

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2015

CORAM

THE HON'BLE MR. JUSTICE S.MANIKUMAR
and

THE HON'BLE MR. JUSTICE M.VENUGOPAL

W.A.Nos.1270 and 1271 of 2015

M.P.Nos.1, 1, 2 and 3 of 2015

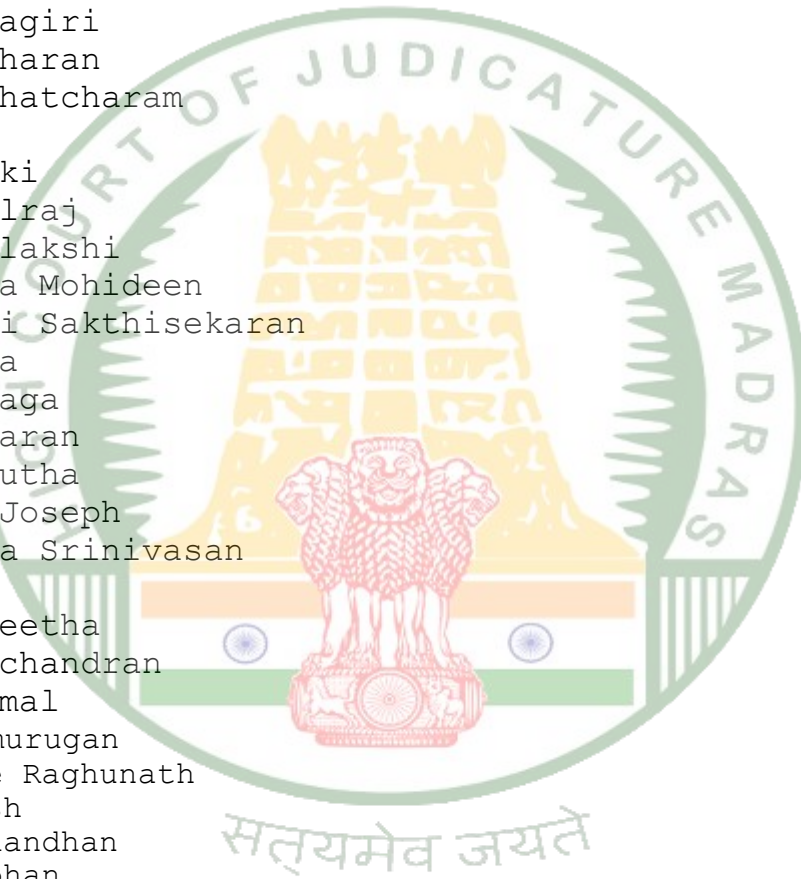
1. D. Vijayalakshmi
 2. S. Jayanthi
 3. C. Bhavani
 4. C. Jaya
 5. J. Manjuladevi
 6. K. Thara
 7. D.F. Shiba
- ... Appellants in both W.As.,

vs

1. The Secretary to Government,
State of Tamil Nadu,
Home Department,
Fort St. George, Chennai 600 009.
2. The Secretary,
Tamil Nadu Public Service Commission,
Commercial Taxes Annexe Building,
Greams Road, Chennai 600 006.
3. The Director,
Forensic Sciences Department,
30-A, Kamarajar Salai,
Mylapore, Chennai-4.
4. N. Mahalakshmi
5. V. Devi
6. M. Hemalatha
7. L. Vijayalatha
8. D. Chitra
9. V.S.Mallika
10. B. Umadevi
11. V. Valliammal

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12. E.D.Thamaraiselvan
13. M. Padma
14. C. Florence Devasudamani
15. T.P.Thara
16. N. Thilagavathi
17. M.S.Vasantha Sundari
18. B. Shanthi
19. K. Manjuladevi
20. V. Sivapriya
21. V. Jagannathan
22. D. Shanmugam
23. V. Arunagiri
24. G. Sridharan
25. D. Panchatcharam
26. S. Uma
27. D. Devaki
28. D.V.Arulraj
29. A. Visalakshi
30. A. Khaja Mohideen
31. Jayanthi Sakthisekaran
32. R. Avina
33. D. Thilaga
34. S. Baskaran
35. L.C. Amutha
36. Sophia Joseph
37. Srividya Srinivasan
38. N. Kala
39. L. Sangeetha
40. R. Ramachandran
41. A. Perumal
42. N. Balamurugan
43. Rajshree Raghunath
44. N. Suresh
45. M.Jeevanandhan
46. S. Rajmohan
47. R. Geetha
48. R. Rajesh
49. P. Vijayakumar
50. C. Pushparani
51. D.Velmurugan
52. M. Vairamuthu
53. M. Sankarkumar
54. R. Ramesh
55. R. Manickam
56. S. Kayathiri
57. T. Vidhyarani
58. P. Vadivel



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59. P. Vijayendran
60. D. Parthasarathy
61. G. Gnanasambandan
62. V. Baskar
63. K. Venkateswaran
64. K. Tharani
65. S. Hemalatha
66. M. Manimaran
67. J. Sintha Sahul Hameed
68. D. Sujatha Priyadharshini
69. G. Uvarani
70. P. Manjari
71. V. Sivasubramanian
72. K.S. Shiva Shangari

... Respondents in both W.As.,

Writ Appeal filed under Clause 15 of Letters Patent Act for setting aside the order dated 25.03.2015 made in W.P.Nos.464 and 465 of 2011.

W.P.No.464 of 2011:- Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of declaration Declaring the appointments of the respondents 30 to 43 as Scientific Assistant Grade II in the Forensic Department under 10(a)(1) of the General Rules of the Tamilnadu State and Subordinate Service Rules after 9.12.1988 when the said posts have been brought under the purview of the Tamilnadu Public Service Commission as illegal.

W.P.No.465 of 2011:- Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified mandamus calling for the records of G.O.Ms.No.996 dt 4.7.1997 issued by the 1st respondent regularizing the services of respondents 4 to 29 and the consequential proceedings having Ref. No. A1/40004/2010 O.O. No. 126/2010 dt 8.12.2010 issued by the 3rd respondent and quash the same and direct the 3rd respondent to redraw the seniority list reckoning the date of notification i.e. 13.9.1989 and 22.11.1996 issued by the 2nd respondent for Direct Recruitment to the post of Scientific Assistant Grade II as the date for fixing the seniority of the petitioners and other regularly selected candidates as per rule 2 (14) of the Tamilnadu State and Subordinate Services Rules and fix the regularisation in the post of Scientific Assistant Grade II.

For Appellants ... Mrs.Nalini Chidambaram
for Ms.C.Uma

For 1st Respondent ... Mr.T.N.Rajagopalan,
Special Government Pleader

COMMON JUDGMENT

(Judgment of the Court was pronounced by S.MANIKUMAR, J.)

