



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P(MD)No.2145 of 2016

and

W.M.P.(MD)No.1867 of 2016

G.Uma Maheswari

.. Petitioner

Vs.

1.The Secretary to Government,
Higher Education (F2) Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

2.The Member Secretary,
Teachers Recruitment Board,
Chennai - 600 006.

.. Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to award 15 marks for the petitioner for the experience of the petitioner in the light of the notification of the 2nd respondent in Advertisement No.4/2013, dated 28.05.2013 and as per the orders in W.P.(MD)No.2274 & 2275 of 2014, dated 11.02.2014 and G.O.Ms.No.502 of the 1st respondent, dated 31.12.2015 and consequently direct the petitioners to appoint the petitioner as Assistant Professor in Zoology in any one of the government colleges with all monetary and attendance benefits on par with other eligible candidates.

For Petitioner : Mr.C.Jegannathan

For Respondents : Mr.S.Kumar

Additional Government Pleader

O R D E R

This Writ Petition has been filed by the petitioner for issuing a Writ of Mandamus directing the respondents to award 15 marks to the petitioner for her teaching experience as per the notification of the second respondent Board, dated 28.05.2013 and as per G.O.Ms.No.502, Higher Education (F2) Department, dated 31.12.2015 and consequently, direct the respondents to appoint the



petitioner as Assistant Professor in Zoology in any one of the Government Colleges.

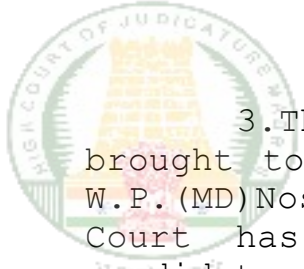
2.The brief facts which are necessary for the disposal of the above writ petition are summarised as follows:

2.1.The petitioner belongs to Backward Class community and she is possessing the qualifications namely, B.Sc., M.Sc., M.Phil., Ph.D., and all these qualifications are in the discipline of Zoology. At present, the petitioner is working as Assistant Professor in Zoology Department in Maruthu Pandiar College, Vallam, Thanjavur District, which is a self-finance college under Bharathidasan University.

2.2.The petitioner has completed her B.Sc., in April, 1987; completed M.Sc., in May, 1989; completed M.Phil., in September, 1991 and completed Ph.D., in February, 2011.

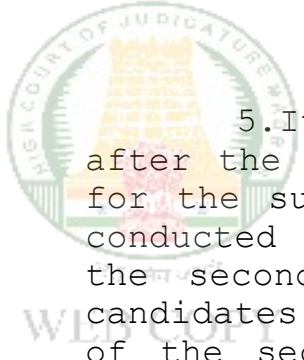
2.3.The petitioner has teaching experience of 7 ½ years as on 30.06.2013 as she is working as Assistant Professor in the private college from 01.01.2003 to 31.12.2007 and from 08.02.2011 to 30.06.2013.

2.4.The second respondent Board issued an advertisement on 28.05.2013 calling for applications to fill up the post of Assistant Professors in the Government colleges. Out of 1093 vacancies in various departments, the total vacancies in the Zoology Department is 60. Being a woman, belong to Backward Class community, the petitioner is eligible to compete to be considered for 14 vacancies out of 60 having regard to the availability of posts under general and women categories and backlog vacancies. Hence, the petitioner submits that her prospects was bright. The second respondent has indicated about the weightage marks to be given to the candidates. It is admitted that maximum of 15 marks can be awarded for teaching experience. Maximum of 9 marks can be awarded to qualifications and 10 marks is reserved for interview. Thus, the total marks is only 34. Though the petitioner was called for an interview after successful process of the first two stages, she submits that she was given only 9 marks for her teaching experience and another 9 marks for her qualifications. Since she secured only 7 marks in the interview, she could make only 25 out of 34. It is also a fact that the cut off mark for Backward Class (Women Category) is 30. It is the case of the petitioner that she is eligible for the entire 15 marks for the teaching experience, only 9 marks were awarded to the petitioner without assigning any reason. Since the petitioner has completed her Ph.D., in 2011 and had completed her M.Phil., in September, 1991, the entire period of service in the private college should be taken to calculate as teaching experience for the purpose of awarding weightage marks. Since only 9 marks were awarded to the petitioner, the total marks obtained by the petitioner fell short of 30. In other words, it is contended by the petitioner that had she been given full weightage marks for her teaching experience which she is entitled to, the petitioner would have been given 31 marks out of 34 and it is well above the cut-off mark.



3. The learned counsel appearing for the petitioner has brought to the notice of this Court a judgment of this Court in W.P. (MD) Nos. 2274 and 2275 of 2014, dated 11.02.2014 wherein this Court has directed to award full weightage marks to those candidates who have acquired M.Phil., degree before 1993. Since based on the judgment of this Court in the writ petition, the first respondent has passed a Government Order on 31.12.2015 directing the appointment of those teachers, the petitioner persuaded this Court to pass similar order or direction in this writ petition for directing the respondents to appoint the petitioner as Assistant Professor in Zoology Department with all monetary and attendant benefits on par with other candidates who have been recruited in this process. The learned counsel for the petitioner relied upon the notification issued by the Teachers' Recruitment Board dated 28.05.2013 and other records and submitted that the petitioner is eligible to acquire the complement of full marks towards teaching experience.

