Single Judge of this Court by a common order dated 27.06.2013 directed the Respondent–Corporation to consider the case of the petitioner and Ms. Anitha Rani for the post of Shramik.

8. Learned Counsel stated that when the respondent corporation called the Ms. Anitha Rani and petitioner for the implementation of the common order dated 27.06.2013, Ms. Anitha Rani reported to the call, and was given appointment, whereas, the petitioner did not turn up. Learned Standing Counsel would further state that Petitioner submitted representation after the disposal of the W.A.

9. Learned counsel further submits that when the petitioner did not turn up to join the employment at the initial call, she has no vested right to seek a relief to consider her case. It is also pointed out by the learned Standing Counsel that in the order of W.A. dated 18.07.2014, a reference is made that Petitioner herein, has not turned up and on observing that Ms. Anita Rani has joined the duty by then, while allowing the W.A., a direction was given to continue the services of her on par with other incumbents in the cadre. Learned counsel would argue that the petitioner had approached the Court with an inordinate delay and having known about the order passed in the W.A., presented representations to the Corporation, which have no merit. Hence he prays for dismissal of the W.P.

#### **Point for Determination**

10. Having heard the submissions of learned counsel appearing on both sides and on perusal of the material available on the record, the point that would emerge for determination is:

Whether the petitioner is entitled for her appointment as Shramik in the respondent-Corporation?

#### **Consideration by the Court**

11. A keen perusal of the material placed on record would show that the petitioner along with Ms. Anitha Rani filed W.P.No.3348 of 2012 and sought a direction from the Court to consider their candidature for the post of Shramik. It is not in dispute that the petitioner and Ms.Anitha

Rani did their ITI in Diesel mechanic branch, which is the educational qualification required for the post of Shramik. The notification issued by the respondent Corporation does not disclose that Shramik post is meant for only men. The fact remains that the respondent-Corporation obtained exemption from the Government by way of circular dated 26.05.2003, exempting women reservation for the post of Shramik, Mechanic and charge-men by direct recruitment. Be that as it may, the notification issued for the post of Shramik, does not indicate the same. In that view of the matter, an interim order dated 09.02.2012 in W.P.M.P.No.4186 of 2012 in W.P.No.3348 of 2012, was passed to consider the case of the petitioner and Ms.Anitha Rani for the post of Shramik. The operative portion of the said order reads thus;

“Learned Standing Counsel for the respondents-APSRTC submits that the petitioners have not challenged the notification and they ought to have challenged the notification.

Learned counsel for the petitioners submits that though the notification envisages that candidates may apply on or before 10.1.2012 and though the petitioners have applied on 7.1.2012 their applications have not been considered only on the ground that they are women and the notification does not say that women are not entitled to apply to the posts of Shramik.

In the above circumstances, there shall be interim direction as prayed for.”

**12.** It is also on record that the petitioner and Anitha Rani approached the Court again by filing a contempt application, *vide* C.C.No.243 of

2012 on the ground that the interim order passed by this Court are not honoured by the respondent Corporation. A learned Single Judge of the then Composite High Court passed a common order dated 27.06.2013 in W.P.No.3348 of 2012 and C.C.No.243 of 2012. For ready reference, the penultimate paragraph of the said common order is extracted hereunder:

**“14.** In view of passing of fresh orders in the writ petition, the respondents are directed to implement the orders of this Court within four (04) weeks from the date of receipt of copy of this order. The proceedings in Contempt Case are accordingly, closed. It is made clear that, if the orders of this Court are not implemented, the petitioners are at liberty to initiate fresh contempt proceedings.”

**13.** The respondent-Corporation in obedience to the orders passed in the W.P. referred supra, issued appointment orders to the Ms.G.Anitha Rani *vide* order dated 25.11.2013, wherein, it is mentioned that as against two women candidates, only one candidate by name Anitha Rani underwent medical examination and was found fit for the post of Shramik. Accordingly, the appointment order was issued on 06.12.2013 in favour of the said Ms. G.Anitha Rani *w.e.f.* 28.11.2013.

**14.** The record would show that the petitioner herein submitted an application on 05.08.2013 i.e., after the final order passed in W.P.No.3348 of 2012 informing the respondent Corporation that she obtained order from the High Court on 27.06.2013 and accordingly, requested the authorities to provide employment to her. Initially the

petitioner, did not turn up to join in the post of Shramik, but she has submitted another application on 31.10.2014 stating that she could not join in the post since she was pregnant as on that date, and expressing her readiness to join the post. It is relevant to state that there has been no mention of her pregnancy in the previous representation dated 05.08.2013.

**15.** It is pertinent to mention that W.A.No.1068/2014 filed by the Respondent-Corporation against the common order dated 27.06.2013, was allowed by a Division Bench of the then Composite High Court, vide order 18.07.2014. It is significant to state the Petitioner herein was Respondent No.2 in the W.A. The Hon'ble Division Bench while reversing the common order observed that the exemption of women candidates to the post of Shramik has a close nexus to the object sought to be achieved and the same cannot be termed as unreasonable. It is pertinent to refer to the penultimate paragraphs in the order dated 18.07.2014, which read thus;

“It is brought to our notice that despite the orders passed in the writ petition, the 2nd respondent did not turn up and the 1st respondent alone reported duty, and that she was accommodated in a post other than ‘Shramik’.

