

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.9415 of 2014
and
M.P.No.1 of 2014

Dr.S.Pranjothi

.. Petitioner

versus

1.Union of India
rep. by Government of Puducherry
rep. by Secretary (Health & Welfare Department)
Puducherry

2.The Director of Health & Family Services
Government of Puducherry
Puducherry

3.Central Administrative Tribunal
Chennai Branch, rep. by
the Registrar
High Court Campus
Chennai

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 3rd respondent herein in O.A.No.580/2011 dated 21.01.2014, quash the same, further direct the respondents 1 and 2 herein to treat the petitioner as Senior Specialist in Neurology w.e.f. 14.9.1992 and absorb him as Specialist Grade-I (Neurology) w.e.f. 14.6.1996 with all consequential promotions, seniority, arrears of salary and all other attendant benefits.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.Venkataswamy Babu

For Respondents: Mr.R.Syed Mustafa
Addl. Govt. Pleader (Pondicherry)

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ petition is to an order passed by the Central Administrative Tribunal, Madras Bench, in O.A.No.580/2011, by which, the Tribunal, declined to issue a direction to the respondents to treat the petitioner as Senior Specialist in Neurology with effect from 14.9.1992, and to absorb him, as Specialist Grade I (Neurology), with effect from 14.6.1996, with all consequential promotions, seniority, arrears of salary and all other attendant benefits.

2. Facts leading to the writ petition are that, the petitioner, obtained MBBS Degree in 1977 and was appointed as Assistant Civil Surgeon on 6.2.1978 at T.R. Pattinam, Puducherry. Subsequently, he obtained M.D. in General Medicine in the year 1989 from Thanjavur Medical College and was promoted as Junior Specialist in General Medicine. In the year 1992, he got the Degree of D.M.(Neurology) from Stanley Medical College, Chennai. He was promoted as Specialist Grade II (Senior Scale), in the year 1996 and then promoted as Specialist Grade I in the year 1998.

3. It is the further contention of the petitioner that when Neurology Department was created in the year 1992, applications were called for from eligible candidates for the post of Senior Specialist. The petitioner applied for the said post, not only in the year 1992, but also when applications were called for in the year 1994 and 1997, but the said post was not filled up, for reasons best known to the respondents. In the meantime, the old Recruitment Rules, viz., Government of Pondicherry Health and Welfare (Health) Junior Specialist and Project Director (Obstetrics and Gynaecology) Group A post Recruitment Rules, 1991 was replaced by Pondicherry Health Services (Allopathy) Rules 1998, and published in the Gazette on 29.9.1998. According to the petitioner, since he was promoted as Specialist Grade I in the year 1998 itself, in the normal course, he would have become Medical Superintendent in the year 2004.

4. It is also the further contention of the petitioner that he was selected and appointed to the post of Specialist Grade II (Senior Scale) (Super Specialist, Neurology) with effect from 12.2.2001 pursuant to the application called for by the Union Public Service Commission. Since he was holding the post of Specialist Grade I, his pay was protected in the new post. The abovesaid appointment of the petitioner was challenged by one Dr. Balasubramanian in O.A.No.890 of 2001 before the Central Administrative Tribunal, Madras Bench, which set aside the appointment of the petitioner. Against which, the petitioner filed W.P. No.14996 of 2002 before this Hon'ble Court, and by order dated 21.3.2003, this court set aside order

of the Tribunal and upheld petitioner's appointment. Aggrieved by the same, the said Dr.Balasubramanain filed a Special Leave Petition before the Hon'ble Supreme Court.

5. It is the further contention of petitioner that even taking it for granted that new rules were to be followed, he would have become Director of Medical Services, in the year 2009, as he had put in 8 years of service as Specialist Grade I. Though he was appointed as Specialist Grade II in the year 2001, as he was holding the post of Specialist Grade I from the year 1998, his seniority, promotion and increments ought to have been given on that basis. However, the respondents did not take any action, recognising his service in the post of Specialist Grade II, continuously for nine years i.e. till 2009. Hence, he made a representation to the respondents on 8.10.2007. The petitioner did not receive any reply. Aggrieved by the inaction of the respondents and under protest, he submitted his application for voluntary retirement from service on 27.1.2009 and accepting his request, he was relieved from service on 1.3.2010.