4. The second respondent filed a detailed counter affidavit. The sum and subsistence of the counter affidavit indicate that the second respondent has raised only the plea of laches rather than defending the case on any other legal grounds except contending that the petitioner is eligible only for fourteen marks on account of her teaching experience. The second respondent submitted that the weightage marks to be awarded to the candidates for the teaching experience and for their higher educational qualifications in the subject were indicated in clause 13 of the prospectus of the second respondent board. The candidates are entitled to weightage marks of 2 for each year of teaching experience subject to a maximum of 15 marks. The petitioner though has stated that she had 7½ years of teaching experience, her actual teaching experience is 7 years 4 months and 21 days. Hence, the petitioner is entitled to only 14 marks towards teaching experience. It is also stated that necessary corrigenda were also issued in compliance with the final orders of this Court in various writ petitions. It is stated by the second respondent that the petitioner attended certificate verification on 04.12.2013. It is the contention of the second respondent that the marks awarded to all the candidates including the petitioner in certificate verification were published on the website of the second respondent board on 01.10.2014. It has been further stated in the counter affidavit that an additional certificate verification through a special camp was also conducted from 01.07.2014 to 07.07.2014 to provide another opportunity to all the candidates to seek clarification in case of any omission or error in the marks awarded during certificate verification conducted earlier from 25.11.2013 to 06.12.2013. For the subject Zoology, the second respondent submits that the additional certificate verification camp was conducted at Quaid-E-Milleth Government Arts College for Women, Chennai, on 03.07.2014.



5. It is further submitted by the second respondent that after the additional certificate verification, the oral interview for the subjects of Zoology, Botany, English and Aquaculture was conducted from 13.10.2014 to 17.10.2014. It is also contended by the second respondent that the provisional mark list of the candidates after oral interview was even published on the website of the second respondent board on 20.10.2014. The provisional selection list of candidates, after oral interview, for the subjects of Zoology, Botany, English and Aquaculture was also published in the website of the second respondent board on 03.11.2014. Hence, on the above factual matrix, the second respondent would contend that the petitioner failed to avail herself all the opportunities extended to the candidates by way of additional certificate verification camp. The petitioner had an opportunity to ventilate her grievance by submitting a representation either at the time of additional certificate verification or at any time immediately after the marks obtained by the petitioner was known to her.

6. Admittedly, in this case, the marks awarded to the candidates in certificate verification were published in the website of the second respondent board on 01.10.2014. Hence, an inference can be drawn that the petitioner had knowledge of the marks awarded to her at the time of verification of certificate. The very object behind the announcement of a special camp for additional certificate verification is to give a fair opportunity to the candidates to ventilate their grievance so as to avoid any complication at a later point of time. The petitioner did not raise any objection of her entitlement to get the full marks of 15 for her teaching experience. At least, the petitioner could have come forward immediately after the publication of the provisional selection list of the candidates, after the oral interview on 03.11.2014. However, the petitioner appears to have woken up after the order passed by the Government vide G.O.Ms.No.502, Higher Education (F2) Department, dated 31.12.2015 pursuant to the order of this Court in W.P.(MD) Nos.2274 and 2275 of 2014. Unfortunately, the petitioner has come forward with the present writ petition long after the completion of the whole selection process. Since the writ petition is filed only during the last week of January, 2016, the petitioner's present writ petition appears to be belated and liable to be dismissed on the simple ground of laches.

7. The candidates who were selected and appointed in the posts of Assistant Professors in Zoology Department, who were likely to be affected by granting the relief to the petitioner in this writ petition, are not impleaded in this present writ petition. Since the petitioner is entitled only for 14 marks towards teaching experience, her total marks would be just 30 marks and not 31 marks as contended by her. It is for this reason, she might not be interested in making a representation or filing a writ petition at the appropriate time.



8. The Hon'ble Supreme Court in the judgment in **Chennai Metropolitan Water Supply and Sewerage Board and others vs. T.T. Murali Babu** reported in (2014) 4 SCC 108 has held as follows:

14. In **State of Maharashtra v. Digambar (1995) 4 SCC 683**, while dealing with exercise of power of the High Court under Article 226 of the Constitution, the Court observed that:

"19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct."

15. In **State of M.P. v. Nandlal Jaiswal** reported in (1986) 4 SCC 566, the Court observed that:

"24. ...it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic."

It has been further stated therein that:

24. ... If there is inordinate delay on the part of the petitioner in filing a 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."

Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

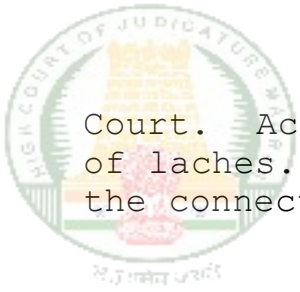
16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. AS a constitutional court it has 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.

9. Having regard to the admitted facts and sequences of events referred to in the previous paragraphs, I am of the view that this Writ Petition is liable to be dismissed on the ground of laches as entertaining this writ petition at this stage would pave way for considerable inconvenience to the respondents and likely to disturb the rights of others which would only lead to multiplicity of proceedings. The petitioner is not vigilant and there is no diligence on her part particularly when there is no explanation for the delay of about two years in approaching this



Court. Accordingly, this Writ Petition is dismissed on the ground of laches. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AE)

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Sub Assistant Registrar

To

1.The Secretary to Government,
Higher Education (F2) Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

2.The Member Secretary,
Teachers Recruitment Board,
Chennai - 600 006.

Order made in
W.P. (MD) No.2145 of 2016
11.08.2016

SRM

CSL/DB/23.08.2016:7P/3C