

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JUNE, 2021

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.711/2014 (S- PRO)

C/W

WRIT PETITION No.10007/2020 (S- RES)

R

IN WRIT PETITION No.711/2014

BETWEEN

M.CHANNABASAPPA
S/O MRUTHYUNJAYA,
AGED ABOUT 50 YEARS,
WORKING AS ASSISTANT
EXECUTIVE ENGINEER,
TECHNICAL ASSISTANT AND QC,
K.P.T.C.L.CAUVERY BHAVAN,
BENGALURU – 9.

... PETITIONER

(BY SRI VIJAYAKUMAR., ADVOCATE (VIDEO
CONFERENCING))

AND

THE GENERAL MANAGER
(ADM AND HRD)
KARNATAKA POWER TRANSMISSION
COMPANY LIMITED,
CORPORATE OFFICER,

CAUVERY BHAVAN,
BENGALURU – 560 009.

... RESPONDENT

(BY SRI HARIKRISHNA S.HOLLA, ADVOCATE (VIDEO
CONFERENCING))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
SET ASIDE THE ENDORSEMENT DTD.24.1.2013 VIDE
ANNEX-J BY THE RESPONDENT; DIRECTION TO THE
RESPONDENT TO REVIEW THE PETITIONERS CASE FOR
PROMOTION TO THE POST OF ASSISTANT EXECUTIVE
ENGINEER FROM THE DATE ON WHICH HIS JUNIORS
NAMELY GIRISH B.V. WHO WAS PROMOTED
w.e.f.23.4.2002 AND ETC.,

IN WRIT PETITION No.10007/2020

BETWEEN

SRI. M. CHANNABASAPPA
S/O. MRUTHUNJAYA,
AGED ABOUT 58 YEARS,
WORKING AS EXECUTIVE ENGINEER (ELEC),
T L AND S S DIVISION,
KARNATAKA POWER TRANSMISSION
CORPORATION LTD.,
220 K V RECEIVING STATION,
SOMANAHALLI,
BENGALURU 560 082,
R/AT NO. 1868, 2ND MAIN,
7TH CROSS, JUDICIAL LAYOUT,
YELAHANKA, GKVK POST,
BENGALURU – 560 065.

... PETITIONER

(BY SRI VIJAYA KUMAR, ADVOCATE (VIDEO
CONFERENCING))

AND

1. THE KARNATAKA POWER TRANSMISSION CORPORATION LIMITED
REPRESENTED BY ITS
MANAGING DIRECTOR,
KAVERY BHAVAN, KG ROAD,
BENGALURU 560 001.
2. THE DIRECTOR (ADMIN AND HRD)
THE KARNATAKA POWER TRANSMISSION CORPORATION LIMITED
KAVERY BHAVAN, K.G.ROAD,
BENGALURU - 560 001.
3. THE CHIEF ENGINEER (ELEC)
THE KARNATAKA POWER TRANSMISSION CORPORATION LIMITED
(THEN KARNATAKA ELECTRICITY BOARD)
KAVERY BHAVAN, K.G.ROAD,
BENGALURU - 560 001.

... RESPONDENTS

(BY SRI HARI KRISHNA S. HOLLA, ADVOCATE FOR R1 & R2
(VIDEO CONFERENCING);
R3 SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS RELATING TO ISSUE OF IMPUGNED ORDER DTD 18.07.2003 PASSED BY R-1 VIDE ANNEX-F AND AFTER PERUSAL SET ASIDE THE SAME SO FAR AS IT RELATES TO THE PETITIONER IS CONCERNED; DIRECT THE RESPONDENTS TO OPEN THE SEALED COVER AND GRANT PROMOTION TO THE CADRE OF ASSISTANT EXECUTIVE ENGINEER, FROM THE DATE HIS JUNIORS WERE PROMOTED AND GRANT HIM ALL CONSEQUENTIAL BENEFITS THAT HE WOULD BE

ENTITLED TO INCLUDING PROMOTION TO THE HIGHER POST.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 07.06.2021, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING :-

ORDER

Petitioner in Writ Petition No.711 of 2014 calls in question the endorsement dated 24-01-2013 declining to consider the case of the petitioner for promotion to the cadre of Assistant Executive Engineer from the date on which his juniors were promoted.

