

BASANTI PRASAD

v.

THE CHAIRMAN, BIHAR SCHOOL EXAMINATION BOARD
AND OTHERS

(Civil appeal No. 3564 of 2009)

MAY 14, 2009

[TARUN CHATTERJEE AND H.L. DATTU, JJ.]

Service law – Retiral benefits – Claim of – Conviction order against employee under the provisions of Penal Code – Termination of service during pendency of appeal – Thereafter, death of employee – Subsequently order of acquittal passed – Representation by employee's wife seeking retiral benefits, rejection of – Writ petition seeking monetary and service benefits as also interim application seeking quashing of termination order – Dismissal of – LPA also dismissed – On appeal, held: Order of High Court not justified – Employee was dismissed on basis of conviction order – No departmental enquiry was held against delinquent employee – There was no negligence or laches or acquiescence on part of petitioner – Employee could not have questioned the dismissal till he was acquitted – Conviction order has been set aside by superior forum and has become final – Writ court should have exercised its extraordinary jurisdiction by directing the employer to redress the grievance of petitioner – Thus, matter should be remanded back – However, litigation is pending for last one decade and petitioner is a poor widow – Dismissal order is set aside without back wages – Petitioner is only entitled to pension.

G.M. Tank v State of Gujarat (2006) 5 SCC 446, Relied on.

Moon Mills Ltd. vs. M.R. Mehar, President, Industrial Court AIR 1967 SC 1450; Maharashtra State Road Transport

A *Corporation vs. Balwant Regular Motor Service (1969) 1 SCR 808; State of Madhya Pradesh vs. Nandlal Jaiswal (1986) 4 SCC 566 and Shri Vallabh Glass Works Ltd. vs. Union of India (1984) 3 SCC 362, referred to.*

B *Lindsay Petroleum Co. v. Prosper Armstrong Hurd Abram Farewall and John Kemp (1874) 5 PC 221, referred to.*

Case Law Reference:

C	AIR 1967 SC 1450	Referred to.	Para 15
	(1969) 1 SCR 808	Referred to.	Para 15
	(1874) 5 PC 221	Referred to.	Para 15
	(1986) 4 SCC 566	Referred to.	Para 16
D	(1984) 3 SCC 362	Referred to.	Para 17
	(2006) 5 SCC 446	Relied on.	Para 22

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3564 of 2009.

From the Judgment & Order dated 12.07.2007 of the High Court of Judicature at Patna in L.P.A. No. 521 of 2007.

Ranjan Mukherjee for the Appellants.

F Gopal Singh, Manish Kumar and Rohan Cama for the Respondents.

The order of the Court was delivered by

G **ORDER**

1. Leave granted.

H 2. This is a petition for special leave to appeal under Article 136 of the Constitution from the judgment and order

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dated 12.7.2007 of the High Court of Judicature at Patna in L.P.A. No. 521 of 2007. By the impugned judgment, the High Court has dismissed the appeal. A

3. The relevant facts are, the appellant is the wife of deceased Bhrigu Ashram Prasad. While he was alive, he was working as an Assistant in Bihar School Examination Board. B

4. Sometime in the year 1976, the appellant's husband was kept under suspension on account of initiation of criminal proceedings against the appellant's husband and other employees of the Board for tempering with the Marks Sheets of several candidates who had appeared in the Annual Secondary School Examination. C

5. On the complaint filed by the Board, the jurisdictional police authorities had filed charge sheet against the appellant's husband and other employees of the Board under Section 420, 467, 471, 458 and 120-B of the I.P.C. before Judicial Magistrate, Patna. After the trial, the Judicial Magistrate had convicted the appellant's husband and other employees of the Board for the offences alleged in the charge sheet and sentenced them to undergo rigorous imprisonment for two years for each of the offences under Section 467, 468, 471 and 120-B of the I.P.C. by his order dated 7.2.1989. D E

6. The appellant's husband and other charge sheeted employees had filed Criminal Appeals before the Additional Sessions Judge, Patna, being aggrieved by the order passed by the Judicial Magistrate, Patna. F

7. While the appeals were pending for consideration, the Bihar School Examination Committee, Patna, by its order dated 4th August, 1992, terminated the services of the appellant's husband, since he had been convicted by the learned Chief Judicial Magistrate, Patna, for offences under I.P.C. in Crime Case No. 18/7/TR No. 121/1998 of Police Station Kotwali, Patna. G H

A 8. The appellant's husband expired during the pendency
of the appeal before the Sessions Court, Patna. With the
permission of the court, the appellant herein had continued to
prosecute the criminal appeal. The learned Sessions Judge,
Patna, has allowed the appeals and thereby has acquitted the
B appellant's husband and others.