6. It is the further contention of the petitioner that due to administrative lapses and delay, appointment and promotion were not effected, as Senior Specialist in Neurology with effect from 14.9.1992 and Specialist Grade I, with effect from 14.2.1996. As the representation sent by him, was not considered, the petitioner has filed Original Application No.580/2011 for the above said relief before the Tribunal. It was the further contention of the petitioner that W.P.No.4718 of 2001, an identical case, was decided by the Hon'ble High Court of Madras on 17.3.2004 and that the same is binding on the respondents.

7. Before the Tribunal, respondents have filed a reply statement and contested the case, inter alia that the Original Application is not maintainable, on the ground of delay, as well as laches. It was also their further contention that the petitioner in effect, has preferred the OA seeking appointment by transfer, on deputation as Senior Specialist in Neurology, with effect from 14.9.1992, the date of circulation of vacancy, and to absorb him, as Specialist Grade I, with effect from 14.6.1996, after a delay of nearly 20 years, when admittedly non-consideration for appointment, on deputation and promotion, remained un-assailed, even as on date. Moreover, by the act of participation in direct recruitment, tendering technical resignation of same post in 2001, he is estopped from claiming retrospective effect, in the absence of any challenge to his non-consideration in 1992 and 1996 respectively.

8. The respondents have further stated that when the vacancy for the post of Senior Specialist in Neurology was circulated to fill up the said post on deputation basis, in the year 1992, the petitioner had applied for the same, even though he did not possess 5 years of regular service, in the

scale, meant for Junior Specialist. However, his application along with the proposal was sent to the Union Public Service Commission for considering his candidature, but the Commission rejected his candidature, stating that he was found eligible for being considered for the post, as he did not have any experience in Neurology, as required in the Recruitment Rules. It was further held by the Commission that the decision in W.P.No.4718 of 2001 referred to by the petitioner, is related to filling up of the post by promotion, and is in no way related and not identical to the case of the petitioner. The case filed by Dr.Balasubaramanain, assailing the appointment of the petitioner, as Specialist Grade II, in Neurology in 2001, on the ground of qualification possessed by the petitioner, went up to Hon'ble Supreme Court, which dismissed the said claim as infructuous, by recording the fact the petitioner had gone on voluntary retirement, with effect from 1.3.2010. The respondents have submitted that the decision rendered by the Hon'ble Apex Court, the consequential benefits, which would flow, in view of the dismissal by the Hon'ble Supreme Court, is no way connected to the present OA and the relief sought for. For the above said reasons, the respondents prayed for dismissal of the original application. The petitioner herein has filed a rejoinder to the reply statement filed by the respondents.

9. Adverting to the rival contentions of both parties, vide order dated 21.01.2014, the Tribunal dismissed the Original Application filed by the petitioner, as follows:

"9. It is seen that the applicant after gone on voluntary retirement with effect from 1.3.2010 has filed the OA in the year 2011 seeking appointment as Senior Specialist in Neurology with effect from 14.9.1992 and absorb him as Specialist Grade I with effect from 14.6.1996 after a delay of nearly 20 years. Further, while he was holding the post of Specialist Grade I in Medicine from 1998, he applied and appeared for the interview for the post of Specialist Grade I(Super Specialty in Neurology) and got selected by the UPSC through direct recruitment. He joined the post after tendering technical resignation from the post of Specialist Grade I. The said appointment was challenged by one Dr. Balasubramanian before this Tribunal which set aside his appointment. In appeal the Hon'ble High Court upheld the appointment of the applicant. Against the order, the said Dr. Balasubramanian filed SLP which was dismissed as infructuous by the Apex Court in view of the fact that the applicant has retired voluntarily with effect from 1.3.2010.