In Writ Petition No.10007 of 2020 the very petitioner calls in question an order of penalty imposed upon him on 18-07-2003 and seeks promotion to be granted with retrospective effect and for consequential benefits thereon.

2. Brief facts leading to filing of the present petitions, as borne out from the pleadings in both the writ petitions, are as follows:-

The petitioner was appointed as a Junior Engineer in the erstwhile Karnataka Electricity Board ('KEB' for short) on 12-10-1988. On acquisition of graduation, he was transposed as Assistant Engineer on 26-09-1990. When the petitioner was working in the cadre of Assistant Engineer, owing to certain omissions and commissions, a charge sheet was issued against him on 17-07-2002 and a departmental inquiry thereon was conducted, which ended in imposition of penalty of 'censure' by an order passed by the Disciplinary Authority on 18-07-2003. After imposition of penalty of censure, the petitioner was promoted to the cadre of Assistant Executive Engineer with effect from 30-09-2003 and not with retrospective effect from the date on which his juniors were promoted.

3. The petitioner gave plethora of representations seeking that he should be promoted with respective

effect from the date on which his juniors were promoted. Those having not been considered, the petitioner had knocked the doors of this Hon'ble Court in Writ Petition No.9885 of 2012 which was disposed of on 02-04-2012 with a direction to the respondent to consider the representations given by the petitioner. It is pursuant to the said direction representations of the petitioner were considered and rejected by an order dated 24-01-2013. It is this order that is called in question in Writ Petition No.711 of 2014.

4. During the pendency of the said writ petition, the petitioner prefers another writ petition in Writ Petition No.10007 of 2020 wherein the petitioner, for the first time, calls in question the order of penalty of censure that was imposed upon him on 18-07-2003 and seeks a consequential relief of direction to the respondent to open the sealed cover and grant him promotion to the cadre of Assistant Executive Engineer

from the date his juniors were promoted with all consequential benefits.

5. Heard Sri.Vijaya Kumar.V.B, learned counsel appearing for petitioner and Sri.Harikrishna.S.Holla, learned counsel appearing for respondents in both the petitions.

6. Learned counsel Sri Vijaya Kumar appearing for the petitioner in both the cases would vehemently argue and contend that the petitioner was denied promotion on account of penalty of censure imposed upon him on 18-07-2003. The said penalty was imposed by an incompetent authority and, therefore, the penalty is *void ab initio*. Any penalty which is imposed by an incompetent authority is *non est* in the eye of law and can be challenged at any point of time, is the emphatic submission of the learned counsel.

7. On the other hand, Sri Harikrishna S.Holla, learned counsel appearing for the respondent/Karnataka Power Transmission Corporation Limited ('KPTCL' for short) would submit that the writ petition ought to be dismissed at the threshold, even without going into the merits, on account of delay and laches on the part of the petitioner. The petitioner was imposed the penalty in the year 2003, but did not choose to challenge the same immediately, accepted the promotion that was granted, but went on giving representations for review of his promotion and for the first time in the year 2012 files a writ petition seeking consideration of his representation for review of promotion and does not challenge the penalty. The representation being rejected files the first writ petition in W.P.No.711/2014, again does not challenge the order of penalty.

7.1. For the first time after about 18 years of imposition of penalty, the petitioner files a second writ petition challenging the order of penalty. The petitioner accepting the promotion that was given after imposition of penalty cannot now turn around and challenge those proceedings which have taken place almost two decades ago.

8. I have given my anxious consideration to the respective rival submissions made by the learned counsel for the parties and have perused the material on record.

9. Certain undisputed facts are that the petitioner was issued a charge sheet on 17-07-2002 seeking to initiate departmental inquiry against him; a departmental enquiry was held which ended in imposition of penalty of censure on 18-07-2003. It is not in dispute that the penalty of censure is one of those

minor penalties enumerated in the Karnataka Electricity Board Employees' (Classification, Disciplinary, Control and Appeal) Regulations, 1987. During the pendency of disciplinary proceedings against the petitioner, his case was considered for promotion to the post of Assistant Executive Engineer and was placed in a sealed cover on account of pendency of the said case. After imposition of penalty of censure, the case of the petitioner was considered and was promoted as Assistant Executive Engineer on 30-09-2003.

