

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.12.2016

Coram:

Hon'ble Mr.Justice NOOTY. RAMAMOHANA RAO  
and  
The Hon'ble Mr.Justice S.M.SUBRAMANIAM

WRIT APPEAL No.1567 of 2016

M.H.Syed Ibrahim .. Appellant  
Versus

1. The Government of Tamilnadu,  
rep. by its Secretary,  
Highways Department,  
Fort St. George, Chennai- 600 009.
2. The Chief Engineer, (G1)  
Highways Department,  
PWD Campus, Chepauk, Chennai-5. .. Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order passed by the learned single Judge in W.P.No.37289 of 2007 dated 18.12.2015.

Petition presented under Art 226 of the constitution of India to issue a writ of certiorarified mandamus calling for the records on the file of the 2nd respondent relating to the issued of Letter No.48420/N3(1)/2003 dated 24.12.2003 and quash the same and consequently direct the respondents to treat the period from 1.3.2000 to 8.1.2002 as duty on compulsory wait with all consequential monetary and service benefits

For Appellant .. Mr.N. Subramaniyan

JUDGMENT

(DELIVERED BY NOOTY.RAMAMOHANA RAO,J)

This Appeal under Clause 15 of the Letters Patent, is directed against the Order rendered in W.P.No.37289 of 2007 on 18.12.2015 by the learned single Judge.

2. At the very outset, we need to note that another W.P.No.37288 of 2007 was also moved by this very writ petitioner and that writ petition is also decided by the very same learned single Judge by an independent order rendered on 18.12.2015.

Since a separate writ appeal bearing No.1566 of 2016 is moved there against and which is also listed today before us, we have agreed to deal with both the writ appeals independently as well.

3. In our opinion, a short preliminary question is required to be addressed. Writ petition No.2789 of 2007 is directed against the order passed on 24.12.2003, by the Chief Engineer, Highways and Rural Works Department, Government of Tamil Nadu, rejecting the claim of the writ petitioner for treating the period from 01.03.2000 up to 08.01.2002 as period spent on duty as compulsory wait.

4. It will be relevant to point out the facts which led to the said issue. The writ petitioner upon selection by the Tamil Nadu Public Service Commission as Assistant Engineer, appears to have been recruited on 23.01.1998 by appointing and posting him as Assistant Engineer in Puzhal Panchayat Union, by the Chief Engineer of the Highways and Rural Works Department. It appears that the State Government, as an administrative policy, has conferred powers upon the District Collectors concerned, by passing orders on 25.05.1998, through G.O.Ms.No.102, Rural Development Department, granting powers on the District Collectors to effect postings and transfers of Assistant Engineers from one Panchayat Union to another Panchayat Union. It appears that the District Collector, Thiruvallore, transferred the writ petitioner/appellant on 07.02.2000 from Puzhal Panchayat Union to R.K. Pet Panchayat Union. The writ petitioner/appellant resisted the said transfer on the ground that it is the Chief Engineer, Highways or the State Government, as the case may be, alone is competent to effect transfer of the writ petitioner/appellant, but not the District Collector. On that premise, the writ petitioner/appellant has not reported to duty at the new place of posting. Ultimately, pursuant to an Interim order said to have been passed by the Tamil Nadu Administrative Tribunal, in O.A.No.6102 of 2000 dated 21.08.2000, the writ petitioner/appellant appears to have been given reposting orders by the District Collector, Thiruvallore. Even thereafter, the writ petitioner/appellant has not reported to duty as the writ petitioner/appellant is of the opinion that the Collector of Thiruvallore District, could not have issued reposting orders on 18.01.2001. Ultimately, the Chief Engineer issued posting orders on 07.01.2002, pursuant to which the writ petitioner/appellant rejoined the duty on 08.01.2002. As was noticed supra, this arrangement was made pursuant to the Interim orders passed by the Administrative Tribunal. The application moved by the writ petitioner/appellant before the Administrative Tribunal was not subsequently adjudicated on merits, but was disposed of on the ground that two years period has already lapsed and hence left it open to the Department to effect transfer on administrative grounds. In these set of circumstances, when the writ petitioner represented for treating the entire period of his absence from

01.03.2000 to 08.01.2002 as period spent on duty duly treating the said period as compulsory wait, that claim has been rejected by the Chief Engineer, by the orders passed on 24.12.2003.

5. Admittedly, the writ petition is instituted nearly four years thereafter, calling in question the correctness of the said rejection order dated 24.12.2003. Hence, we required Mr.N. Subramaniyan, learned counsel for the Appellant, to satisfy us as to how such a belated claim in the writ petition can be entertained. The learned counsel for the writ petitioner/appellant would urge before us that since the issue relates to payment of salary and allowances for the period from 01.03.2000 up to 08.01.2002, the same can be treated as a continuous cause of action. Alternatively, the learned counsel would urge that if the period of nearly two years is not to be treated as period spent on duty, it would adversely impact the writ petitioner/appellant in the matter of drawing his subsequent increments and higher amount of salary and hence from that perspective also the cause of action is a continuous one.