10. The above facts would go to show that the relief sought for by him i.e. to his appointment as Senior Specialist in the year

1992 and to absorb him Specialist Grade I with effect from 14.6.1996 is hit by delay and laches and on this ground alone, the OA is liable to be dismissed. The decision rendered by the Hon'ble High Court of Madras in the case of S. Valluvan S. Tamil Nadu Civil Supplies Corporation (2013 (2) CWC 344) is not helpful to the applicant. The OA is accordingly dismissed. In the circumstances, there is no order as to costs.

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10. Being aggrieved by the same, instant writ petition has been filed by the petitioner.

11. Assailing the correctness of the order of the Tribunal, Mr.A.R.L.Sundaresan, learned senior counsel appearing for Mr.Venkataswamy Babu, learned counsel on record for the petitioner, submitted that the Tribunal, failed to consider that applications were called for the post of Senior Specialist in Neurology in the years 1992, 1994 and 1997 respectively, and for the reasons best known to the respondents 1 and 2, selection and appointment to the said post was not done. According to him, when there was lapse and negligence on the part of the Director of Health & Family Services, Government of Puducherry, Puducherry, respondent No.2, in filling up the vacant posts of Specialist in Neurology, the Tribunal ought to have treated the writ petitioner as Senior Specialist in Neurology, with effect from 14.09.1992, the year, in which the vacancy arose and consequently, ought to have directed absorption, as Specialist Grade-I (Neurology) with effect from 14.06.1996, with all consequential promotions, seniority, arrears of salary and all other attendant benefits. According to him, cancellation of selection, was not informed to the writ petitioner, until for the first time, when the Director of Health & Family Services/respondent No.2, filed a counter affidavit in the original application O.A.No.580/2011, to that effect.

12. It is the further submission of the learned senior counsel that appointment and selection of the writ petitioner in the post of Specialist Grade-II (Senior Scale) (Super Specialist Neurology) made on 24.05.2001 with effect from 12.02.2001, was challenged by Mr.Balasubramanian in O.A.No.819/2001 before the Tribunal and upon setting aside the same, W.P.No.14996/2002 was filed by the writ petitioner and this court, by order dated 21.03.2003, upheld the petitioner's selection and appointment to the post Specialist Grade-II (Senior Scale) (Super Specialist Neurology).

13. It is the further submission of the learned senior counsel that when the representation of the writ petitioner to the respondents 1 and 2 was not considered for promotion to the higher post, under protest, the petitioner was constrained to go on voluntary retirement of service with effect from

01.03.2010. After retirement, Civil Appeal No.2332/2007 filed by Dr.Balasubramanian was dismissed against the order made in W.P.No.14996/2002. In the above said circumstances, he submitted that there was no delay and laches on the part of the petitioner. For the above said reasons, he prayed for reversal of the order impugned.

Heard Mr.AR.L.Sundaresan, learned senior counsel for the petitioner and perused the materials available on record.

14. Material on record discloses that one post of Senior Specialist in Neurology was created in 1991, as per the Recruitment Rules notified, vide G.O.Ms.No.6 Health and Family Welfare Department (Health), Chief Secretariat and published, in Gazette No.27 dated 07.07.1992. The said post was sought to be filled up by transfer on deputation/transfer, failing which, by direct recruitment. Vacancy for the post of Senior Specialist in Neurology was circulated among the officers of the Central/State Governments/Union Territories. According to the respondents, though the writ petitioner did not possess, five years of regular service, in the scale, applicable to the said post, he had applied to the post of Senior Specialist in Neurology, claiming that he had completed five years of regular service, in the post, in the scale of pay Rs.2,200 - 4,000. Proposals along with his application were sent to the Union Public Service Commission, for considering his candidature. On 24.06.1992, the Union Public Service Commission, rejected his candidature by informing that, he is not eligible for being considered to the post of Senior Specialist in Neurology, as he did not possess the required experience, in Neurology specialty. The vacancy was once again circulated vide letter dated 06/10.5.1994. Two applications, one from the writ petitioner and another from Dr.Renukadevi, Assistant Surgeon, Govt. Head Quarters, Cuddalore, Tamil Nadu were received 21.08.1995. Proposals were sent to the Union Public Service Commission. For want of certain clarifications regarding experience of the writ petitioner and the counting of period of study leave in respect of the other candidate, and ACRs of both the candidates, the proposal was returned by the Union Public Service Commission.

