

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgement 01.09.2016	Date of Pronouncing Judgement 06.01.2017
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Coram

The Hon'ble Mr. Justice B. Rajendran

Writ Petition Nos. 10437 to 10443 of 2015 (7 cases)
M.P. Nos. 1, 2 and 3 of 2015
(in each of the cases)

and

W.M.P. Nos. 21080 to 21190 of 2016

M. Elangovan ... Petitioner in WP. 10437/15
S. Vijayalakshmi ... Petitioner in WP. 10438/15
S. Kannan ... Petitioner in WP. 10439/15
Periyasamy ... Petitioner in WP. 10440/15
K. Vasudevan ... Petitioner in WP. 10441/15
D. Arulanandaraj ... Petitioner in WP. 10442/15
V. Annadurai ... Petitioner in WP. 10443/15

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Rural Development and Panchayat Dept.,
Secretariat, Fort St. George,
Chennai - 600 009.
 2. The Director of Rural Development and Panchayat
Panagal Building,
Saidapet,
Chennai - 600 015.
 3. The District Collector,
Salem District, Salem...R1 to R3 in all WPs
 4. A. Rajagopal,
Deputy Block Development Officer (Retd.)
Sankagiri, Salem District.
 5. R. Ravichandran
Deputy Block Development Officer
Edapaddy, Salem District. ..R4 & R5 in WP. 10437/15
- J. R. Ravichandran ..R4 in WP. 10438/15
- V. Sujatha
G. Chennakrishnan ..R4 & R5 in WP. 10439/15
- R. Ravichandran ..R4 in WP. 10440/15
- G. Balasubramanian ..R4 in WP. 10441/15

A.Selvaraj
T.Anburajan

..R4 & R5 in WP.10442/15

T.Anburajan
P.Balakrishnan

..R4 & R5 in WP.10443/15

6. S.Tamil Selvan

7. N.Thiruverangan ..R6 & R7 in WP.Nos.10437, 10439,
10442 & 10443/15, R5 & R6 in
WP.10438/15, 10440 & 10441/15

(R-6 and R7 are impleaded as per order passed by this Court in M.P.Nos.4 to 4 of 2015, of these W.Ps.

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records relating to the impugned order issued by the second respondent in Na.Ka.No.82442/2014/C1, dated 24.03.2015, and to quash the same and consequently, to direct the respondents 1 to 3 to accord seniority of the petitioner in the cadre of Assistant by taking into account of the date of joining to the post of Assistant as well as the seniority as per the ratio laid down in the order passed in W.P.No.14595 of 2009, dated 30.04.2010, as confirmed by the Hon'ble Division Bench in W.A.No.2132 of 2011, dated 13.02.2013 with all consequential and other attendant benefits including promotion on par with juniors. In all W.Ps.

For Petitioners : Mr..Muthu Krishnaswamy Senior Counsel
for M/s.G.Sankaran

For Respondents
1 to 3 : Mr.P.H.Aravind Pandian
Additional Advocate General, assisted
by
Mr.V.Jaya Prakash Narayanan,
Special Government Pleader

For Respondent -4 : Mr.L.Chandra Kumar

For Respondent- 5 : Mr.V.Sudhakar
in WP.No.10437/15

COMMON O R D E R

Since the issue involved in these Writ Petitions is identical in nature, they have been taken up together and disposed of vide this common order.

2. For the sake of brevity, the facts of the case are being taken from W.P.No.10437 of 2015.

i) The petitioner was initially appointed as Junior Assistant in Rural Development Department on 17.09.1990. His service has been regularized from the date of his initial appointment. As per the service rules, to become eligible for

promotion to the post of the Assistant, the employee has to pass the following five Departmental Tests,

- I) Community Development Manual Paper-I,
- II) Village Swaraj
- iii) Constitution of India and Miscellaneous Acts.
- iv) Account Test
and
- v) Tamil Nadu Panchayat Act, 1994.