Challenge in these appeal is, to the orders, made in W.P.Nos.464 and 465 of 2011, by which, a learned single Judge has dismissed both the writ petitions. W.P.No.464 of 2011 is filed for a Declaration, declaring the appointments of respondents 30 to 43 as Scientific Assistant Grade II in the Forensic Sciences Department, under 10(a)(i) of the General Rules of the Tamil Nadu State and Subordinate Service Rules, after 9 December 1988, when the said posts have been brought under the purview of the Tamil Nadu Public Service Commission, as illegal. W.P.No.465 of 2011 is filed for a Certiorarified Mandamus, to quash the proceedings in G.O.Ms.No.996, dated 04.07.1997, issued by the Secretary to the Government, Home Department, Chennai, first respondent, regularizing the services of respondents 4 to 29 and the consequential proceedings in Ref.No.A1/40004/2010 O.O.No.126/2010, dated 8.12.2010, issued by the Director, Forensic Sciences Department, Chennai, third respondent herein, and with a prayer to direct the third respondent, to re-draw the seniority list reckoning the date of notification i.e.13.09.1989 and 22.11.1996 issued by the Secretary, Tamil Nadu Public Service Commission, Chennai, second respondent, for direct recruitment to the post of Scientific Assistant Grade II, as the date for fixing the seniority of the petitioners and other regularly selected candidates, as per rule 2(14) of the Tamil Nadu State and Subordinate Services Rules and fix the regularisation in the post of Scientific Assistant Grade II.

2. It is the case of the petitioners that they were regularly appointed as Scientific Assistants Grade II, based on the selection process, initiated by the Tamil Nadu Public Service Commission. Respondents 4 to 43 herein were appointed as Scientific Assistants Grade II, on temporary basis under Rule 10(a)(i) of General Rules of the Tamil Nadu State and Subordinate Service Rules. Their appointments were made during the period from 19.02.1987 to 07.08.1989 and from 1989 to 1991 respectively. The temporarily appointed Scientific Assistants filed original applications in O.A.No.1727 and 1728 of 1989 to quash the notification issued by the Tamil Nadu Public Service Commission dated 13 September 1989, calling for applications, for direct recruitment and to issue a direction, for

regularisation of their services. The Tribunal allowed the original applications, by order dated 4 December 1981 and the said order was challenged by the Government before the Hon'ble Supreme Court in Civil Appeal Nos.1242 and 1243 of 1993. The said appeals were later on, withdrawn and thereafter, the Government regularised the services of temporary appointees, by order in G.O.Ms.No.996, dated 4 July 1997. The regularisation was given effect retrospectively, taking into account, the date of their initial appointment. Thereafter, the third respondent herein published a seniority list of Scientific Assistants Grade II. Since seniority was fixed, taking into account the initial date of appointment of employees, who were regularised, by order dated 4 July 1997, respondent Nos.27 and 29 filed Original Application before the Tribunal. The original application was subsequently transferred to this Court and re-numbered as W.P.No.2111 of 2007. The writ petition was dismissed by an order, dated 2nd September 2010. The petitioners thereafter, have filed the present writ petitions, challenging the order in G.O.Ms.No.996 dated 4th July 1997 and the inter se seniority list dated 8th December 2010.

3. Before the Writ Court, it was the contention of the Joint Secretary to Government, Home Department, on behalf of the first respondent that the Government have regularised the services of temporary appointees, in strict compliance with the directions issued by the State Administrative Tribunal, in its order, dated 4th December 1991 in O.A.Nos.1727 and 1728 of 1989. According to the first respondent, the temporary appointees are seniors to the petitioners and their services were rightly regularised from the date of their initial appointments.

4. In the writ proceeding, the thirty sixth respondent herein, in her counter affidavit, on behalf of respondents 34 to 43, contended that the petitioners were all appointed long after the issuance of the order in G.O.Ms.No.996, dated 4th July 1997 and since respondents 4 to 21, 24 and 26 were appointed as Scientific Assistants Grade II in the year 1987, ten years prior to the appointment of the writ petitioners, it is not open to them to claim seniority retrospectively.

5. Before the writ Court, Respondent No.27 in her counter affidavit has admitted the factual position that though her writ petition in W.P.No 2111 of 2007 was dismissed

by this Court, persons selected by the Tamil Nadu Public Service Commission in the selection held in 1989 should be placed above those, whose services were regularised at a later point of time, notwithstanding the fact of their temporary appointment, which was earlier, in point of time.

6. It was the submission of respondent No.36 in the counter affidavit, filed on behalf of respondents 34 to 43, that the writ petitions were not maintainable, in view of the order, dated 2nd September 2010 in W.P.No.2111 of 2007. According to him, regularisation was made with the concurrence of Tamil Nadu Public Service Commission and therefore, no interference is called for at this point of time.

7. On the above facts, the two issues considered by the writ Court, are as follows:

(i) Whether the petitioners are entitled to seniority from a date prior to their actual date of entry into service.

(ii) Whether it is open to the subsequent appointees to challenge the earlier order of regularisation pursuant to the order passed by Tribunal after fourteen years on the ground that the Supreme Court in its judgment rendered in 2006 held that no seniority can be given from the initial date in case it was a temporary appointment.

8. The decisions considered by the Writ Court in W.P.Nos.464 and 465 of 2011, dated 25.03.2015, are as follows:

"26. In *Vijay Kumar Kaul v. Union of India*, (2012) 7 SCC 610, following the earlier judgment relating to delay and laches, the Supreme Court held that belated approach in filing writ petition is impermissible.

"26. From the aforesaid pronouncement of law, it is manifest that a litigant who invokes the jurisdiction of a court for claiming seniority, it is obligatory on his part to come to the court at the earliest or at least within a reasonable span of time. The belated approach is impermissible as in the meantime interest of third parties gets ripened and further interference after enormous delay is likely to usher in a state of anarchy.

27. The acts done during the interregnum are to be kept in mind and should not be lightly brushed aside. It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time."

27. Recently in *Londhe Prakash Bhagwan v. Dattatraya Eknath Mane*, (2013) 10 SCC 627, the Supreme Court observed that in case the delay in challenging action is abnormal, Court has no power to condone it,

"8.Now, the sole question which falls for our consideration is:

When can an aggrieved person apply before the court, if no limitation is prescribed in the statute for filing an appeal before the appropriate forum?

We have duly considered the said question.

9. Even if we assume that no limitation is prescribed in any statute to file an application before the court in that case, can an aggrieved person come before the court at his sweet will at any point of time? The answer must be in the negative. If no time-limit has been prescribed in a statute to apply before the appropriate forum, in that case, he has to come before the court within a reasonable time. This Court on a number of occasions, while dealing with the matter of similar nature held that where even no limitation has been prescribed, the petition must be filed within a reasonable time. In our considered opinion, the period of 9 years and 11 months, is nothing but an inordinate delay to pursue the remedy of a person and without submitting any cogent reason therefor. The court has no power to condone the same in such case."

28. The Supreme Court in *State of Uttaranchal v. Shiv Charan Singh Bhandari*, (2013) 12 SCC 179, followed the judgment in *P.S.Sadasivaswamy v. State of Tamil Nadu* (1975) 1 SCC 152. The Supreme Court in the said decision held that in case a junior is promoted over his head, the senior must challenge it atleast within six months or at the most a year of

such seniority and that any one who sleeps over his right is bound to suffer.

"24. There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in Ghulam Rasool Lone v. State of J & K (2009) 15 SCC 321."

26. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in P.S.Sadasivaswamy v. State of T.N., (1975) 1 SCC 152), wherein it has been laid down that:

"2. A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. 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. "

Seniority a civil right :-

29. The Supreme Court in H.S.Vankani v. State of Gujarat, (2010) 4 SCC 301, underlined the importance of seniority and the consequences of unsettling the seniority. The Supreme Court said :-

"38. Seniority is a civil right which has an important and vital role to play in ones service career. Future promotion of a government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority, etc. Seniority once settled is decisive in the upward march in ones chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instils confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of ones junior in service is unsettled, it may generate

bitterness, resentment, hostility among the government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume a lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and government, driving the parties to acute penury. It is well known that the salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money-making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further, it also consumes a lot of judicial time from the lowest court to the highest resulting in constant bitterness among the parties at the cost of sound administration affecting public interest.

39. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action."

.....

31. The Supreme Court in Amarjeet Singh v. Devi Ratan, (2010) 1 SCC 417, held that an employee cannot be given seniority prior to his birth in the cadre. The Supreme Court said :-

27. The law permits promotion with retrospective effect only in exceptional circumstances when there has been some legal impediment in making the promotions, like an intervention by the court. An officer cannot be granted seniority prior to his birth in the cadre adversely affecting the seniority of other officers who had been appointed prior to him. The latecomers to the regular stream cannot steal a march over the early arrivals in the regular queue. [Vide S.P. Kapoor (Dr.) v. State of H.P. Shitla Prasad Shukla v. State of U.P. (SCC p. 190, para 10) and Uttaranchal Forest Rangers Assn., (Direct Recruit) v. State of U.P.,]

32. The view expressed in Amarjeet Singh was followed by the Supreme Court later in Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267."

9. After considering the above decisions and the discussion, a learned single Judge, while dismissing the writ petitions, held as follows:

"The Government have appointed the temporary appointees on account of administrative exigency. They have worked for years together. The Tribunal having found that the Government have regularised the appointments made prior to 3 October 1986 rightly directed regularisation of other employees appointed prior to 9 December 1988. It was a one time measure. The Government though challenged the order before the Supreme Court, subsequently took a conscious decision to comply with the direction and accordingly the Civil Appeals were dismissed as withdrawn. The petitioners who are subsequent appointees now wanted the benefit given to the temporary appointees by way of regularisation of their services to be recalled after seventeen years. Some of the petitioners were College students when the Government appointed the temporary appointees on account of administrative necessity. The petitioners have no legal or moral right to challenge the regularisation order issued long prior to their entry into service. I therefore do not find any merit in the contentions taken by the petitioners."

10. Assailing the correctness of the orders made in the writ petitions, Mrs.Nalini Chidambaram, learned Senior Counsel appearing for the appellants reiterated the submissions made before the writ Court and further added that the learned single Judge has not adverted to the validity of the appointments of respondents 30 to 43 as Scientific Assistants, Grade II, made under Rule 10(a)(1) of the Tamil Nadu State and Subordinate Service Rules, much after, bringing the said post, under the purview of the Tamil Nadu Public Service Commission and that therefore, the temporary appointees ought not to have been regularised, contrary to the recruitment rules. She further submitted that the order in the Original Application Nos.1727 and 1728 of 1989, relate only to the appointments made before 19.02.1987 and for the respondents 30 to 43 appointed between 1982 to 1991, the Government cannot take shelter, under the orders of the Tribunal made in O.A.Nos.1727 and 1728 of 1989, dated 04.12.1991. She therefore submitted that the Writ Court ought to have interfered with the impugned

G.O.Ms.No.996, dated 4th July 1997, regularising respondents 30 to 43, from the date of their initial appointment and consequently, the inter se seniority list dated 8th December 2010, ought to have been set aside.

11. Describing the appointments of respondents 30 to 43, as illegal and contrary to the recruitment rules, which contemplate selection by the Tamil Nadu Public Service Commission and placing reliance on the decisions of the Apex Court in K.Madalaimuthu v. State of Tamil Nadu reported in AIR 2006 SC 2662 and Bhupendra Nath Hazarika v. State of Assam reported in 2013 (2) SCC 516, learned Senior Counsel for the appellants further submitted that the writ Court ought to have interfered with both the orders impugned. According to the learned Senior Counsel, there is a violation of the Recruitment Rules and respondents 30 to 43, cannot claim benefit of the orders of the Administrative Tribunal and that the abovesaid aspect, has not been adverted to, by the writ Court.

Heard the learned counsel for the parties and perused the materials available on record.

12. Before adverting to the case of the appellants, let us first consider the prayer in the writ petitions. In W.P.No.464 of 2011, has been filed, for a declaration, declaring the appointments of respondents 30 to 43 as Scientific Assistant Grade II in the Forensic Sciences Department, under 10(a)(i) of the General Rules of the Tamil Nadu State and Subordinate Service Rules, after 9th December 1988, when the said posts have been brought under the purview of the Tamil Nadu Public Service Commission.

13. W.P.No.465 of 2011, has been filed for a writ of Certiorarified Mandamus, to quash the proceedings in G.O.Ms.No.996, dated 04.07.1997, issued by the Secretary to the Government, Home Department, Chennai, first respondent, regularising the services of respondents 4 to 29 and the consequential proceedings in Ref.No.A1/40004/2010 O.O.No.126/2010, dated 8.12.2010, issued by the Director, Forensic Sciences Department, Chennai, third respondent herein, and to direct the third respondent to re-draw the seniority list reckoning the date of notification i.e.13.09.1989 and 22.11.1996 issued by the Secretary, Tamil Nadu Public Service Commission, Chennai, second respondent, for direct recruitment to the post of Scientific Assistant

Grade II, as the date for fixing the seniority of the petitioners and other regularly selected candidates, as per rule 2(14) of the Tamil Nadu State and Subordinate Services Rules and fix the regularisation in the post of Scientific Assistant Grade II.

14. The admitted position is that petitioners 1 and 2/appellants have been appointed on 8th March, 1997, pursuant to the notification, dated 13th September, 1989. Petitioners 3 to 24, have been appointed, vide order, dated 26th July 1999 and 13th January, 2000, pursuant to the notification, dated 22nd November, 1996. Writ petitioners 25 to 27 have been appointed on 22nd November, 2000, pursuant to the notification issued by the TNPSC, dated 25th August, 1999. Writ petitioners 28 to 36, have been appointed on 18.02.2005 and 12.07.2005, pursuant to the notification of the Commission, dated 19th July, 2001. Whereas, the private respondents 4 to 29, have been appointed as Scientific Assistants, Grade II, on temporary basis, by the Directorate of Forensic Sciences Department, much earlier than the appellants.

15. Counter affidavit of the Government also makes it clear that all the private respondents have been appointed under Rule 10(a)(1) of the Tamil Nadu State and Subordinate Service Rules, through employment exchange, only after the prior approval of the Government. All the private respondents have been appointed against the vacancies for the period, 3rd October 1986 to 1989.

