

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2017

CORAM

**THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and**

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

R.A.No.21 of 2017

M.H.Syed Ibrahim

... Applicant

Vs.

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

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

.. Respondents

Prayer : Review application has been filed against the order dated 07.12.2016
passed in W.A.No.1566 of 2016.

For Review Applicant : Mr.N.Subramaniyan

ORDER**NOOTY.RAMAMOohana RAO, J.**

This Review Application seeks a review of the order and Judgement rendered by us in W.A.No.1567 of 2016.

2.W.A.No.1567 of 2016, arose out of W.P.No.37289 of 2007, which was decided by Justice C.S.Karnan, by his Order dated 18.12.2015. That Writ Petition was instituted calling in question, the correctness and validity of the order passed on 24.12.2003, by the Chief Engineer (General), Highways Department, Government of Tamil Nadu, rejecting the claim of the Writ Petitioner to treat the period spent by him from 01.03.2000 to 08.01.2002, as 'duty on compulsory wait' with all consequential benefits.

3.The writ petitioner, a Graduate Engineer was recruited as an Assistant Engineer in the Highways Department, pursuant to his selection by the Tamil Nadu Public Service Commission on 23.01.1998. While the writ petitioner was working as an Assistant Engineer at Puzhal Panchayat Union in Tiruvallur District, the District Collector issued an order of transfer on 7th February, 2000, transferring and posting him to R.K.Pet Panchayat Union. The Writ Petitioner refused to carry out the order of transfer on the ground that it was not the District Collector who can

transfer him, but it was the Divisional Engineer of the Highways Department, who can effect such transfer. Consequently, he stayed away from duty from 01.03.2000. He took up the issue of order of transfer passed by the District Collector with his Head of the Department viz. The Chief Engineer, Highways Department. The Chief Engineer in turn advised him to obey the order of transfer. However, the Writ Petitioner did not join duty, on the ground that only the Highways Department can deal with him and the District Collector cannot pass an order of transfer.

4.The State Government has been contemplating to bifurcate Rural Works Department from the Highways Department for securing improved performance of the Rural Works. At that point of time, since the writ petitioner was working as an Assistant Engineer at Puzhal Panchayat Union, the District Collector has effected the order of transfer.

5.The modalities relating to complete bifurcation of the Rural Works Department from the Highways Department, are still in progress. Consequently, the allocation of existing staff members between both the wings is also pending consideration. Instead of realising the fact that the administrative order of transfer is liable to be carried out by every disciplined Government servant, as

transferability is a condition of service, the writ petitioner has assumed that the District Collector was wrong in that process and hence, chose to remain away from service.

6.It is subsequently, pursuant to the *ex parte* interim order of stay passed by the Administrative Tribunal, entertaining O.A.No.6102 of 2000, instituted by the Writ Petitioner on 21st August 2000, without assigning any reason, the writ petitioner was issued posting order by the Chief Engineer, Highways Department, to avoid further complications in the matter, including possible Contempt of Courts action before the said Tribunal. That is how, the Writ Petitioner came to join duty, nearly two years after his transfer, on 8th January, 2002.

7.If a Government servant is not issued posting orders immediately upon his return from approved leave or from deputation or from foreign service or from an assignment entrusted to him earlier, such a Government servant will be kept on "Compulsory Wait", so that the said period can be treated and regularised later on as 'period spent on duty'. The rationale behind that being, it is the Government servant who is willing to work and render service, but, it is because of the Administrative inability to find a suitable post or vacancy for extracting services from such a Government servant, he was made to wait for orders of posting. Therefore, no fault can be attributable to the Government servant. The delay in

finding a suitable position or vacancy is purely attributable to the administration and hence such a period is to be treated as 'compulsory wait' and to be regularised as 'period spent on duty'. Otherwise, there will not be any continuity of service benefit that would accrue to the employees concerned. For instance, an annual grade increment is liable to be accorded as a matter of course upon the Government servant rendering twelve months of satisfactory service. For any reason, if a the Government servant gets relieved from a particular post before completing the next twelve months of service, to enable him to receive the next increment, but, no posting order is issued to him immediately, he will not be able to render continuous satisfactory service of 12 months to the State and consequently, his right to earn the next annual grade increment would get impaired. Hence, such period of absence is required to be treated as 'period spent on duty' by declaring such period as 'compulsory wait'. That alone can fetch him the benefit of continuous service.