C 9. After disposal of the criminal appeal, the appellant had
approached the Bihar School Examination Committee by filing
representations, inter alia representing, that, since her husband
has been honourably acquitted by the Sessions Court in the
criminal appeal filed by him against the order of conviction
passed by the Judicial Magistrate, the appellant's husband is
deemed to have remained in service till the date of retirement
from service and, therefore, she is entitled for all the retiral
D benefits of her late husband. Since her representations were
rejected by the Board (Committee), the appellant was
constrained to file the writ petition before High Court of
Judicature at Patna in C.W.J.C. No. 14536 of 2005, inter alia
seeking a writ in the nature of mandamus to the Bihar School
Examination Board to settle all the monetary and service
E benefits payable to her late husband. During the pendency of
the writ petition, appellant had filed I.A. No. 1256 of 2007, inter
alia requesting the court to issue a writ in the nature of certiorari
to quash the order passed by the Board (Committee) dated 4th
F August, 1992, terminating the services of the appellant on the
ground that he has been convicted in a criminal case.

G 10. The court has rejected the writ petition, primarily on the
ground that, since the appellant's husband had not questioned
the order of termination dated 4.8.1992, while he was alive and
at this belated stage the appellant cannot be permitted to
question the order of termination of services passed by the
Board (Committee). According to the learned Judge, the delay
and laches on the part of the appellant in questioning the said
order by filing application on 26.2.2007 is fatal and the same
cannot be condoned. It is also observed in the order, since the
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appellant's husband was terminated from service, in view of the order of conviction passed by a criminal court and since that order is neither modified nor annulled by any superior forum, the appellant is not entitled to the relief sought for in the writ petition. The Letters Patent Appeal filed by the appellant is rejected by the High Court on the ground, that, the appellant's husband had not questioned the order of termination passed by the Board (Committee), while he was alive and, therefore, the appellant is not entitled for any relief, since according to them, it appears to be a case of acquiescence. The court has also observed, that, nothing prevented the appellant's husband while he was alive to challenge the order of dismissal passed by the Board before the competent forum. The appellant is before us in this appeal, being aggrieved by the aforesaid finding and the conclusion reached by the court in L.P.A. No. 521 of 2007 dated 12.7.2007.

11. The learned counsel for the appellant would contend, that, the deceased employee while he was in service, did not challenge the order of dismissal passed by the Board (Committee), since the dismissal order was the direct result of his conviction by the learned Magistrate for the offences punishable under the provisions of Indian Penal Code. Assuming even he had questioned it before any superior forum, it would not have yielded any better result, since Bihar Service Code authorizes the employer to terminate the services of government employee, if he is convicted for offences punishable under Indian Penal Code by a competent criminal court, and since the result of the appeal was obvious, the appellant's husband had not questioned the order, terminating his services by the Board. Further, the learned counsel would submit, even if he had filed Writ Petition under Article 226 and 227 of the Constitution, he would not have been successful, since the Bihar Service Code authorizes the employer to sever the relationship of employer and employee, if for any reason, an employee is convicted for offences under the Indian Penal Code. It is also submitted, that the delinquent employee could

A not have kept the petition alive before the High Court, on the
 ground, that, his criminal appeal is pending before the Sessions
 Court against the order of conviction passed by Judicial
 Magistrate. Therefore, it is pointed out by the learned counsel,
 that, the High Court has committed an error in rejecting the relief
 B sought by the appellant only on the ground, that, in the petition
 filed in the year 2005, the appellant could not have called in
 question the order of dismissal passed by the Board
 (Committee) against her husband in the year 1992. It is further
 argued by the learned counsel for the appellant that during the
 C pendency of the criminal appeal filed before the Sessions Court
 against the order of conviction passed by the learned
 Magistrate, the appellant's husband could not have sought for
 any relief from any other forum, since the order of dismissal was
 staring at the appellant and the cause of action for the appellant
 did arise only after disposal of the criminal appeal, wherein the
 D Sessions Court has acquitted the appellant's husband and
 other employees of the Board.