16. When a notification, dated 23.08.1989, in Advertisement No.52, was issued, by the Tamil Nadu Public Service Commission, for the post of Scientific Assistants, Grade I and II. Rule 10(a)(1) appointees have filed two original applications in O.A.Nos.1727 and 1728 of 1989, before the Tamil Nadu Administrative Tribunal. O.A.No.1727 of 1989, has been filed to quash the notification. O.A.No.1728 of 1989, has been filed to regularise the services of the temporary appointees in the respective posts. After hearing the parties therein, the Tamil Nadu Administrative Tribunal, vide order, dated 04.12.1991, directed that, "appointments made prior to 09.12.1988 should also be dealt with in the same manner, as appointments made prior to 03.10.1986 and to regularise them. The Tribunal further directed that the action initiated by the Commission may relate only to the vacancies available after such regularization. Persons appointed in 1989 should take their chances in the examination for which, notification has

been issued in the same year." The order, dated 04.12.1991 in O.A.Nos.1727 and 1728 of 1989, was challenged by the Government before the Hon'ble Supreme Court in Civil Appeal Nos.1242 and 1243 of 1993 and later on, the same were withdrawn on 24.09.1996.

17. Material on record discloses that after withdrawing the civil appeals and after getting concurrence from the Tamil Nadu Public Service Commission, Chennai, the Government have issued orders in G.O.Ms.No.996, Home (Police-XVI) Department, dated 04.07.1997, regularising 31 Scientific Assistants, Grade II. G.O.Ms.No.996, impugned in W.P.No.464 and 465 of 2011, is extracted hereunder:

GOVERNMENT OF TAMIL NADU
ABSTRACT

ESTABLISHMENT - Forensic Science Department - Tamil Nadu Forensic Service - Regularisation of certain Scientific Assistants, Grade II in the Forensic Science Department - Orders - Issued.

HOME (POLICE - XVI) DEPARTMENT

G.O.Ms.No.996

Dated 04.07.1997

Read:

1. G.O.Ms.No.2790, Home, dated 03.10.1986.
2. G.O.Ms.No.635, Home, dated 09.12.1988.

Read Also:

1. From the Director of Forensic Science, Letter No.A1/6403/93, dated 26.05.1993.
2. From the Tamil Nadu Public Service Commission, Letter No.5971/CD-B2/95, dated 20.11.1996 and 27.03.1997.

ORDER:

The Government direct that under rule 23(a)(1) of the Central rules for the Tamil Nadu State and Subordinate Services, services of the Scientific Assistant Grade.II annexed to this order in the Tamil Nadu Forensic Subordinate Services be regularised with effect from date noted against their names.

2. The Government also direct that consequent on their regularisation, they are eligible to draw arrears of pay and increment, if any.

(GOVERNOR OF TAMIL NADU)

R.POORNALINGAM,
SECRETARY TO GOVERNMENT.

Thus, all the 10(a)(1) appointees, appointed from 19.02.1987 to 07.08.1989, have been directed to be regularised from the date of their appointment to the post of Scientific Assistants Grade II.

18. Material on record further discloses that on 20.04.1998, the Director of Forensic Sciences Department, Chennai, has drawn a provisional seniority list in the post of Scientific Assistants, Grade II. The same has been challenged in O.A.No.7206 of 1999, by one D.Devaki and A.Visalakshi, respondents 27 and 29, in the present writ appeals, on the grounds, inter alia that the seniority list, dated 20.04.1998, is contrary to General Rule 35 (a) and not based on the rank assigned to them, in the list of selected candidates for the post of Scientific Assistant Grade II, by the Tamilnadu Public Service Commission. In the said O.A.No.7206 of 1999, they sought for a direction to respondents 1 to 3 therein to revise the seniority list of Scientific Assistant Grade II issued by the Director of Forensic Sciences Department, Chennai, based on the rank assigned to them by the Tamil Nadu Public Service Commission in the competitive examination held in the year 1989, for the post of Scientific Assistant Grade II and under General Rule 35(a), and consequently, to include their names in the panel of Scientific Assistant Grade I issued by the Director of Forensic Sciences Department, Chennai, in proceedings Rc.No.A4/883/99 dated 22.1.1999 and consequently, to promote them as Scientific Assistant Grade I, based on the seniority list, so revised. These two persons were temporarily appointed as Scientific Assistants Grade II on 15.9.1988 and 25.3.1988 respectively, through Employment Exchange under 10 (a)(i) of the Tamil Nadu State and Subordinate Services Rules. However, they had participated in the examination conducted by TNPSC and by a communication, dated 22.12.1995, the TNPSC informed them that they were provisionally selected for appointment to the said post and that their ranking was also assigned.

19. The said Original Application came to be transferred to this Court, and re-numbered as W.P.No.2111 of 2007. In the said writ petition, respondents 4 to 27, were Scientific Assistants, Grade II, working in various places. At this juncture, it is to be noted that the writ petitioners in W.P.No.2111 of 2007, D.Devaki and A.Visalakshi, were also parties in O.A.Nos.1727 and 1728 of 1989, wherein, the Tribunal, by common order, dated 04.12.1991, in the said Original Applications, has directed the State Government to regularise the services of the abovesaid two individuals, along with other respondents 4 to 27 therein, with effect from the date of order of their appointment. W.P.No.2111 of 2007, came to be dismissed on 02.09.2010, against which, an appeal is stated to have been filed. While confirming the seniority list, a learned single Judge in W.P.No.2111 of 2007, at Paragraphs 16 to 18, held as follows:

"16. When the temporary services of these petitioners and the respondents were already regularised and their seniority also came to be fixed on the basis of the order passed by the Tribunal which also became final and since the posts of Scientific Assistant Grade II were brought under the purview of TNPSC from 9.12.1988 instead of 3.10.1986 and as per the communication from the TNPSC dated 22.12.1995, the petitioners were selected and came to be appointed only on 8.3.1997 ten years after the appointments of the respondents, the claim of the petitioners that they must be placed as seniors above the respondents is not legally sustainable. As rightly contended by the learned Additional Government Pleader appearing for the State, after regularising the services of both the petitioners and the respondents on the basis of the order passed by the Tribunal in O.A.Nos.1727 and 1728 of 1989 dated 04.12.1991, as bound by the direction of the Tribunal after regularisation of their services, their seniority was also fixed on the guidelines issued by the Tribunal in its order dated 4.12.1991. As such, if the ranks assigned by the TNPSC were to be considered for fixing their seniority as claimed by the petitioners, then the petitioners would have to be placed as new recruits in the vacancies arose only in the year 1989-90 and their seniority position also would be far below their present position, namely in Sl.Nos.35 and 32 respectively, for the simple reason,

that the petitioners were appointed by the TNPSC only on 8.3.1997 whereas the respondents and the petitioners were appointed originally through Employment Exchange between 1987 and September 1988. Therefore, rule 35(a) will not apply to the present case, but will apply only to seniority among the candidates selected by the TNPSC. Further, I have already held that Rule 35(a) will not apply to appointments made outside the purview of the TNPSC, because, these posts were brought under the purview of TNPSC only from 09.12.1988 but much before the respondents were appointed as Scientific Assistant Grade II.

17. When the posts were not under the purview of TNPSC in the year 1988, more importantly when the TNPSC and the State Government also have accepted the order of the Tribunal dated 04.12.1991 by not bringing their posts under the purview of TNPSC from 1986 but bringing the posts under the purview of TNPSC only from 09.12.1988, both the respondents and the petitioners need not be selected by the TNPSC as their services were already regularised with fixing up of their seniority. This view is taken not only to avoid the argument that the inter-se seniority once settled will be unsettled but fairness, equity and law also demand no interference with the concluded inter-se seniority already settled.