15. In the meantime, subsequently, Medical Officers' Association was going on agitation, with the demand for adoption of Central Health Services pattern. Government of Puducherry, approached Government of India, Ministry of Health and Family Welfare, which approved adoption of CHS pattern to the Medical Officers of the Health Department, vide their letter dated 15.02.1996. Thereafter, G.O.Ms.No.23 dated 21.08.1996, was issued, extending Central Health Services pattern to the various categories of Medical Officers of the Health Department in Puducherry. Action was taken for placement of the Medical Officers of the existing grades/scale of pay and consequently, the writ petitioner was placed in the corresponding post, with the designation as Specialist Grade

II (Senior Scale) in Medicine, vide G.O.Ms.34 dated 05.11.1996.

16. Material on record discloses that Government of Puducherry decided to fill the post of Specialist Gr.II (Senior Scale) Super Specialty, in Neurology, by direct recruitment. Proposals for filling up the post, on deputation basis was withdrawn, and it was decided to send a fresh proposal, for filling up the re-designated post of Senior Specialist in Neurology as Specialist Grade II (Senior Scale) (Super Specialty Neurology) to the Commission for selection of suitable candidates, by direct recruitment, as per the draft CHS Recruitment Rules.

17. At this juncture, on the available materials, it could be seen that as per the pre-revised Recruitment Rules, the said post was to be filled up by transfer on deputation/transfer, failing which, by direct recruitment. Pending approval of the Union Public Service Commission, vacancy has been circulated again vide letter dated 10.11.1997. Later-on, a decision has been taken to fill up the post by direct recruitment. From the above, it could be seen that the post of Senior Specialist in Neurology, has to be filled up by direct recruitment, and as per the Pondicherry Health Service Rules, notified on 18.09.1998 and as approved by the Union Public Service Commission and therefore, the petitioner, as a matter of right, cannot seek for promotion to the said post. When the petitioner was working as Specialist Grade-II in Neurology, Department of Neurology, Government of Pondicherry, he has submitted a representation dated 27.01.2009 to the Director of Health and Family Services, Government of Puducherry, requesting voluntary retirement, under Rule 56(k) of FRSR and 48 of CCS Pension Rules, 1972. Voluntary retirement has been accepted and he was relieved on 01.03.2010. Thereafter, the petitioner has filed O.A.No.580/2011 before the Central Administrative Tribunal, praying for a direction to the respondents to treat him, as Senior Specialist in Neurology with effect from 14.09.1992 and to absorb him, as Specialist Grade-I (Neurology) with effect from 14.6.1996, with all consequential promotions, seniority, arrears of salary and all other attendant benefits.

18. No doubt, the post of Senior Specialist in Neurology was notified earlier, and also circulated, and as per the extant Recruitment Rules, sought to be filled up on promotion on transfer or deputation basis, and when the petitioner and another candidate applied, the selection and appointment were not done, for the reasons stated supra. Pursuant to the upgradation of the scale of pay of Assistant Surgeon, from 2000 - 2500 to 2200 - 4000, with effect from 01.01.1996 (4th Pay Commission) and rectification of anomaly, Government of India have ordered to fix the pay scale of Junior Specialist as 3,000 - 4,500. While serving as Junior Specialist in Government Hospital, Mannadipet, the petitioner has submitted

a representation dated 23/24.05.1994 to the Secretary, Government of Puducherry, to consider his case, for the post of Senior Specialist Grade-II (Senior Scale) (Super Specialist Neurology). Two applications have been received and thereafter, Government of India, have approved adoption of CHS Pattern to Medical Officers of Health Department of Union Territory of Puducherry, with effect from 15.02.1996. Accordingly, G.O.Ms.No.23 dated 21.08.1996 has been issued. The writ petitioner has been placed in the corresponding post with the designation, as Specialist Grade-II (Senior Scale) in Medicine. The Government of Puducherry have decided to withdraw the proposal to fill up the post on adoption basis and decided to fill up the post by direct recruitment. Prayer of the writ petitioner is that the respondents ought to have treated him, as Senior Specialist in Neurology with effect from 14.9.1992, and absorbed him as Specialist Grade-I (Neurology), with effect from 14.6.1996, with all consequential promotions, seniority, arrears of salary and all other attendant benefits.