12. The learned counsel for the respondent in the course
 of his argument would submit; that, since the deceased
 E employee did not challenge his order of dismissal from service
 during his life time, the High Court was justified in rejecting the
 appeal on the ground of acquiescence, estoppel and delay. It
 is further contended, that, since the appellant's husband has
 expired, the Board (Committee) cannot initiate any disciplinary
 F proceedings in which charges alleged against the appellant's
 husband could have been proved and established. It is further
 submitted by the learned counsel for the respondent, that, the
 High Court was justified in rejecting the application filed by the
 appellant for amendment of the prayers made in the Writ
 G Petition, by making an application seeking additional relief in
 the year 2007. Lastly, it is submitted merely because, the
 appellant's husband was acquitted of all the criminal charges
 by the Sessions Court, it does not ipso facto would entitle the
 appellant for all the reliefs claimed in the writ petition and, at
 H any rate, the appellant is not entitled to arrears of salary from

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the date of termination till the employee is deemed to have retired from service on attaining the age of superannuation. In aid of submission, the learned counsel brings to our notice the observations made by this Court in the case of *G.M. Tank vs. State of Gujarat*, (2006) 5 SCC 446.

13. Before the High Court, the principal question for consideration was whether the appellant should be non-suited only on the ground that she had belatedly questioned the order of dismissal passed against her late husband in the year 1992 in a petition filed in the year 2005 and the other incidental issue was, whether the appellant is entitled for monetary and service benefits in view of the order passed by the Sessions Court acquitting the appellant's husband from the offences alleged against him under Indian Penal Code by setting aside the order passed by the Judicial Magistrate who had convicted him for those offences after a full fledged trial.

14. In the normal course, we would not have taken exception to the order passed by the High Court. They are justified in saying that a delinquent employee should not be permitted to revive the stale claim and the High Court in exercise of its discretion would not ordinarily assist the tardy and indolent person. This is the traditional view and is well supported by plethora of decisions of this Court. This Court also has taken the view, that, there is no inviolable rule, that, whenever there is delay the court must refuse to entertain a petition. This Court has stated that the writ court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution may condone the delay in filing the petition, if the delay is satisfactorily explained

15. Reference may be made at this stage to the decisions of this court in the case of *Moon Mills Ltd. vs. M.R. Mehar, President, Industrial Court*, AIR 1967 SC 1450 and *Maharashtra State Road Transport Corporation vs. Balwant Regular Motor Service*, (1969) 1 SCR 808, wherein this court has approved the view expressed by the Privy Council in the

A case of *Lindsay Petroleum Co. vs. Prosper Armstrong Hurd Abram Farewall and John Kemp* (1874) 5 PC 221. The court had observed :-

B “Now the doctrine of laches in Courts of Equity is not an
 C arbitrary or a technical doctrine. Where it would be
 D practically unjust to give a remedy, either because the party
 E 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 argument against relief, which otherwise would be just,
 is founded upon mere delay, that delay of course not
 amounting to a bar by any statute of limitations, 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 relates to the remedy.”

16. In *State of Madhya Pradesh Vs. Nandlal Jaiswal* (1986) 4 SCC 566, it was held as under :-

F “There can be doubt that the petitioners were guilty of gross
 delay in filing the writ petitions with the result that by the
 time the writ petitions came to be filed. If there is inordinate
 delay on the part of the petitioner in filing a writ petition
 and such delay is not satisfactorily explained, the High
 G Court may decline to intervene and grant relief in the
 exercise of its writ jurisdiction. The evolution of this rule of
 laches or delay is premised upon a number of factors. Of
 Course, this rule of laches or delay is not a rigid rule which
 can be cast in a strait jacket formula, for there may be
 H cases where despite delay and creation of third party rights

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the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it."

17. In *Shri Vallabh GlassWorks Ltd. Vs. Union of India* (1984) 3 SCC 362, it was observed:

"While there are different periods of limitation prescribed for the institution of different kinds of suits by the Limitation Act, 1963, there is no such period prescribed by law in respect of petitions filed under Article 226 of the Constitution. Whether relief should be granted to a petitioner under Article 226 of the Constitution where the cause of action had arisen in the remote past is a matter of sound judicial discretion governed by the doctrine of laches. Where a petitioner who could have availed of the alternative remedy by way of suit approaches the High Court under Article 226 of the Constitution, it is appropriate ordinarily to construe any unexplained delay in the filing of the writ petition after the expiry of the period of limitation prescribed for filing a suit as unreasonable. This rule, however, cannot be a rigid formula. There may be cases where even a delay of a shorter period may be considered to be sufficient to refuse relief in a petition under Article 226 of the Constitution. There may also be cases where there may be circumstances which may persuade the court to grant relief even though the petition may have been filed beyond the period of limitation prescribed for a suit. Each case has to be judged on its own facts and circumstances touching the conduct of the parties, the change in situation, the prejudice which is likely to be caused to the opposite

A party or to the general public etc.”