ii) The petitioner passed the aforesaid Departmental Tests, and his probation has been declared on 31.05.2000. Subsequently, the petitioner got promoted to the post of Assistant and joined duty on 06.09.2001. The case of the petitioner is that, the next avenue of promotion is to the post of Deputy Block Development Officer. Since the official respondents, without reference to the seniority in the feeder category as well as the date of joining the promotional post, viz., Assistant, fixed the seniority by mode of Adoption Date, the petitioner's name has been placed much below his juniors, and owing to which, the petitioner has got promotion to the post of Deputy Block Development Officer belatedly in the year 2010-11. According to the petitioner, due to such wrong fixation of seniority, he has been deprived of his service benefits.

iii) The petitioner states that, one S.Yuvaraj, who was placed similarly like the petitioner, filed a Writ Petition, in W.P.No.14595 of 2009, praying for issuance of a writ of certiorarified mandamus, to quash the order passed by the second respondent/Director of Rural Development and Panchayat, (as by the said impugned order, the petitioner's request to place him above his juniors, viz., E.Venkatachalam and C.Swamiinathan was rejected) and for a consequential direction to fix his seniority in the cadre of Assistant, by taking into account his date of promotion as Assistant and confer all consequential service and monetary benefits. This Court, by order, dated 30.04.2010, allowed the Writ Petition, quashed the the impugned order, and directed the officials respondents to fix the seniority of the petitioner in the cadre of Assistant, by taking into account his date of promotion as Assistant and confer all consequential service and monetary benefits. When the matter on appeal before the Hon'ble Division Bench, being W.A.No.2132 of 2011, the Hon'ble Division Bench by judgement, dated 13.02.2013, confirmed the orders passed in the Writ Petition. The third respondent, in pursuance of the order passed in W.P.No.14595 of 2009, issued a proceedings, dated 15.04.2013, revising the seniority of S.Yuvaraj by placing him at the appropriate place in the cadre of Assistant. The petitioner states that, while implementing the order passed in W.P.No.14595 of 2009, the official respondents ought to have taken into consideration the case of other similarly placed persons, who have been deprived of their service benefits due to such wrong fixation of seniority.

iv) Therefore, the petitioner and six other aggrieved persons (viz., the petitioners in other Writ Petitions) submitted a joint representation, dated 18.03.2014, clearly

setting out their case and sought for rectification of seniority list, in the light of the orders passed in W.P.No.14595 of 2009. Since the said representation evoked no response, they filed a Writ Petition in W.P.No.31359 of 2014, praying for issuance of a writ of mandamus to direct the official respondents to accord seniority in the cadre of Assistant by taking into account of the date of their joining the post as Assistant in the light of the order passed in W.P.No.14595 of 2009. This Court, by order, dated 01.12.2014, disposed of W.P.No.31359 of 2014, by directing the official respondents to consider the said representation, dated 18.03.2014, and to pass appropriate orders. Pursuant to the order passed in W.P.No.31359 of 2014, the second respondent passed an order, dated 24.03.2015, rejecting the request of the petitioners, stating that, for fixation of seniority in the cadre of Assistant, the date of passing the departmental test has to be taken into consideration. It is further stated in the impugned order that, in the Writ Petition filed by S.Yuvaraj, in W.P.No.14595 of 2009, there was a positive direction issued in his favour, to fix his seniority in the cadre of Assistant by taking into account of his date of promotion as Assistant and to confer all consequential service and monetary benefits, and in compliance of the said direction, his seniority has been revised, whereas, in the order passed in W.P.No.31359 of 2014, there was only a direction to consider the claim of the petitioner and therefore, two judgments are different in nature, and therefore, the request of the petitioners cannot be considered.