19. From the materials on record, it could be seen that the petitioner was appointed as Assistant Surgeon in Government of Puducherry and in 1989, he was promoted, as Junior Specialist with effect from 03.04.1989, and thereafter, consequent to the adoption of CHS pattern, he was placed in the corresponding post of Specialist Grade II (Senior Scale) in Medicine. Though the writ petitioner has contended that he should have been treated as Senior Specialist in Neurology, with effect from 14.09.1992, it could be seen from the above, the post was not filled up on deputation/transfer basis, from 1992 onwards, for the reasons stated supra and subsequently, the post of Specialist in Neurology, has been re-designated Specialist Grade II (Senior Scale) (Super Specialty Neurology) and that Government of Puducherry, have decided to fill up the post by direct recruitment by following CHS Recruitment Rules. If the petitioner, had any legal right for being treated as Senior Specialist in Neurology with effect from 14.09.1992 and consequentially to be absorbed as Specialist Grade-I (Neurology), with effect from 14.09.1996, as prayed for, in the original application, he should have approached the forum within a reasonable time. From 1992, he has not approached the forum, raising any issue on promotion, as discussed in the foregoing paragraphs, and after retirement, he has approached the Tribunal. Rights if any, to be considered for promotion and accrued, on the basis of rules, at a particular point of time, have to be enforced, within a reasonable time, and cannot be permitted to be resurrected, after retirement, with exception to pension, and pay, subject to limitation. Promotion cannot be claimed as a matter of right, at any time.

20. Laches or reasonable time are not defined under any Statute or Rules. "Laches" 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 laches in one case might not constitute in another. What is reasonable time has not been explained in any of the enactments. Reasonable time depends upon the facts and circumstances of each case.

21. 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 too 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."

22. The Tribunal, by observing that there is delay and laches, has dismissed the Original Application. Delay and laches on the part of the petitioners is per se apparent. In this context, this Court deems it fit to extract few decisions dealing with delay and laches, which are as follows:

(i) In P.S.Sadasivaswamy v. State of Tamil Nadu reported in AIR 1974 SC 2271, the Hon'ble Apex Court held as follows:-

"..... 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. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal."

(ii) In State of M.P. v. Bhailal Bhai reported in AIR 1964 SC 1006, the Hon'ble Supreme Court held that it is not either unreasonable delay denies to the petitioner the discretionary extraordinary remedy of mandamus, certiorari or any other relief.

(iii) 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."

iv) 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."

v) In State of Rajasthan v. D.R.Laxmi reported in 1996 (6) SCC 445, the Hon'ble Supreme Court observed though the order may be void, if the party does not approach the Court, within reasonable time, which is always a question of act and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner.

vi) 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."

23. Though the petitioner has acquired, a super specialty degree, viz. D.M. in Neurology, and also, worked as Grade II Specialist (Senior Scale) (Super Specialty Neurology) and was the Head of the Department, in Government General Hospital, Puducherry and ventilated his grievance, for promotion to higher posts and sought for consequential benefits, in the light of the decisions, stated supra, reliefs sought cannot be granted.

24. It is the case of the respondents that, as per the revised CHS pattern, a decision had been taken to fill up the post, by direct recruitment. After voluntary retirement, the petitioner has approached the Tribunal and that too, after an inordinate delay and laches. Decision of the Tribunal refusing to grant the relief sought for, cannot be held to be illegal, and the same does not warrant any interference.

Accordingly, the writ petition is dismissed. However, there shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

asr

To

- 1.The Secretary
Government of Puducherry
(Health & Welfare Department)
Puducherry
- 2.The Director of Health & Family Services
Government of Puducherry
Puducherry
- 3.The Registrar
Central Administrative Tribunal
Chennai Branch,
High Court Campus
Chennai

1 cc to Government Pleader, Sr. 64995

W.P.No.9415 of 2014

RK (CO)
kk 14/12