10. The petitioner accepts the order of penalty and the promotion that was given to him on 30-09-2003 and then gives representations seeking promotion with retrospective effect from the date on which his juniors were promoted. Particularly, promotion of Sri Girish B.V. which was on 23.04.2002. This representation of the petitioner did not meet its consideration at the hands of the KPTCL which drove the petitioner to

approach this Court in Writ Petition No.9885 of 2012 seeking a direction to review the promotion of the petitioner and grant him promotion from the date on which his juniors were promoted. This Court directed consideration of this representation given by the petitioner though no notice was issued to respondents.

11. The respondent/KPTCL on consideration of the representation given, rejected the claim of the petitioner stating that once having imposed penalty of censure, promotion cannot be granted with retrospective effect and would only be prospective. The endorsement given to the petitioner declining to accept his claim is in tune with the well settled principle of law that when censure is a penalty enumerated under the Rules or Regulations and promotion given to an employee who is imposed penalty of censure will only be from the date of such imposition and not with retrospective effect, notwithstanding the case of such

employee being placed in a sealed cover. In this regard it is apposite to refer to the judgment of the Apex Court in the case of **UNION OF INDIA v. A.N. MOHANAN**¹ wherein the Apex Court after considering the judgment in the case of *UNION OF INDIA v. K.V. JANKIRAMAN* reported in **(1991) 4 SCC 109** at paragraphs 10, 11 and 12 held as follows:

“10. Though learned counsel for the respondent submitted that awarding of censure does not amount to awarding of penalty, the same is clearly untenable. In Union of India v. K.V. Jankiraman [(1991) 4 SCC 109: 1991 SCC (L&S) 387: (1993) 23 ATC 322: AIR 1991 SC 2010], AIR at pp. 2017-18 it was held as follows: (SCC pp. 121-22, para 26)

“26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby

¹ **(2007) 5 SCC 525**

that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee, etc. In such circumstances, the authorities concerned must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to

anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of para 3 of the said memorandum viz. 'but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion', we direct that in place of the said sentence the following sentence be read in the memorandum:

‘However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the authority concerned by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so.’ ”

11. Awarding of censure, therefore, is a blameworthy factor. A bare reading of Para 3.1 as noted above makes the position clear that where any penalty has been imposed the findings of the sealed cover are not to be acted upon and the case for promotion may be considered by the next DPC in the normal course.

12. Having regard to the penalty imposed on him, undisputedly the

respondent has been given promotion with effect from 26-11-2001. His claim for promotion with effect from 1-11-1999 was clearly unacceptable and, therefore, the CAT and the High Court were not justified in holding that he was entitled to be promoted with effect from 1-11-1999. The order of the High Court affirming the view taken by the CAT cannot be sustained and is, therefore, set aside.”

(emphasis supplied)

In the light of the judgment of the Apex Court, no fault can be found with the endorsement that is called in question in Writ Petition No.711 of 2014.

12. It is not in dispute that the petitioner was imposed penalty of censure on 18-07-2003 which was never called in question by the petitioner at any point in time. Throughout, the case of the petitioner was seeking a review of his promotion to be granted from the date on which his Juniors were promoted to the cadre of

Assistant Executive Engineer. After having accepted the penalty of censure and the promotion that was given as a result of penalty of censure from a particular date after about 17 years of imposition of the said penalty and 18 years after placing the case of the petitioner in a sealed cover, the petitioner files second writ petition in Writ Petition No.1007 of 2020 on 25-08-2020. Therefore, there is a delay of 17 long years in challenging the order of penalty of censure.

13. The contention of the learned counsel for the petitioner insofar as it pertains to Writ Petition No.1007 of 2020 is concerned, the order of penalty imposed upon the petitioner on 18-07-2003 was by an incompetent authority – a Company Secretary of KPTCL who was placed in-charge of the post of General Manager (Administration and Human Resources). The learned counsel would submit that an order that is *non est* can be called in question at any point of time

notwithstanding its acceptance by the petitioner. This submission of the learned counsel is unacceptable to me on the sheer conduct of the petitioner. The petitioner all along kept quiet accepting the penalty that was imposed on him on 18-07-2003. Having accepted the promotion that was given to him on 30-09-2003 with prospective effect, only made a grievance about promotion not being given from the date his juniors were promoted. Up to the year 2020 the petitioner did not choose to challenge the order of penalty.