3. Challenging the aforesaid order, dated 24.03.2015, the present Writ Petitions are filed.

4. The learned Senior Counsel for the petitioners, after reiterating the facts of the case assailed the impugned order on three grounds. Firstly, by contending that, when a similarly placed person, S.Yuvaraj filed a Writ Petition, challenging the fixation of seniority in the cadre of Assistant on adoption date basis and when the said Writ Petition was allowed by this Court, by setting aside mode adopted by the official respondents for fixation of seniority, and when the same was confirmed by the Hon'ble Division Bench when a challenge was made to the said order in W.A.No.2132 of 2011, the official respondents, while implementing the order passed in W.P.No.14595 of 2009, revising the seniority of the said S.Yuvaraj, ought to have extended the same benefit insofar as other similarly placed persons are concerned, including the petitioners herein. In this connection, the learned Senior Counsel placed reliance on the decision of the Hon'ble Supreme Court rendered in the case of (Viman Vaman Awale Vs. Gangadhar Makhriya Charitable Trust and others) reported in (2014) 13 S.C.C. 219, wherein, it has been held that, when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending the similar benefit. The learned Senior Counsel states that the said decision was also followed by the Hon'ble Division Bench of this Court in re (The State of Tamil Nadu

rep.by Secretary, Education Dept. and others Vs. S.Esanulla)
reported in (2014) S.C.C. Online Mad 10848.

5. Secondly, the learned Senior Counsel contended that when the petitioners submitted a representation, dated 18.03.2014, seeking for rectification of the seniority list and to revise their seniority, as has been done in the case of S.Yuvaraj, in the light of the order passed in W.P.No.14595 of 2009, the Official Respondents have not considered the said representation, which constrained them to file Writ Petition, in W.P.No.31359 of 2014, praying for issuance of a writ of mandamus to direct the respondents to accord seniority in the cadre of Assistant by taking into account of the date of their joining the post as Assistant in the light of the order passed in W.P.No.14595 of 2009, and though this Court disposed of the Writ Petition with a specific direction, directing the official respondents to consider the said representation, dated 18.03.2014 and pass orders, the Official respondents have not passed any orders in compliance of the direction issued in W.P.No.31359 of 2014, only when the petitioners initiated contempt proceedings, the second respondent has passed the present impugned order, that too, assigning the same reason, which has already been considered and rejected in the orders passed in W.P.No.14595 of 2009. Therefore, the learned Senior Counsel contended that the impugned order is arbitrary, illegal and liable to be set aside.

6. The learned Senior Counsel thirdly contended that even as per Rule 2 (1) of Tamil Nadu State and Subordinate Service Rules, the date of joining the post of Assistant has to be taken into consideration for the purpose of fixation of seniority, and there cannot be any fixation of seniority in the promotional post of Assistant by way of following Adoption Date. Due to wrong fixation of seniority, the petitioners names have been placed below their juniors and their names have not been included in the panel drawn for promotion to the Post of Deputy Block Development Officer in the year 2006-07, and hence, they were given promotion as Deputy Block Development Officer belatedly in the year 2010-11, as a result of which, they have been deprived of their service benefits. The learned Senior Counsel, therefore, contended that the impugned order is unsustainable.

7. Mr.P.H.Arvind Pandian, the learned Additional Advocate General, assisted by Mr.V.Jaya Prakash Narayanan, learned Special Government Pleader, while reiterating the contentions raised in the counter affidavits filed by respondents 1 to 3 in support of the Petitions for vacating the interim injunction granted by this Court, would submit that the petitioners are consolidated pay candidates of Survey Department. They joined the Rural Development Department as Junior Assistant due to retrenchment from Survey Department, as per G.O.308, Social Welfare and Noon Meal Department, dated 11.06.1990. All the persons of Survey Department have been appointed only in Noon Meal Section of Panchayat Unions. The Noon Meal Programme is still under the Social Welfare Department. The Rural

Development Department is only the implementing authority of the Noon Meal Programme. The petitioners were appointed only by Social Welfare Department. Therefore, it is very clear that the petitioners parent Department is Social Welfare Department and not Rural Development Department. When regularization of service of such candidates are pending, the petitioners have been interchanged to the post of Junior Assistant/Cashier/Rural Welfare Officer Grade II of Rural Development Department, without verification of their parental service. After 13 years, the Social Welfare Department, vide G.O.180 of SW and NMP Department, dated 30.01.2003, has declared the probation of such candidates, who are all working as Assistant in Rural Development Department. As per G.O.585 of RD and LA Department, dated 12.04.1984, a Junior Assistant has to pass five Department Tests, (as mentioned the preceding para of this judgment). The petitioners have been promoted to the post of Assistant only by considering the fact that they have passed departmental tests and their probation has been declared, without verification of their parental service.