18. Therefore, I conclude precisely that after both the petitioners and the respondents were appointed in the year 1987-88 as Scientific Assistant Grade II under Rule 10(a)(i)(1) through Employment Exchange when the TNPSC and the State Government finally regularised their services by fixing their seniority, there would not be any more need for selection of the same candidates by the same TNPSC as their regularisation and seniority were already settled. Otherwise, the settled position will not only unsettle the final and concluded position but will also pave way for chaos in the administration at the cost of harmful and serious effect on the administration."

20. Between 1999 and 2005, there were appointments to the post of Scientific Assistants Grade II. Material on record discloses that even before the dismissal of the said writ

petition, the Director of Forensic Sciences Department, Chennai, 2nd respondent herein, has drawn a temporary seniority list, dated 21.04.2010, of the Scientific Assistants, Grade II, in Forensic Sciences Department, subject to the outcome of W.P.No.2111 of 2007. This list contains 101 names. Some of the Scientific Assistants Grade II, Forensic Sciences Department, have submitted a representation, dated 13.05.2010, to revise the seniority list.

21. Taking note of the judgments, dated 04.12.1991 of the Tribunal in O.A.Nos.1727 and 1728 of 1989 and the decision in W.P.No.2111 of 2007, dated 02.09.2010, a regular seniority list, dated 08.12.2010, of Scientific Assistants Grade II, appointed on or after 03.10.1986, has been issued. The said post has been re-designated as Junior Scientific Officer. Seniority of the Scientific Assistants, Grade II/Junior Scientific Officer, has been fixed, as per the date of entry into service/regularisation.

22. Proceedings, dated 08.12.2010, has also been issued by the Director of Forensic Sciences Department, determining the seniority of Scientific Assistants Grade I (re-designated as Scientific Officer), regularly promoted during 1999-2000. Now, after all these events, the petitioners 1 and 2/appellants, appointed on 08.03.1997, pursuant to the notification, dated 13.09.1989; Petitioners 3 to 24/appellants appointed, vide order, dated 26.07.1999 and 13.01.2000, pursuant to the notification, dated 22.11.1996; petitioners 25 to 27/appellants, appointed on 22.11.2000, pursuant to the notification issued by the TNPSC, dated 25.08.1999; and petitioners 28 to 36/appellants, appointed on 18.02.2005 and 12.05.2005 respectively, pursuant to the notification of the Commission, dated 19.07.2001, have filed W.P.Nos.464 and 465 of 2011 respectively, on the grounds inter alia that the appointment of the private respondents is illegal and contrary to the amended rules, issued in G.O.Ms.No.635, Home, dated 09.12.1988, by which, the post of Scientific Assistants, Grade II, has been brought within the purview of Tamil Nadu Public Service Commission.

23. Except D.Devaki and A.Vislakshi, none of the petitioners/appellants were in service, when the appointments of the respondents were made, between 19th February 1987 and 7th August, 1989. They were all recruited between 1999 and 2005. The writ petitioners/appellants have been appointed 10 years to 16 years, later than respondents 4 to 34.

24. As rightly observed by the learned single Judge, the Government have issued G.O.Ms.No.996, regularising the services of all the private respondents, in the year 1997 itself. Even the petitioners 1 and 2/appellants were aware of the same. There was no challenge by them in the year 1997. As rightly observed by the Writ Court, the petitioners 3 to 24/appellants were not even inducted to the cadre, on the date of regularisation, when the Government have issued G.O.Ms.No.996, dated 04.07.1997.

25. Now, when a regular seniority list, dated 08.12.2010 is drawn, the petitioners/appellants have filed W.P.Nos.464 of 2011, for a declaration, declaring the appointments of the respondents 30 to 43, as Scientific Assistant Grade II in the Forensic Sciences Department, under 10(a)(i) of the General Rules of the Tamil Nadu State and Subordinate Service Rules, as illegal. Rule 10(a)(i) of the said Rules, reads as follows:

"a(i)(1) where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with these rules and the Special Rules, the appointing authority may temporarily appoint a person, who possesses the qualifications prescribed for the post otherwise than in accordance with the said rules.

"(Added Vide G.O.Ms.No.21, P&AR (S) Dept., 23-1-96 w.e.f.23-1-96)

Provided that no appointment @ by direct recruitment under this clause shall be made of any person other than the one sponsored by the Tamil Nadu Public Service Commission from its regular or reserve list of successful candidates to any of the posts within the purview of the Tamil Nadu Public Service Commission.

@(Added Vide G.O.Ms.No.21, P&AR (S) Dept., 23-1-96 w.e.f.23-1-96)

Second Proviso omitted vide G.O.Ms.No.146 P&AR (S) Dept. dt. 13.9.2006 w.e.f. 16.8.82

Provided ** further that appointment by direct recruitment under this clause (1) in respect of posts within the purview of Tamil Nadu Public Service Commission shall be made, only where new posts with

new qualifications are created temporarily and where the Tamil Nadu Public Service Commission does not have a regular or reserve list of successful candidates for sponsoring.

** Substituted vide G.O.Ms.No.146 P&AR(S) Dept.
dt.13.9.2006 w.e.f. 16.8.82."

26. A bare reading of the rule, makes it clear that the appointing authority has powers to make appointment under Rule 10(a)(1) of the abovesaid Rules and in the case on hand, it is the specific stand of the Government that all the appointments made between 19.12.1987 to 07.08.1989, under Rule 10(a)(1) of the abovesaid Rules, were with the prior concurrence of the Government, as against the posts, in relation to the vacancies for the period from 3rd October 1986 to 1989.

27. The Government or the appointing authority, as the case may be, has the power to invoke the Rules, owing to exigencies, prevalent at that point of time. Appointment of the respondents 4 to 43, made under Rule 10(a)(1) of the rules, between 19.02.1987 to 07.08.1989, cannot be declared as illegal, at this length of time. As observed earlier, all the temporary appointees have been regularised, vide G.O.Ms.No.996, Home, dated 4 July 1997, in the year 1997 itself. Now, after 11 years, except, the writ petitioners 1 and 2/appellants, recruited by TNPSC on 08th March 1997, all other petitioners/appellants, recruited between 1999 and 2005, have challenged G.O.Ms.No.996, Home, dated 4 July 1997, regularising the private respondents 4 to 27. The petitioners/appellants, who were not at all in service, at the time, when the order of regularisation was issued, have absolutely no locus standing to challenge the said order. Action of the Government in regularising the services of the private respondents cannot be questioned by the writ petitioners/appellants, who were not in service, at the time, when the orders were issued and consequently, the accrued rights of the private respondents, by virtue of the orders of regularisation, be erased.

28. As rightly observed by the Writ Court, a tentative seniority list of Scientific Assistants Grade II, has been published on 20.04.1998 and that the same was challenged in W.P.No.2111 of 2007, only by two persons, viz., Mrs.D.Devaki and Mrs.A.Visalakshi, respondents 27 and 29, in the present writ appeals. As rightly observed by the writ Court, the petitioners/appellants, who were not appointed prior to

20.04.1998, cannot be heard to say that they were not aware of the regularisation order, dated 04.07.1997.