6. We are afraid that the contentions urged on behalf of the writ petitioner/appellant before us cannot be accepted in this regard, for the following reasons:-

(i) Whether or not a particular spell of absence in service of a civil servant is liable to be treated as 'compulsory wait' or not is a one time affair, relevant for that particular period of absence from duty. It is not an unusual phenomena, particularly in Government services where for certain administrative exigencies, posting orders could not be issued to the civil servants promptly. As a result, such civil servants are made to await the posting orders and the period thus consumed by the State in issuing posting orders is liable to be treated as compulsory wait so that the civil servant concerned can draw his salary and allowances for that period of absence from duty as if he had rendered services to the State. Such a principle is rested upon a fair and equitable ground that when the civil servant is not at fault, no penal consequences should visit him from such compulsory wait thrust on him. Hence, for the delay or laches on the part of the competent authority to issue necessary posting orders, the salary and allowances for the period spent on compulsory wait is allowed to be drawn and paid. Otherwise, a civil servant who has not rendered any service to the State, excepting when he has been granted leave of absence to proceed on Earned Leave, he is not entitled to be paid salary and allowances. Salary and allowances are paid as compensation for the services rendered. We are, therefore, of the opinion that regulation of the period of any absence from service as compulsory wait is to be treated as one time affair specific for that particular spell/period of absence and consequently, it cannot be construed as a continuous cause of action available for the civil servant. If it is not a continuous cause of action, any

money claim has to be raised within a period of 3 years from the date the cause accrues.

(ii) With regard to the second contention, all that we need to notice is, that as per Fundamental Rule FR 24, an annual increment shall ordinarily be drawn as a matter of course, unless it is withheld, where the conduct has not been found good or the work performed has not been satisfactory. Thus, upon completion of every 12 months of satisfactory service, an increment is to be granted automatically unless it has been withheld as a measure of punishment. Therefore, even grant of increment is an annual affair but not a continuous affair. It may be true that if a civil servant has not rendered satisfactory services to the State, it may result in, in his missing the said increment for ever. But however, each increment being an annual affair, the same cannot be treated as a continuous cause, for the related lis to be raised in that regard at any point of time.

7. We are conscious that for exercising the power under Article 226 of the Constitution, there is no prescribed period of limitation. Normally, the delay in instituting is not considered as a bar for entertaining a writ petition. It is, essentially, a self-imposed restriction by the courts, so that an appropriate adjudication would be undertaken in cases instituted promptly and pursued diligently. Normally if the period for approaching the Civil Court for securing the same relief is barred, institution of writ petitions beyond the said period of limitation is treated to be hit by the principle of delay and laches. All monitory claims can be made by approaching the Civil Court by within a maximum period of three years. Applying the above principle to the facts on hand, the writ petition being instituted beyond three years period is liable to be treated to have been hit by delay and laches.

8. Cause of justice is never allowed to suffer by the Constitutional Courts, particularly on technical grounds. But however, a civil servant occupying the position of an Assistant Engineer, who is not only a very literate person but who is conscious of his rights, would not be allowed to sleep over his own rights and then wake up after a long period of time to agitate his right. The civil servants are assumed to have the necessary wherein that for agitating their rights as stated above. All the more so, when one is objecting to carry out a simple order of transfer from one place to another, effected by the District Collector, Thiruvallore, on a high principle that the District Collector lacks competence to do so, such an individual, in our opinion, cannot be permitted to agitate about his rights, long after the cause to agitate about the same has arisen.

9. The only explanation offered by the writ petitioner was that since he was actively engaged in pursuing the related disciplinary action initiated against him arising from out of the same conduct of not reporting to duty, he considered it

appropriate to wait for the outcome of the said disciplinary proceeding, before he can launch an attack on the order of rejection of the claim to treat the period of absence from service as compulsory wait. This explanation, when translated into real terms, means that the writ petitioner is trying to keep his options open depending upon the nature of punishment that will be imposed against him by the competent authority. Such an opportunistic tendency to wait for the outcome of the disciplinary proceedings cannot, however, in our opinion, offer justification for approaching this Court at any point of time, as one would like to do so.

10. In the instant case, rejection of the claim by the Chief Engineer, Highways and Rural Works Department, was made on 24.12.2003 and the writ petition having been instituted beyond three years period is liable to be dismissed only on the ground of delay and laches, without pronouncing on merit of the matter.

11. We are, therefore, of the opinion that the writ petition deserves to be dismissed. Accordingly, we dismiss the present writ appeal, but however, without costs.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

gr.

To

1. The Secretary  
Government of Tamilnadu,  
Highways Department,  
Fort St. George, Chennai- 600 009.

2. The Chief Engineer, (G1)  
Highways Department,  
PWD Campus, Chepauk, Chennai-5.

1 cc to Mr.N. Subramaniam, Advocate, Sr. 71927

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RSY (CO)  
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