8. It is further submitted by the learned Additional Advocate General that promotion to the post of Assistant requires various criteria to be considered, which are not stipulated for other Departments, and the respondents while fixing seniority of the petitioners in the cadre of Assistant have thoroughly verified the conditions mentioned below and fixed the seniority:-

- a) Feeder Category Junior Assistant Cadre Seniority List.
- b) Passing of Departmental Tests.
- c) Declaration of Probation
- d) Completion of Fundamental Training at Bhavani Sagar
- e) Rendering of one year Rural Welfare Officer Grade-II Service.

9. The learned Additional Advocate General appearing for the official respondents would further submit that a junior Assistant cadre employee is promoted to Assistant cadre not only considering the aforementioned conditions but also taking into account the vacancy available during the panel year. If there is no vacancy, their names will be considered only in the next panel year. He would submit that, even as per the amendment made to the Tamil Nadu Ministerial Service Rules, vide G.O.349 of Personnel and Administrative Reforms Department, dated 12.04.1984, the petitioners are not seniors, as alleged by them. That apart, there were lot of conditions for promotion to Assistant cadre and lot of categories has been arrived at accurately. Since promotions are ordered in batches as and when vacancy arises, and the promotees would join the promotional post in various dates, to categorize them, adoption date mode has been followed by the respondents, and the same would not affect the seniority, as it is only a reference for administrative convenience.

respondents, the respondents 1 to 3 have drawn a comparative statement between the petitioners and the private respondents in each of the writ petitions and the same is also mentioned in the counter affidavit filed in support of respective Petitions. One such statement which is in connection to the writ petition in W.P.No.10437 of 2015 is set out hereinbelow, and a perusal of the same would clearly show that the petitioner is junior to respondents 4 and 5 in each cases;-

Details	M.Elangovan / Petitioner	A.Rajagopal /R4	R.Ravichandra n/R5
Mode of Appointment	Survey Dept.	Survey Dept.	Compassionate ground
Date of Joining as Jr. Assistant	17.09.1990	16.09.1990	07.07.1993
Date of Passing Test	31.05.2000	October, 1992	23.11.1995
Date on which probation declared	31.05.2000 AN	13.11.1992	23.11.1995 AN
Panel year eligible for Assistant Cadre promotion	2001-02	1991-1992	1996-1997
Date of joining as Assistant on promotion	06.09.2001	06.09.2001	07.09.2001

11. Further, learned Additional Advocate General, in reply to the first ground raised by the learned Senior Counsel for petitioners that when the respondents have revised the seniority in the case of similarly placed person, S.Yuvaraj, in the light of the orders passed in W.P.No.14595 of 2009, they are bound to extend the same benefit to other similarly placed persons, would submit that the order passed in S.Yuvaraj's case cannot be cited as a condition precedent, as in the said case, when a Writ Appeal was filed against the said S.Yuvaraj and two others, viz., E.Venkatachalam and C.Swaminathan, (who, according to the said S.Yuvaraj are juniors) the said two respondents did not contest the Writ Appeal and remained ex parte, and caused a seniority revision for his colleague, S.Yuvaraj, and though the respondents 1 to 3 are mindful of the fact that revision of seniority of S.Yuvaraj, would result in chaos, and it would cause much hardship to district administration, only in compliance of the order passed by this Court, and also taking into other vital factors that the said S.Yuvaraj is at the verge of retirement, revision of his seniority would not affect others seniority, nor it will give any fruitful benefit to him, as there is a condition that a Deputy Block Officer has to serve one year in the said post, to which, he is not eligible, revised his seniority. Therefore, the benefit given to S.Yuvaraj, will not enure to the benefit of the petitioners, and assigning all these reasons, the present impugned order has been passed by the second respondent

and the same requires no interference .