14. It cannot be accepted that an employee upon whom a penalty is imposed can challenge it at any point of time. Delay, in challenge of a particular order defeats equity that was available at the relevant point of time. An order though according to the petitioner being *non est* having been accepted by the petitioner all along for close to 2 decades cannot now wake up and knock the doors of this Court at the verge of his retirement that

too seeking a relief of opening of sealed cover in which the promotion of the petitioner was kept due to pendency of disciplinary proceedings in the year 2002 after 18 years.

15. The contention of the learned counsel for the petitioner that the order having been passed by an incompetent authority is a legal ground and can be urged at any later point of time is also unacceptable, as extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, is discretionary. Therefore, exercising such discretion, I decline to entertain the challenge to the penalty imposed upon the petitioner 17 years ago. Though there is no limitation prescribed for invoking the jurisdiction of this Court under Article 226, any action challenged should be within a reasonable time. In my considered view, delay of 17 years in raising the challenge to the order of

penalty cannot be considered to be proceedings brought about within the reasonable time.

16. It is germane to notice the latest judgment rendered by a Three Judge Bench of the Apex Court in the case of **U.P.Power Corporation Ltd., Vs. Ramgopal**² specifically dealing with inordinate delay in filing the writ petition wherein the Apex Court has held as follows:

“iii) Inordinate delay in filing writ petition

14. Finally, the prolonged delay of many years ought not to have been overlooked or condoned. Services of the Respondent were terminated within months of his appointment, in 1978. Statedly, the Respondent made a representation and served UPPCL with a legal notice in 1982, however such feeble effort does little to fill the gap between when the cause of action arose and he chose to seek its redressal (in 1990).

² 2020 SCC OnLine SC 101

15. *Seen from a different perspective also, it is clear that the Respondent has shown little concern to the settled legal tenets. Even a civil suit challenging termination of services, if filed by the Respondent, would have undoubtedly been barred by limitation in 1990. In a similar situation where the appellant belatedly challenged the promotion of his junior(s), this Court in P.S. Sadasivaswamy v. State of Tamil Nadu¹, held as follows:*

“2. ... if the appellant was aggrieved by it he should have approached the Court even in the year 1957, after the two representations made by him had failed to produce any result. One cannot sleep over the matter and come to the Court questioning that relaxation in the year 1971. ... In effect he wants to unscramble a scrambled egg. It is very difficult for the Government to consider whether any relaxation of the rules should have been made in favour of the appellant in the year 1957. The conditions that were prevalent in 1957,

cannot be reproduced now. ...It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.....”

16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an

unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In *SS Balu v. State of Kerala*², this Court observed thus:

“17. It is also well-settled principle of law that “delay defeats equity”. ...It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of

the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.”

(emphasis supplied)

In terms of the law laid down by the Apex Court in the afore-extracted judgment, though limitation is not strictly applicable to a petition filed under Article 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time and this Court naturally ought to be reluctant in exercising its discretionary jurisdiction to protect those who slept over wrongs and illegalities.

17. Entertaining the second writ petition wherein a challenge to the imposition of the penalty of the year 2003 is made after 17 years will also fall foul of the judgment of the Apex Court in the case of **STATE OF**

BANK OF INDORE v. GOVINDRAO³ wherein it is held as follows:

“2. On 3-10-1977 the Disciplinary Authority, after taking into consideration the objection filed by Govindrao, passed an order dismissing him from service. On 2-6-1978 the Bank paid Govindrao full Provident Fund which was forwarded along with a letter of the same date. On 5-6-1978 Govindrao accepted the Provident Fund amount subject to certain objections and claim of interest. On 18-7-1978, an appeal preferred by Govindrao against the order of dismissal, was dismissed by the appellate authority. Nearly four years thereafter, another appeal (described as special appeal) was filed by Govindrao which was again dismissed.