18. We do not think it necessary to burden this judgment with reference to various decisions of this Court, where it has been emphasized time and again, that, where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere. However, if the delay is properly explained, and if the third party rights is not going to be effected, the High Court may entertain the petition and consider the case of the aggrieved person on merits.

19. Now reverting back to the facts of this case, The services of the appellant’s husband was terminated only on the ground, that he was convicted by a Judicial Magistrate for certain offences under the provisions of Indian Penal Code. It is not a case where the delinquent employee was dismissed from service on the ground that he was charge sheeted by the police for certain offences under Indian Penal Code after holding a departmental enquiry. In the later circumstances, the delinquent employee could not have been heard to say that he did not question the order within a reasonable time, since the order of conviction passed by the Judicial Magistrate has nothing to do with the order passed by disciplinary authority. As we have already noticed, the dismissal was in view of the order of conviction passed by the Magistrate, till that order is set aside by a superior forum, the appellant’s husband or the appellant could not have questioned the same till he was acquitted by the Sessions Court. In view of these peculiar circumstances, in our view, the High Court was not justified in rejecting the prayer of the appellant primarily on the ground of delay and laches on the part of the appellant in questioning the order of termination passed on 4.8.1992 in a petition filed in the year 2005. In the present case, we are of the opinion that there is no such negligence or laches or acquiescence on the part of the appellant as may disentitle her for grant of a writ. Having said so, the matter requires to be remanded back to

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the High Court for taking a decision on the merits of the case. But taking into consideration the pendency of the litigation between the parties from last one decade and taking also into consideration the plight of the poor widow who is fighting the litigation before various forums with limited resources, we desist from remanding the matter and we intend to decide the matter on merits here itself in order to give quietus to this litigation.

20. What relief the appellant is entitled to is the main issue that falls for consideration.

21. The facts are not in dispute. The services of the appellant's husband was terminated only on the ground that he was convicted by a Judicial Magistrate for the offences under Indian Penal Code. That only means, no independent departmental enquiry was held against the delinquent employee. In the appeal filed before the Sessions Court against the order of conviction, the appellant has succeeded. Since, the punishment imposed was based on an order of conviction and since the same is set aside by an order passed by a superior forum and that order having become final for various reasons, including the death of the appellant's husband, as natural corollary, the request of the appellant requires to be redressed by the employer and since that was not done, a writ court ought to have exercised its extraordinary jurisdiction by commanding the respondents to redress the grievance of the appellant without resorting to a hypertechnical approach. In view of the above, the order passed by the respondents terminating the services of the appellant requires to be set aside and we do so.

22. It is argued by the learned counsel for the respondent that if the delay is condoned and relief is granted to the appellant, the respondent had to bear the brunt of paying huge arrears of salary and other monetary benefits and, secondly, direction to pay arrears of wages is not automatic and it depends on several factors. The learned counsel has drawn our

A attention to the observation made by this court in the case of G.M. Tank vs. State of Gujarat, wherein this court has stated :-

B “32. In the instant case, the appellant joined the respondent in the year 1953. He was suspended from service on 8-2-1979 and got subsistence allowance of Rs 700 p.m. i.e. 50% of the salary. On 15-10-1982 dismissal order was passed. The appellant had put in 26 years of service with the respondent i.e. from 1953-1979. The appellant would now superannuate in February 1986. On the basis of the same charges and the evidence, the department passed an order of dismissal on 21-10-1982 whereas the criminal court acquitted him on 30-1-2002. However, as the criminal court acquitted the appellant on 30-1-2002 and until such acquittal, there was no reason or ground to hold the dismissal to be erroneous, any relief monetarily can be only w.e.f. 30-1-2002. But by then, the appellant had retired; therefore, we deem it proper to set aside the order of dismissal without back wages. The appellant would be entitled to pension.”

E 23. The facts in the aforesaid decision is more or less akin to the facts and circumstances of this case. Therefore, the issue that we have raised for our consideration need not detain us for a long. Therefore, we are of the view that the appellant is not entitled to back wages. The appellant would be entitled to pension only.

F 24. In the result, we allow this appeal. We set aside the order passed by the learned Single Judge in CWJC No.14536 of 2005 dated 02.05.2007 as affirmed in L.P.A. No. 521 of 2007 dated 12.07.007. However, there shall be no order as to costs.

G N.J.

Appeal allowed.