12. In reply to the second ground raised by the learned Senior Counsel for petitioners despite specific direction issued by this Court in the writ petition filed by the petitioners herein in W.P.No.31359 of 2014, to consider their representation, the second respondent has assigned the same reason, which was already considered and set aside by this Court in W.P.No.14595 of 2009, the learned Additional Advocate General opposed such submission by pointing out that in the writ petition filed by petitioners, this Court made it very clear that while considering the representation, the scope and applicability of the order passed in W.P.No.14595 of 2009, shall be taken into consideration. The second ground taken by the petitioners is also untenable.

13. Coming to the third ground raised by the learned Senior Counsel appearing for the petitioners, the learned Additional Advocate General appearing for the official respondents would submit that the petitioners, by citing various irrelevant service Rules, have stated that the respondents have violated the service rules prescribed for promotion to the post of Assistant. He would submit that for fixation of seniority in the cadre of Assistant, the date of passing of the departmental test has to be taken into consideration and not the date of the promotional post.

14. In reply to the counter affidavits filed by respondents, rejoinder has been filed by the petitioners, and the learned Senior Counsel for the petitioners, while reiterating the submissions made therein, would submit that though the petitioners initially appointed in Survey Department, subsequently, they were absorbed into Rural Development Department, as per G.O.308, Social Welfare and Noon Meal Department, dated 11.06.1990, and their seniority has been reckoned in the post of Junior Assistant from the date of absorption into Survey Department, and their services have been regularized as on the date of absorption into R.D. Department, and while arriving the seniority in the post of Junior Assistant, without reference from the date of joining the survey department, the seniority in the erstwhile Survey Department alone has to be taken into consideration for fixation of seniority in the R.D. Department. It is stated that in R.D. Department, the seniority in the post of Junior Assistant has been arrived, as per the proceedings of District Collector, Salem, dated 27.03.2001, wherein, the seniority of the petitioners have been correctly fixed by taking into consideration of the date of appointment to the post of Junior Assistant, in R.D. Department. Accordingly, the petitioners have been rightly placed in 2001 Junior Assistant Seniority List and the private respondents in each Writ Petitions are admittedly juniors to the petitioners.

15. The learned Senior Counsel further stated that promotion to the post of Assistant was also effected for the petitioners as well as the private respondents in the year

2001, 2002 and 2003, and it has been made clear that the petitioners were given promotion earlier to private respondents in the respective writ petitions based on seniority. Accordingly, as on 2001 and 2002, the petitioners are seniors to the private respondents, who were given promotion. But, when the seniority in the post of Assistant was drawn, suddenly the private respondents in each writ petition are placed above the respective writ petitioner by reckoning into the date of passing of Department Test and the date of declaration, without reference to actual seniority in the post of Junior Assistant and date of promotion as Assistant. Therefore, the seniority is suddenly altered by referring to the date of passing of Departmental Test/Declaration of probation by terming it as adoption date for the purpose of fixation of seniority in the post of Assistant, which is contrary to law.

16. The learned Senior Counsel for the petitioners further stated that on the date of promotion to the post of Assistant, the petitioners have passed all the five departmental tests and got their probation declared and they have also completed Fundamental Training at Bhavani Sagar and completed one year service in the post of RDO Grade II. Therefore, the petitioners are fully qualified as on the date of promotion to the post of Assistant and the rights accrued to the petitioners based on declaration of probation for further promotion to the post of Assistant cannot be stultified by the impugned revision of seniority, particularly, when they are fully eligible without reference to eligibility condition. In this connection, the learned Senior Counsel for petitioners relied on the judgment of the Hon'ble Supreme Court, in Viman Vaman Awale's case (cited supra) for the proposition that "when a particular set of employees is given relief by Court, all other similarly situated persons should be treated alike by extending same benefit since not doing so would amount to discrimination and be violative of Article 14 of the Constitution. However, this normal rule is subject to well-recognized exceptions in form of laches, delays and acquiescence, which would be valid grounds to dismissed their claim. But, said exception would not apply to those cases, where, judgment pronounced by Court was judgment in rem with intention to benefit all similarly situated persons, irrespective of whether they had approached court or not.