29. The tentative seniority list, dated 20.04.1998, has been sustained by this Court in W.P.No.2111 of 2007, dated 02.09.2010. There are appointments from 1999 to 2005. Naturally, those recruited between 1999 and 2005, have to be placed below, those who had been already regularised. Therefore, a provisional seniority list, dated 21.04.2010, seemed to have been drawn by the Department. As the inter-se dispute between those appointed between 1987 and 1989, under Rule 10(a)(1) of the Rules and subsequently, regularly appointed through TNPSC, Mrs.D.Devaki and Mrs.A.Visalakshi, respondents 27 and 29, came to be resolved in W.P.No.2111 of 2007, dated 02.09.2010, subsequently, when a final seniority list was issued on 08.12.2010, it was found by the Department that the provisional seniority list issued on 21.04.2010 was found to be in order, except the order of seniority of Thiru.N.Suresh and Thiru.M.Jeevanandan (Sl.Nos.41 and 42). Thus, from the sequence of events, it could be deduced that from a deep slumber from 1997 to 2011 and after the tentative seniority list, dated 21.04.2010, that being sustained by an order of this Court in W.P.No.2111 of 2007, dated 02.09.2010 and which came to be finalised on 08.12.2010, with a slight modification in the seniority, as stated supra, the petitioners/appellants have filed W.P.Nos.464 and 465 of 2011, for the reliefs, as stated supra.

30. The services of respondents 4 to 27, have been regularised in the year 1997 and as of today, much water has flown. There is absolutely no basis and locus for the writ petitioners/appellants, to challenge the temporary appointments, made in the year 1989, as illegal, after 22 years, from the date of their temporary appointment and after 14 years, from the date of their regularization, regularising them from their initial date of appointment. The recruits between 1999 and 2005 have questioned the power of the appointing authority, who has made the temporary appointments, under Rule 10(a)(1) of the Rules, with concurrence of the Government. They cannot question the competence of the appointing authority, who had exercised his powers, under Rule 10(a)(1) of the Rules, as illegal, that too, after so many years and moreso, when the temporary appointments were made, writ petitioners/appellants were not even inducted into the service. Power to make appointments is conferred on the

authority and when exercised, owing to exigency, it cannot be termed as illegal.

31. After considering the rival submissions and taking note of a catena of decisions, on the aspect of delay and laches and the objections of the learned Senior Counsel for the petitioners/appellants, regarding the non-availability of record of concurrence given by the TNPSC., at Paragraph 35, the Writ Court, held as follows:

"The Government have appointed the temporary appointees on account of administrative exigency. They have worked for years together. The Tribunal having found that the Government have regularised the appointments made prior to 3 October 1986 rightly directed regularisation of other employees appointed prior to 9 December 1988. It was a one time measure. The Government though challenged the order before the Supreme Court, subsequently took a conscious decision to comply with the direction and accordingly the Civil Appeals were dismissed as withdrawn. The petitioners who are subsequent appointees now wanted the benefit given to the temporary appointees by way of regularisation of their services to be recalled after seventeen years. Some of the petitioners were College students when the Government appointed the temporary appointees on account of administrative necessity. The petitioners have no legal or moral right to challenge the regularisation order issued long prior to their entry into service. I therefore do not find any merit in the contentions taken by the petitioners."

32. Under Article 226 of the Constitution of India, there is no time limit for filing a Writ Petition. What is reasonable time is not prescribed in the rules framed under Article 229 of the Constitution of India. The words "reasonable time", as explained in *Veerayeeammal V. Seeniammal* reported in 2002 (1) SCC 134, at Paragraph 13, is as follows:

"13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable".

The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's The Law Lexicon it is defined to mean:

"A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than "directly"; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

33. There is inordinate delay and laches on the part of the petitioner. What is laches is also given as follows:

"Laches or reasonable time are not defined under any Statute or Rules. "Latches" or "Lashes" is an old french word for slackness or negligence or not doing. In general sense, it means neglect to do what in the law should have been done for an unreasonable or unexplained length of time. What could be the latches in one case might not constitute in another. The latches to non-suit, an aggrieved person person from challenging the acquisition proceedings should be inferred from the conduct of the land owner or an interested person and that there should be a passive inaction for a reasonable length of time. What is reasonable time has not been explained in any of the enactment. Reasonable time depends upon the facts and circumstances of each case."

34. Statement of law has also been summarized in Halsbury's Laws of England, Para 911 , pg. 395 as follows:

"In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

- (i) acquiescence on the claimant's part; and
- ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

35. In addition to the above, this Court deems it fit to consider few decisions, on the aspect of delay and laches and reasonable time, in approaching the Writ Court.

(i) In State of M.P., v. Bhailal Bhai reported in AIR 1964 SC 1006, the Hon'ble Supreme Court held that unreasonable delay denies to the petitioner, the discretionary extraordinary remedy of mandamus, ceriorari or other relief.

(ii) In State of M.P., v. Nandlal Jaismal reported in 1986 (4) SCC 566, the Hon'ble Supreme Court, at Paragraph 24, held as follows:

"24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. 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 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. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion

and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised 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, even if the State action complained of is unconstitutional or illegal.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 cases where despite delay and creation of third party rights 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."

(iii) In *State of Maharashtra v. Digambar* reported in AIR 1995 SC 1991, the Hon'ble Supreme Court, considered a case, where compensation for the acquired land was claimed belatedly and at Paragraphs 12, 18 and 21, held as follows:

"12. How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State invoking writ jurisdiction of the High Court under article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decision of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the

Constitution if his conduct is blame-worthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a welfare State, is also difficult to comprehend. Where the relief sought under Article 226 of the Constitution by a person against the welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blame-worthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable

even if the relief was granted in respect of alleged deprivation of his legal right by the State.

18. Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled for grant of such relief was explained succinctly by Sir Barnes Peacock, long ago, in *Lindsay Petroleum Co. v. Prosper Armstrong* (1874) 5 PC 221) thus : "Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be 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 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 or 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 it relates to the remedy."

21. Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement of such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily."

(iv) In *State of Rajasthan v. D.R. Laxmi* reported in 1996 (6) SCC 445, the Hon'ble Supreme Court observed that though the order may be void, if the party does not approach the Court within a reasonable time, which is always a question of

fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner.

(v) In *Chairman, U.P.Jal Nigam and another v. Jaswant Singh* reported in AIR 2007 SC 924, the Hon'ble Supreme Court, after considering a catena of decisions, on the aspect of delay, at Paragraph 13, held as follows:

"13.....Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted."

(vi) In *S.S.Balu v. State of Kerala* reported in 2009 (2) SCC 479, at Paragraph 17, the Hon'ble Supreme Court held as follows:

"17. It is also well-settled principle of law that "delay defeats equity". The Government Order was issued on 15-1-2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal thereagainst, they impleaded themselves as party-respondents. 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. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage. In *NDMC v. Pan Singh*⁹ this Court held: (SCC p. 283, para 16)

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17

workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction."

(vii) In *Virender Chaudhary v. Bharat Petroleum Corporation* reported in 2009 (1) SCC 297, the Hon'ble Supreme Court held as follows:

"The court exercises its jurisdiction only upon satisfying itself that it would be equitable to do so. Delay and/or laches, indisputably, are the relevant factors.

