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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.04.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

WRIT APPEAL [MD] No.722 of 2016
CMP [MD] NOS.4589 AND 4918 OF 2016

A.Kennedy

... Appellant

vs.

1. The Chief Educational Officer,
Madurai District, Madurai - 2.
2. The District Educational Officer,
Madurai Educational District,
Madurai - 2.
3. The Secretary / Correspondent,
Madurai Madura College
Higher Secondary School,
R.M.S.Road, Madurai - 1.
4. S.Vijayalakshmi
P.G.Assistant (Tamil)
Madurai Madura College
Higher Secondary School,
R.M.S.Road, Madurai - 1.

... Respondents

Writ Appeal is filed under Clause 15 of Letters Patent, against the order, dated 22.03.2016, made in W.P.(MD) No.5617 of 2016.

Prayer in WP(MD). 5617/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings passed by the 3rd respondent in his proceedings No.MCHSS/01/PG (Tamil)/2013-14 dated 15.05.2014, duly approved by the 2nd respondent in his proceedings Na.Ka.No.6208/A5/2014 dated 12.12.2014 and quash the same as illegal and unconstitutional and as against the Rule of 15(3) of the Tamil Nadu Private Schools Regulation Act and consequently direct the Respondents No.2 and 3 to appoint the petitioner as P.G. Assistant (Tamil) through promotion.



For Appellants : Mr.K.Kannan

For Respondents 1 & 2 : Mr.V.R.Shanmuganthan
Special Government Pleader

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JUDGMENT

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

Challenge in this Writ Appeal is to an order, made in W.P.(MD) No.5617 of 2016 dated 22.03.2016, by which the writ Court has declined to quash the proceedings impugned.

2. Facts leading to the appeal are that the appellant has passed M.Phil (Tamil) Degree. He was working as B.T. Assistant in Madurai Madura College Higher Secondary School, Madurai, the 3rd respondent College from 16.04.2005. A post of Post Graduate Assistant (Tamil) fell vacant. It is the grievance of the petitioner that though, he was fully qualified to be promoted to the said post, the management advertised for direct recruitment. Hence, he filed W.P.(MD) No.4848 of 2014 seeking for a direction to the respondents to appoint him as P.G. Assistant (Tamil) by way of promotion as per Rule 15(3) of the Tamil Nadu Recognized Private Schools (Regulation) Act. While the said writ petition was pending the recruitment was completed and the 4th respondent was appointed as P.G. Assistant vide proceedings of the third respondent, dated 15.05.2014. Appointment was also approved by the District Educational Officer, Madurai Educational District, Madurai, the 2nd respondent, in his proceedings in R.C.No.6208/A5/2014 dated 12.12.2014. The appellant withdrew W.P. (MD) No.4848 of 2014. Thereafter, he has chosen to challenge the appointment of the 4th respondent dated 15.05.2014 and the consequential approval dated 12.12.2014 as stated supra.

3. Adverting to the above prayer, the writ Court at paragraph No.4 in W.P.(MD) No.5617 of 2016 dated 22.03.2016 ordered as hereunder:

"4. As stated earlier, even as early as on 15.05.2014 the fourth respondent and appointed by the third respondent in the post of P.G.Assistant and the second respondent also had approved the appointment of the fourth respondent on 12.12.2014. Admittedly, both the petitioner and the fourth respondents are working in the same school. Knowing fully well that the fourth respondent was appointed by the third respondent and she is working as P.G. Assistant under one and the same management, viz., the third respondent, he has belatedly filed this writ petition challenging the appointment of



the fourth respondent. The earlier writ petition seeking a direction to the authorities to consider his seniority was withdrawn for the reasons best known to him and this writ petition is filed about one year and ten months after the appointment of the petitioner. There is no valid reasons stated by the petitioner for the delay and laches on his part to approach this Court. Hence, the writ petition deserves only to be dismissed and accordingly, dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed."

4. Though, order made in W.P.(MD) No.5617 of 2016 dated 22.03.2016 is assailed on various grounds, as rightly observed by the writ Court, the appellant has challenged the appointment of the 4th respondent after one year and ten months. No valid reason has been assigned by the appellant in the appeal. However, during the course of the hearing of this appeal, Mr.K.Kannan, learned counsel for the appellant contended that only after getting the order of approval, the appellant could challenge an order of appointment. The said contention cannot be accepted for condoning the delay. Moreover, the Hon'ble Apex Court in **P.S.Sadasivaswamy Vs. State of Tamil Nadu**, reported in **AIR 1974 SC 2271**, held as follows:

"2. The main grievance of the appellant is that the 2nd respondent who was junior to him as Assistant Engineer was promoted as Divisional Engineer in 1957 by relaxing the relevant rules regarding the length of service necessary for promotion as Divisional Engineer and that his claim for a similar relaxation was not considered at that time. The learned Judge of the Madras High Court who heard the writ petition was of the view that the relaxation of the rules in favour of the 2nd respondent without considering the appellant's case was arbitrary. In view of the statement on behalf of the Government that such relaxation was given only in the case of overseas scholars, which statement was not controverted, it is not possible to agree with the view of the learned Judge,. Be that as it may, if the appellant was aggrieved by it he should have approached the Court even in the year 1957 after the two representations made by him had failed to produce any result. One cannot sleep over the matter and come to the Court questioning that relaxation in the year 1971. There is the further fact that even after respondents 3 and 4 were promoted as Divisional Engineers over the head of the appellant he did not come to the Court questioning it. There was a third opportunity for him to have come to the Court when respondents 2 to 4 were again promoted as Superintending Engineers over the head of the appellant. After fourteen long years because of the tempting prospect of the Chief Engineership he has come to the Court. In effect he wants to unscramble a scrambled



egg. It is very difficult for the Government to consider whether any relaxation of the rules should have been made in favour of the appellant in the year 1957. The conditions that were prevalent in 1957 cannot be reproduced now. In any case as the Government had decided as a matter of policy, as they were entitled to do, not to relax the rules in favour of any except overseas scholars it will be wholly pointless to direct them to consider the appellants' case as if nothing had happened after 1957. Not only respondent 2 but also respondents 3 and 4 who were the appellant's juniors became Divisional Engineers in 1957 apparently on the ground that their merits deserved their promotion over the head of the appellant. He did not question it. Nor did he question the promotion of his juniors as Superintending Engineers over his head. He could have come to the Court on every one of these three occasions. 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 'here 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 extra-ordinary 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."

5. Going through the order impugned in this appeal, we do not find that there is any infirmity warranting interference and therefore, Writ Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar



To

1. The Chief Educational Officer,
Madurai District, Madurai - 2.

2. The District Educational Officer,
Madurai Educational District,
Madurai - 2.

+1 CC to the Special Government Pleader, SR No.25212

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SH/ARK-PV/SAR-II:09.06.2016:5P/4C