17. Heard Mr.Muthu Krishnaswamy, learned Senior Counsel for the petitioners, Mr.P.H.Aravind Pandian, learned Additional Advocate General, assisted by Mr.V.Jaya Prakash Narayanan, learned Special Government Pleader, for officials respondents and the learned counsel for the private respondents, and perused the materials placed on record, including the counter affidavits filed by respondents 1 to 3 and private respondents respectively and reply affidavit.

18. The case of the petitioners is that even though they came from different Department, once they were given promotion, their seniority cannot be altered and in the cases hand, some of the respondents, in each of the cases are juniors to them,

therefore, the petitioners have been denied their valuable right to get promotion. Further, the main contention of the petitioners is that similarly placed person viz., S.Yuvaraj filed W.P.No.14595 of 2009, challenging the fixation of seniority in the cadre of Assistant by adopting the date of adoption and based on the order passed therein, he has been placed above two persons, who are juniors to him. Therefore, the same benefit has to be extended to the other similarly placed persons. In this connection, they relied upon the decision of the Hon'ble Supreme Court rendered in the case of Viman Vaman Awale, (cited supra) wherein, it has been held that, when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending the similar benefit. Therefore, the petitioners would contend that benefit has to accrue to them. Whereas, in the counter affidavit filed by the official respondents, it has been stated that the petitioners, are employees of Survey Department, and they have been absorbed into Rural Development Department, at a later point of time. When regularization of service of such candidates are pending, the petitioners have been interchanged to the post of Junior Assistant/Cashier/Rural Welfare Officer Grade II of Rural Development Department, without verification of their parental service. As rightly pointed out when publication of Assistant cadre seniority was considered during the year 2009, subsequent publication was made only on 30.01.2003. These petitioners, having enjoyed the service benefits for all these 12 or 13 years, as the case may be, can they be placed in similar situation is the first question that has to be answered. In the judgment of the Hon'ble Supreme Court in (State of Uttar Pradesh and others vs. Arvind Kumar Srivatsava and others) reported in (2015) 1 Supreme Court Cases 347, it has been categorically held that as follows:-

18. Both these judgments, along with some other judgments, were taken note of in U.P. Jal Nigam & Anr. v. Jaswant Singh & Anr. That was a case where the issue pertained to entitlement of the employees of U.P. Jal Nigam to continue in service up to the age of 60 years. In Harwindra Kumar v. Chief Engineer, Karmik this Court had earlier held that these employees were in fact entitled to continue in service up to the age of 60 years. After the aforesaid decision, a spat of writ petitions came to be filed in the High Court by those who had retired long back. The question that arose for consideration was as to whether the employees who did not wake up to challenge their retirement orders, and accepted the same, and had collected their post retirement benefits as well, could be given relief in the light of the decision delivered in Harwindra Kumar (supra). The Court refused to extend the benefit applying the principle of delay and laches. It was held that an important factor in exercise of discretionary relief under Article 226 of the Constitution of India is laches and delay. When a person who is not vigilant of his rights and

acquiesces into the situation, his writ petition cannot be heard after a couple of years on the ground that the same relief should be granted to him as was granted to the persons similarly situated who were vigilant about their rights and challenged their retirement. In para 7, the Court quoted from M/s. Rup Diamonds & Ors. (supra). In para 8, S.M. Kotrayya (supra) was taken note of.

19. Some other judgments on the same principle of laches and delays are taken note of in paras 9 to 11 which are as follows:

"9. Similarly in Jagdish Lal v. State of Haryana, (1997) 6 SCC 538, this Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the court, then such person cannot stand to benefit. In that case it was observed as follows: (SCC p. 542)

"The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684. The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage."

10. In Union of India v. C.K. Dharagupta, (1997) 3 SCC 395, it was observed as follows:

"9. We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P. Joshi v. Union of India, OA No. 497 of 1986 decided on 17-3-1987, gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit of Joshi case. In view of our finding that the benefit of the judgment of the Tribunal dated 17-3-1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief."

11. In Govt. of W.B. v. Tarun K. Roy, (1997) 3 SCC 395, their Lordships considered delay as serious factor and have not granted relief. Therein it was observed as follows: (SCC pp. 359-60, para 34)

The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in State of W.B.