"15. The Superior Courts, times without number, applied the equitable principles for not granting a relief and/or a limited relief in favour of the applicant in a case of this nature. While doing so, the court although not oblivious of the fact that no period of limitation is provided for filing a writ petition but emphasize is laid that it should be filed within a reasonable time. A discretionary jurisdiction under Article 226 of the Constitution of India need not be exercised if the writ petitioner is guilty of delay and laches."

Some of the decisions considered by the Hon'ble Apex Court in *Virender Chaudhary's* case (cited supra), are reiterated as follows:

"16. In *Uttaranchal Forest Development Corporation and Anr. v. Jabar Singh and Ors.* [(2007) 2 SCC 112], this Court held:

"It is not in dispute that the effective alternative remedy was not availed of by many of the workmen as detailed in paragraphs supra. The termination order was made in the year 1995 and the

writ petitions were admittedly filed in the year 2005 after a delay of 10 years. The High Court, in our opinion, was not justified in entertaining the writ petition on the ground that the petition has been filed after a delay of 10 years and that the writ petitions should have been dismissed by the High Court on the ground of laches."

17. In *New Delhi Municipal Council v. Pan Singh and Ors.* [(2007) 9 SCC 278], this Court held:

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. (See *Govt. of W.B. v. Tarun K. Roy* [(2004) 1 SCC 347], *U.P. Jal Nigam v. Jaswant Singh* [(2006) 11 SCC 464] and *Karnataka Power Corpn. Ltd., v. K.Thangappan* [(2006) 4 SCC 332])

17. Although, there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily, writ petition should be filed within a reasonable time. (See *Lipton India Ltd. v. Union of India* [(1994) 6 SCC 524] and *M.R.Gupta v. Union of India* [(1995) 5 SCC 628])

(viii) In *Chennai Metropolitan Water Supply and Sewerage Board v. T.T.Murali Babu* reported in 2014 (4) SCC 108, at Paragraphs 16 and 17, held 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 scrutinize 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 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.

17. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the

said ground alone the writ court should have thrown the petition overboard at the very threshold."

36. As regards the decision in K.Madalaimuthu v. State of Tamil Nadu reported in AIR 2006 SC 2662, the Writ Court, at Paragraph 33(a), has held as follows:

"The learned Senior Counsel for the petitioners placed reliance on the judgment of the Supreme Court in K.Madalaimuthu v. State of Tamil Nadu, (2006) 6 SCC 558 in support of her contention that the Supreme Court interpreted Rule 4(a) of Tamil Nadu State and Subordinate Service Rules, and made it very clear that temporary appointees would be entitled to seniority only from the date of regularisation. There is no doubt with regard to the law laid down by the Supreme Court in K. Madalaimuthu cited supra."

37. In Bhupendra Nath Hazarika v. State of Assam reported in 2013 (2) SCC 516, relied on by the learned Senior Counsel for the petitioners/appellants, the Assam Public Service Commission (for short "the Commission") issued an advertisement No.9/92, dated 23.6.1992, inviting applications for preliminary examination for a Combined Competitive Examination, 1992-93 for selecting candidates for various posts and services including thirty vacancies in the Assam Police Service (Junior Grade) (for short "the APS") as requisitioned by the Commissioner-cum-Secretary to the Government of Assam in the Department of Personnel on 5.9.1992. On 29.8.1992, the Commission published another advertisement No.12/92, inviting applications for filling up of 20 posts in the APS under Rule 5(1)(c) of the 1966 Rules. The main examination for the regular batch was held on 15.11.1992 for total marks of 1400. The examination for the special batch was held on 22.11.1992, for 650 marks. The Commission declared the result, in respect of the regular batch on 23.4.1993 and, vide letter dated 24.4.1993, recommended 30 candidates for appointment in order of merit. But no appointment was made till 13.8.1993. At this juncture, the Commissioner-cum-Secretary to the Government of Assam in the Department of Home, requested the Commission to furnish the select list of the special recruits, at the earliest. On the basis of the aforesaid letter of request, the Commission sent its recommendations, in respect of the candidates belonging to the special batch, and on the basis of the said

recommendation, vide notification No.HMA.478/86/Pt-I/17, dated 3.7.1993, the respondent Nos.6 to 24 therein, before the tribunal, were appointed. The respondent No.25 therein, was appointed on 31.8.1994. Thereafter, the Competent Authority, vide notification No.HMA.110/93/43, dated 13.8.1993, appointed 28 persons from the regular batch. As the recruits of the special batch were appointed earlier, they were treated as senior to the recruits belonging to the regular batch. The direct recruits of regular batch invoked the jurisdiction of the tribunal, seeking revision of seniority, claiming them to be senior, to respondent Nos.6 to 24. The Tribunal found that since the seniority list was in violation of Assam Police Rules, held that they could not be treated as regular recruits. The Tribunal further held that inaction on the part of the Government in not notifying the appointments of regular batch candidates, recommended earlier by the Commission, could not be put in jeopardy and lose their seniority and accordingly, directed re-fixation of the seniority list. The Tribunal held that as per the Services Rules, 1966, recruitment should be made only, in special cases and at all time, such recruitment must be limited only to 5 per cent of the total number of posts in the cadre and such special recruitment, must be limited only to one post in a particular year. It was further held that the 1966 Rules do not carry forward of such posts and therefore, there could not have been accumulation of vacancies to be filled up by resorting to the provision contained in clause (c) of sub-rule (1) of Rule 5.

38. From the perusal of the judgment of the Apex Court in Bhupendra Nath Hazarika's case (cited supra), it could be deduced that the tribunal has further held that as per Rule 8 (1), the Governor was required to call for recommendations from the recommending authorities for the purpose of recruitment to the service under clause (c) of sub-rule (1) of Rule 5 and the recommending authorities were also required to submit recommendations in respect of the persons having regard to the laid down criteria but in the said case, the said procedure was given a total go by and therefore, observed as not permissible. The Tribunal has also noticed that Rule 8(2) was mandatory, which provides that all the recommendations were required to be submitted before the selection committee constituted under Rule 7(1) and that the selection committee was required to interview the recommended candidates and prepare the select list and, therefore, the Commission, in no circumstance, be entrusted with the responsibility of

interviewing, testing, selecting and recommending any candidate for special recruitment under clause (c) of sub-rule (1) of Rule 5.