Hence, the writ appeal is allowed and the writ petition is dismissed. However, by taking into account, the fact that the 1st respondent has been appointed against another post, we direct that the dismissal of the writ petition shall not entail in her removal from service. She shall be treated as having been appointed against such posts on

regular basis and shall be continued in the service on par with other incumbents in the cadre.”

16. Thereafter, Petitioner submitted a representation on 09.02.2017.

A fair look at the contents of the representation would reveal that once again the Petitioner while requesting the authorities to consider her case, made reference of the order passed by the High Court in favour of Ms. Anita Rani and her, and that she could not join the post since she was pregnant then.

17. Out of the several factors that are determinative in nature while exercising jurisdiction under Article 226 of the Constitution, delay or laches is an important one. It has been settled by precedents that negligence or omissions on the part of the Petitioner to assert their rights cannot be filled up while exercising jurisdiction under Article 226. Taking this proposition a little further, in **Karnataka Power Corporation Ltd. and another v. K. Thangappan and another**,<sup>1</sup> the Hon'ble Apex Court observed as follows;

“7. What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd* [(1874) 5 PC 221 : 22 WR 492] (PC at p. 239) was approved by this Court in *Moon Mills Ltd. v. M.R. Meher* [AIR 1967 SC 1450] and *Maharashtra SRTC v. Shri Balwant Regular Motor Service* [(1969) 1 SCR 808 : AIR 1969 SC 329] . Sir Barnes had stated:

“Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be

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<sup>1</sup> (2006) 4 SCC 322

practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.”

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in *Rabindranath Bose v. Union of India* [(1970) 1 SCC 84 : AIR 1970 SC 470] that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.”

**(emphasis supplied)**

18. No fixed time period of limitation for filing writ petitions. However while preferring writ petitions seeking invocation of the extraordinary jurisdiction of the writ courts, diligence should be shown in reasonable time. What this reasonable time is, has not been codified or provided in terms of days, as it depends on the facts and circumstances of each case. Discretion of this Court while exercising jurisdiction under Article 226 has to be applied reasonably and judicially. Reiterating the doctrine of delay and laches in writ petitions, the Hon'ble Supreme Court in ***Chennai Metropolitan Water Supply & Sewerage Board and others v. T.T. Murali Babu***<sup>2</sup> observed as follows;

“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**

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<sup>2</sup> (2014) 4 SCC 108

**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. ”**

**(emphasis supplied)**

**19.** On conglomeration of the facts and the circumstances of the case, it is relevant to point out that the latest representation being dated 09.02.2017 was made almost after three years pursuant to the order passed by the Division Bench in W.A. No.1068/2014, dated 18.07.2014, whereby the order passed by the learned Single Judge to consider the case of the Petitioners therein was set aside. It is also not out of place to mention that the Petitioner herein is Respondent No.2 in the W.A. The present W.P. is filed in September of 2019. Viewed from any angle, the delay and laches on the part of the petitioner cannot be excused at this juncture.

**20.** Moreover, by virtue of the order passed in W.A.No.1068/2014, dated 18.07.2014, the judgment of the learned Single Judge was set aside. It is surprising to note that no averment whatsoever has been made in the writ affidavit concerning the Writ Appeal. On a mere glance of the writ affidavit, any reasonable inference would be that even pursuant to the common order passed by the learned Single Judge, the petitioner herein was denied the post though Ms. Anitha Rani was granted the said benefit. However, that is not the complete picture. The fact of the filing and result of the W.A. are brought to the notice of the court in the counter affidavit filed by the respondents.

21. Praying the relief based on an order of the learned Single Judge in a Writ Petition, which was reversed by a Division Bench, to which the Petitioner herein was a party, is a nothing but suppression of facts. A writ remedy is an equitable remedy and a petitioner approaching the writ court must come with clean hands without suppressing any material fact, for the reason that this Court knows the law but not facts. The view of this Court is fortified by the observations made by the Hon'ble Supreme Court on this point in **K.D. Sharma v. Steel Authority of India Limited and Others**<sup>3</sup>, which reads thus;

**“38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “hide and seek” or to “pick and choose” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because “the court knows law but not facts”**

**(emphasis supplied)**

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<sup>3</sup> (2008)12 SCC 481

**22.** In that view of the matter, considering the facts and circumstances of the case, this Court finds no merit in entertaining this Writ Petition. Accordingly Point Answered as against the Petitioner.

**23.** In the result, Writ Petition is dismissed.

No order as to costs.

Miscellaneous petitions pending if any, shall stand closed.

**JUSTICE VENKATA JYOTHIRMAI PRATAPA**

03.05.2024

*Mjll\**

L.R. copy to be marked

**HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**WRIT PETITION No. 15757 of 2019**

**03.05.2024**

*Mjll\**