Devi Prasad Kumar, 1991 Supp (1) SCC 138. The plea of delay, which Mr. Krishnamani states, should be a ground for denying the relief to the other persons

similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a court of law."

20. The Court also quoted following passage from the Halsbury's Laws of England (para 911, p.395):

"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 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."

21. Holding that the respondents had also acquiesced in accepting the retirements, the appeal of U.P. Jal Nigam was allowed with the following reasons:

"13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it 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. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?"

22, The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1 Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2 However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim. (3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to

all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see C. Sharma & Ors. v. Union of India (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

23. Viewed from this angle, in the present case, we find that the selection process took place in the year 1986. Appointment orders were issued in the year 1987, but were also cancelled vide orders dated June 22, 1987. The respondents before us did not challenge these cancellation orders till the year 1996, i.e. for a period of 9 years. It means that they had accepted the cancellation of their appointments. They woke up in the year 1996 only after finding that some other persons whose appointment orders were also cancelled got the relief. By that time, nine years had passed. The earlier judgment had granted the relief to the parties before the Court. It would also be pertinent to highlight that these respondents have not joined the service nor working like the employees who succeeded in earlier case before the Tribunal. As of today, 27 years have passed after the issuance of cancellation orders. Therefore, not only there was unexplained delay and laches in filing the claim petition after period of 9 years, it would be totally unjust to direct the appointment to give them the appointment as of today, i.e. after a period of 27 years when most of these respondents would be almost 50 years of age or above.

19. Similarly, the Hon'ble Division Bench of this Court in the case of The State of Tamil Nadu rep.by Secretary, Education Dept. and others Vs. S.Esanulla reported in (2014) S.C.C. Online Mad 10848, has held as follows:-

"7. It is well settled proposition of law that the petitioner cannot claim the same relief after an inordinate delay without explaining the reasons for delay. Even otherwise, similarly situated employees as aforesaid were granted regularisation with effect from the back date on the basis of relaxation granted in the qualification. The Court cannot direct the employer/authorities to relax the qualification in all cases. In that event, fixing of qualification, which is prerogative of the employer, would become redundant and this would

amount to taking away of the power of the employer to fix the qualification for a particular post."

20. From the emerging principle, as laid down by the Hon'ble Division Bench of this Court, it is seen that the petitioners have stated that there is no laches on their part in approaching this Court, but, it is to be noted that when similarly placed person challenged the irregularity of fixation of seniority, this Court has struck down the same as against two persons, viz., E.Venkatachalam and C.Swamiinathan, and when Appeal was preferred against the said S.Yuvaraj and aforesaid two persons, the said two persons did not propose to contest the Appeal and remained ex parte, and when the Hon'ble Division Bench heard the Writ Appeal, it was the submission of the learned counsel for the first respondent/S.Yuvaraj that the first respondent is not pressing his claim as against second respondent, and wants seniority against one of them. In that view of the matter, the Writ Appeal was disposed of. Thereafter, only to implement the order passed in W.P.No.14595 of 2009, the official respondents passed orders revising the seniority of S.Yuvaraj, but, before doing so, the official respondents have also taken note of other vital factors, like, by revision of his seniority, he will not be fetched with any monetary benefits, as he was at the verge of retirement, nor will it affect the seniority of others. In that view of the matter, the order passed in W.P.No.14595 of 2009 cannot be cited as judgment in rem. Therefore, the decision of the Hon'ble Supreme Court in Viman Vaman Awale's cas, relied upon by the learned Senior Counsel for the petitioners is of no assistance to the facts of this case..