39. Therefore, on the facts and circumstances and with reference to the statutory rules, in the above reported case, the tribunal has observed that all the processes undertaken by the Commission and the third respondent therein, were in gross violation of the mandatory provisions of the Rules and hence, the selection was not valid. So saying, the tribunal had proceeded to hold that as the respondent Nos.6 to 25 therein had been appointed in violation of the rules and hence, they could not be treated as regular recruits within the meaning of Rule 5(1)(a) of the 1966 Rules. Though the selection could have possibly been set aside, the Tribunal, while observing that due to unreasonable delay and inaction on the part of the Government in not notifying the appointments, the regular batch candidates, who were earlier recommended by the Commission, could not be put in jeopardy and lose their seniority and accordingly, directed for refixation of the seniority list. The Tribunal has further directed that the regular batch shall be allowed all the consequential benefits, with effect from the date on which the senior most member of the special batch availed of any benefit even by creating supernumerary duty post in the cadre. When the above decision was tested, after going through the material on record, at Paragraphs 15 and 16, the Hon'ble Supreme Court, has analyzed the views of the learned single Judge, as hereunder:

"15. The learned single Judge also observed that the members of the Special Batch were selected throwing over-board, in entirety, the relevant recruitment rules. Regard being had to chronology of events leading to the appointment of the members of the Special Batch, the learned single Judge opined that the entire exercise for selecting the Special Batch was wholly de hors the relevant recruitment rules. The urgency shown by the Government to obtain the result of the examination held in respect of the Special Batch was an indication that the Government was waiting, for no justified and valid reason, to, first, make appointment of the members of the Special Batch, though selected in complete disregard of the Rules, and, then, issue appointment in respect of the members of the Direct Batch, whose process of selection was never questioned. After so

stating, the learned single Judge held that contrary to the provisions of Rule 5(1)(c), which prescribes upper age limit for selection to be 35 years and throwing to the wind the very purpose for which special recruitment was sought to be made, the age was relaxed to 45 years and persons, who were born in 1942, came to be selected in the year 1992, and thereby many of the officers recruited under the special drive were as old as 50 years, whereas proposal for the special drive was made on the pretext of recruiting young officers. He also opined that the whole process of selection of the special batch recruited was mala fide and arbitrary.

16. After so stating, the learned single Judge dealt with issues whether the appointments were ab-initio void, whether the relevant rules of recruitment were relaxed in respect of the special batch at the time of making their recruitment and what was the permissible limit of relaxation and whether there can be deemed relaxation. Delving into the said aspects, the learned single Judge ruled that while appointing the special batch, the rules of recruitment were completely shelved, no order of relaxation was passed under Rule 23 relaxing the provisions contained in Rule 5(1)(c) of the 1966 Rules; and that there could not have been any deemed relaxation. The learned single Judge referred to various pronouncements of this Court with regard to relaxation and deemed relaxation and expressed the view that the Special Batch was recruited, ostensibly, on the ground that the department was in need of young officers in the grade of Deputy Superintendent of Police, but the officers recruited were as old as 50 years, and, thus, the very purpose for which the proposal was mooted stood defeated."

40. The Hon'ble Supreme Court further analyzed the views of the Hon'ble Division Bench, at Paragraphs 21 and 22 of Bhupendra Nath Hazarika's case (cited supra), observed as follows:

"21. The Division Bench analysed the scheme of the rules and stated that Rule 5(1)(c) envisages a selection in special cases from amongst the limited categories of persons referred to and the number of vacancies to be filled up by that procedure has also

been restricted. The Division Bench referred to Rule 8 and regarded it as unequivocal on the conditions of eligibility, commencement of the process contemplated and the culmination thereof, and observed that the assessment of eligibility by the Recommending Authority of the person is a sine qua non for consideration of his candidature to be recruited. The candidate, as per the mandate of Rule 8, has to be of outstanding merit and ability, possessing the academic qualification as prescribed by Rule 10, should not be above 35 years of age on the first day of the year in which the recommendations are called for and should have not less than two years of experience in duties comparable in status and responsibility to that of the Deputy Superintendent of Police or 8 years of experience in duties comparable in status and responsibility to that of the Inspector of Police.

22. After so stating, the Division Bench referred to various authorities and, eventually, came to hold that though the appointments of the special recruits had been made in deviation of the Rules, yet the same cannot by any means be branded as de hors any procedure whatsoever known to public employment. Their induction of the special recruits cannot be equated with ad hoc, casual or temporary recruitments or an entry through the backdoor and hence, their appointment cannot be regarded as de hors the rules. Dealing with the aspect of seniority it ruled that their appointments not being in observance of the statutory provision *stricto sensu*, the fixation of their batch wise seniority over the direct recruits of the same year is impermissible and the benefit as stipulated under the proviso to Rule 18(1) was not extendable."

41. In the above factual background, the Hon'ble Supreme Court, at Paragraph 55, in Bhupendra Nath Hazarika's case (cited supra), held as follows:

"42. The aforesaid authorities clearly lay down the principle that when there is violation of the recruitment rules, the recruitment is unsustainable. Whether any active part is played by a selectee or not has nothing to do with the appointment made in contravention of the rules. In the case at hand, the

special batch recruits have encroached into the quota of the direct recruits. The whole selection process is in violation of the rules and, therefore, we are inclined to concur with the opinion expressed by the learned single Judge that the selection was made de hors the rules. The Division Bench was not justified in stating that the selection could not be said to be de hors the rules. However, we accept the conclusion of the tribunal as well as the High Court that as there had been long delay in challenging the selection of the special batch recruits and some of them have already retired, it would not be apposite to annul their appointments."

42. With due respect to the views of the Hon'ble Supreme Court on the facts and circumstances of the reported case and the submission of the learned Senior Counsel of the appellants, we are of the considered view that case on hand, before us, is inapposite and therefore, the said decision would not lend any support to the case of the petitioners/appellants. Respondents 4 to 29 have been appointed during 19.02.1987 to 07.08.1989 and respondents 30 to 43 have been appointed between 1989 and 1991. Respondents 4 to 29 have been regularised in G.O.Ms.No.996, dated 04.07.1997. Scientific Assistants Grade II appointed during 1989 to 1991, have been regularised in G.O.Ms.No.1252, Home, dated 07.11.2000. The latter G.O., has not been challenged.

43. From the material on record, it could be deduced that some of the private respondents 4 to 29, recruited between 19.02.1987 and 07.08.1989, as Scientific Assistants Grade II and regularised in G.O.Ms.No.996, have also earned their further promotion to the post of Scientific Assistants Grade I (re-designed as Scientific Officer) and a seniority list, dated 08.12.2010, has also been issued to them, by the Director of Forensic Sciences Department, Chennai. Private respondents 4 to 16, have also been promoted as Scientific Assistants Grade I (re-designated as Scientific Officer), during 1999-2000. Admittedly, promotions made in the year 1999-2000, have also not been challenged and reached finality. Seniority list of the Scientific Assistants Grade I (re-designated as Scientific Officer), issued by the Director of Forensic Sciences Department, Chennai, has also not been challenged. Thus, by filing writ petitions in the year 2011, for the reliefs, stated supra, the writ petitioners/appellants

cannot be permitted to resurrect stale matters and unsettle regularisation made in the year 1997 and 2000, respectively. When the private respondents have been regularised, from the date of their initial appointment and some of them viz., respondents 4 to 16, have also earned promotion to the next level, as rightly observed by the Writ Court, the writ petitions filed with an inordinate delay and laches, challenging the appointment, made in the year 1987, are liable to be dismissed. Going through the entire material on record, we do not find any valid grounds to interfere with the orders made in W.P.Nos.464 and 465 of 2011, dated 25.03.2015.

44. Hence, Writ Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

skm

To

1. The Secretary to Government,
State of Tamil Nadu,
Home Department,
Fort St. George, Chennai 600 009.
2. The Secretary,
Tamil Nadu Public Service Commission,
Commercial Taxes Annexe Building,
Greens Road, Chennai 600 006.
3. The Director,
Forensic Sciences Department,
30-A, Kamarajar Salai,
Mylapore, Chennai-4.

W.A.Nos.1270 and 1271 of 2015

NM (CO)
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