3. Nothing happened thereafter for nearly five years. On 6-4-1987 Govindrao decided to move a writ petition challenging the validity of the order of dismissal passed on 3-10-1977. The writ petition came to be

³ (1997) 2 SCC 617

heard by a Division Bench of the Madhya Pradesh High Court. By a judgment and order dated 21-6-1990, V.D. Gyani and A.G. Qureshi, JJ. quashed the order of dismissal. V.D. Gyani, J., speaking for the Bench, held that the writ petitioner must be deemed to have retired on his due date of retirement i.e. 9-10-1977. The Bank was directed to pay all the dues, Provident Fund, pension, gratuity to the writ petitioner within three months from the date of the judgment.

5. It is difficult to see how this writ petition was entertained at all by the High Court. The date of dismissal was 3-10-1977. The appeal against that order was dismissed on 18-7-1978. The writ petitioner did not choose to challenge that appellate order by way of a writ petition. What was described as special appeal was again dismissed on 12-5-1982. There was no reason for the High Court, after a long lapse of nearly ten years from the date of the order of dismissal, to entertain the writ petition

and quash the order of dismissal. We are of the view that the High Court should not have entertained that at all. It should have been dismissed in limine.”

(emphasis applied)

The Apex Court in the afore-extracted judgment has clearly held that a writ petition which challenges an order of penalty after about 10 years ought not to have been entertained by the High Court in exercise of its jurisdiction under Article 226. The view of mine, in this regard, is fortified by the afore-extracted judgments.

18. Insofar as the judgment relied on by the learned counsel appearing for the petitioner in the case of ***State of Orissa Vs. Brundaban Sharma & Another (1995) Supp(3) SCC 249*** with reference to paragraph 8 is distinguishable on the facts of the case at hand without much ado. The Apex Court in the case (*supra*)

was considering the exercise of jurisdiction under Section 38- B of Orissa Estates Abolition Act, 1951 and in those facts held that a *non est* order is not binding on the parties to it and absence of limitation was an assurance to exercise of power with caution and circumspection. The Apex Court clearly held, length of time depends on the factual scenario in a given case. Therefore, the judgment was rendered on the facts of the case before the Apex Court. The case at hand is hit by delay, laches and acquiescence on the part of the petitioner for close to two decades.

19. The next judgment relied on by the learned counsel is in the case of ***Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group***⁴, paragraph 16 of the said judgment reads as follows:

“16. It is a settled legal proposition that even if an order is void, it requires to be

⁴ (2011) 3 SCC 363

so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil [(1996) 1 SCC 435 : AIR 1996 SC 906] , Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd. [(1997) 3 SCC 443 : AIR 1997 SC 1240] , M. Meenakshi v. Metadin Agarwal [(2006) 7 SCC 470] and Sneh Gupta v. Devi Sarup [(2009) 6 SCC 194] , this Court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.”

The Apex Court (*supra*) has held that if an order is void it has to be declared by a competent forum and not by any party and if it is void, the party has to approach the appropriate forum. There can be no doubt about the legal position enunciated by the Apex Court, but even to

declare an order to be void it has to be brought before a Court in appropriate proceedings, within reasonable time, not after accepting the order for 18 years. Therefore, this judgment also does not lend support to the contentions advanced by the learned counsel appearing for the petitioner.

20. It is also to be noticed that Sri Girish B.V. upon whom the petitioner would now want to be placed in the seniority list by grant of promotion from the date on which he was granted such promotion, is not made a party to these proceedings. The petitioner is now working as Executive Engineer. Any direction given in the case at hand for opening of the sealed cover of 18 years vintage or consideration of his promotion with retrospective effect, will upset the **applecart** as position of several employees would get altered, without hearing them, that too on such conduct of the petitioner who

approaches this Court after 17 years of the event of imposition of penalty.

21. Therefore, I decline to entertain the challenge made to the order dated 18-07-2003 in Writ Petition No.10007 of 2020. The writ petition being devoid of merit, is to be dismissed.

22. For the aforesaid reasons, I pass the following:

ORDER

(i) Both the Writ Petitions stand dismissed.

(ii) No costs.

**Sd/-
JUDGE**

bkp
CT:MJ