21. Further, the plea taken by the learned Senior Counsel for the petitioners that seniority has been fixed in violation of service jurisprudence rules is also untenable for the reason that for fixation of seniority in the cadre of Assistant, the date of passing of the departmental tests and the date of declaration of promotion are the conditions to be considered and not the date of appointment to the promotional post, as alleged by the petitioners. Viewed in that perspective, the petitioners are rather juniors to the private respondents. In this regard, comparative statements drawn between the petitioners and the private respondents in each writ petitions have been furnished in the counter affidavits, and it would be beneficial to refer to one such statement concerning the petitioner and private respondents in W.P.No.10437 of 2015, which is set out hereinbelow:-

Details	M.Elangovan / Petitioner	A.Rajagopal /R4	R.Ravichandra n/R5
Mode of Appointment	Survey Dept.	Survey Dept.	Compassionate ground
Date of Joining as Jr. Assistant	17.09.1990	16.09.1990	07.07.1993

Date of Passing Test	31.05.2000	October, 1992	23.11.1995
Date on which probation declared	31.05.2000 AN	13.11.1992	23.11.1995 AN
Panel year eligible for Assistant Cadre promotion	2001-02	1991-1992	1996-1997
Date of joining as Assistant on promotion	06.09.2001	06.09.2001	07.09.2001

22. Further, the petitioners' parent Department is Survey Department, and irrespective of the same, they have been given promotion as Assistant, and hence, they are not entitled to seek seniority on the basis of date of appointment to the promotional date.

23. As rightly pointed out by the learned Additional Advocate General for respondents 1 to 3, the earlier order passed in W.P.No.14595 of 2009, cannot be a ground to set aside the present impugned order, as the same has been passed by the second respondent, bearing in mind all other vital aspects, as mentioned in the preceding para.

24. The private respondents have also filed Miscellaneous Petitions for vacating the interim injunction granted in favour of the petitioners. According to them, by grant of interim injunction, their seniority has been affected. Taking into consideration their date of passing the departmental tests and their date of declaration of probation, they got promoted as Assistant much prior to the writ petitioners and assumed the post much prior to the writ petitioners. They would further contend that the Writ Petitions are liable to be dismissed on the ground of non-joinder of proper and necessary parties. They would further contend that, writ petitioners were temporarily promoted as Assistant, by invoking Rule 39 (a) of Tamil Nadu State and Subordinate Service Rules and since no panel was drawn for more than a decade, the third respondent prepared a presumptive panel for the post of Assistant and drew the seniority list of Assistants by placing them in the presumptive panel, in which, they are eligible. For the purpose of drawing presumptive panel, two criterias, viz., a) date of appointment as Junior Assistant and b) date of passing the departmental examination were followed, and that would clearly distinguish and prove that the petitioners in the vacate stay petitions are seniors to the writ petitioners. and by virtue of grant of interim orders in favour of the writ petitioners, the process for promotion to the post of Deputy Block Development Office has been stalled. They also would further contended that the order passed in the case of S.Yuvaraj is not applicable to the case of the writ petitioners as he has asked only for fixation of his seniority in the cadre of Assistant from the date of his promotion on 05.09.2001, whereas, he was given seniority in the cadre of Assistant by placing him in the presumptive panel, i.e. 07.11.1997, and

assigned Rank NO.81 (a) and therefore, the said order is not binding the private respondents. Therefore, according to the vacate stay petitioners, unless, the interim orders are not vacate, it would cause serious hardship to them, and hence, prayed for vacating the interim injunction. The said submissions made in the vacate stay petitions are also considered by this Court for the purpose of disposal of these writ petitions.

25. Taking note of the above submissions of the private respondents in the vacate stay petitions and the reasons assigned hereinabove, all these Writ Petitions are devoid of merits and they are liable to be dismissed. Accordingly, the Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions, including the petitions filed for vacating the order of interim injunctions are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1. The Secretary to Government,
State of Tamil Nadu,
Rural Development and Panchayat Dept.,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director of Rural Development and Panchayat
Panagal Building,
Saidapet, Chennai - 600 015.
3. The District Collector,
Salem District, Salem.

+1 cc to Mr.v.Suthakar,advocate,sr.1462

+1 cc to Mr.L.Chandrakumar,advocate,sr.1509

+1 cc to Mr.G.Sankaran,advocate,sr.1912

+1 cc to govt.Pleader,sr.2077.

ksj(co)
krd 31/1

in Writ Petition Nos.10437
to 10443 of 2015 (7 cases)