8. The annual grade increment is liable to be released as a matter of routine, unless it has been withheld as a measure of punishment. To avoid any such evil consequence, befalling on an otherwise obedient and disciplined Government servant, the period for which such servant is not issued posting order, is considered as "compulsory waiting period" and that period would be regularised later on as 'period spent on duty' and so that he can be paid the normal salary and

allowances for that period, in effect, wiping off all evil effects from his physical inability to render continuous services to the State. Thus, treating any spell of absence by a Government Servant, as 'compulsory wait' is more or less an administrative tool, which can be pressed into service in the interest of the public administration and also with a view to cause no injustice to an individual, who is not at fault.

9. In the instant case, the claim made by the writ petitioner to treat the period between 1st March, 2000 and 8th January, 2002, nearly 22 months duration, has not been found favour of the Head of the Department namely the Chief Engineer, Highways Department and he rejected the said claim by his order dated 24.12.2003. Challenging the said order, the petitioner instituted W.P.No.37289 of 2007, more than four years thereafter. It is in that context, we have arrived at the conclusion that the writ petition is hit by delay and laches and accordingly, dismissed the writ petition. Now, the present Review Application has been filed raising several grounds, virtually treating the present Review Application, as a case of re-hearing of a Writ Appeal.

10. Heard the learned counsel for the Review Applicant at considerable length.

11.The learned counsel for the Review Applicant during the course of his elaborate submissions in this Review Application, has placed reliance upon the Judgment rendered by the Hon'ble Supreme Court in ***UNION OF INDIA AND ORS v TARSEM SINGH [(2008) 8 648]*** and would submit that we have committed an error in dismissing Writ Appeal on the ground that the Writ Petition was hit by delay and laches.

12.It is appropriate to notice from the facts of the above case, that, one Tarsem Singh, while working in the Indian Army was invalidated in medical category, on 13.11.1983. But, he approached the High Court of Punjab and Haryana in the year 1999, seeking a direction for payment of disability pension on the above count. The learned single Judge of the High Court allowed the Writ Petition on 06.12.2000, directing the respondents in that Writ Petition to accord disability pension, at the rates permissible. Insofar as the payment of arrears are concerned, it was confined to a period of 38 months prior to the filing of the Writ Petition. The said order was carried out by the respondents by granting disability pension and also settled in favour of Tarsem Singh, the arrears of disability pension for a period of 38 months prior to the institution of the Writ Petition. However, it was the said Tarsem Singh, who went in Appeal before the Division Bench of the

Punjab and Haryana High Court. The Division Bench of High Court held that the Tarsem Singh was entitled to disability pension from the date it fell due and it should not be restricted to any period, as was done by the learned single Judge. The Division Bench also granted interest at 6% per annum on the arrears of disability pension payable to Tarsem Singh. It was as against the said order of the Division Bench, the Union of India preferred an Appeal before the Hon'ble Supreme Court. The relevant principles on the subject have been culled out in paragraph Nos. 7 & 8 of the Judgment, in the following words:

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of

writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.”

13.It is crystal clear that the belated service related claim is liable to be rejected on the ground of delay and laches and the exception can be culled out only in respect of continuous wrong. Receipt of disability pension or for that matter even ordinary pension, is a continuous affair. But, it is not a one time affair. Each month, the pensioner concerned will have to be settled and paid the pension. In contrast to other terminal benefits, such as gratuity or Provident fund or leave encashment, pension has to be paid month after month and is also capable of being revised subsequently, by the State, Union of India/Employer as the case may be.

14.In the instant case, treating a particular spell of absence of service from 1st March 2000 to 8th January, 2002, as a compulsory wait, is not a continuous affair. It is a simple and pure one time affair. Either it should be treated as a period of compulsory wait and regularised as such treating it as duty period or decline to be treated as duty period. Since the present case is not one of continuous cause of action, we are of the firm opinion that the conclusion to which we have arrived at while deciding the Writ Appeal No.1567 of 2016, was not wrong, much less no error was apparent on the face of the said record warranting a review of that order.

15. The explanation offered by the learned counsel for the Review Applicant is that by the time the Chief Engineer has declined to consider the request of the writ petitioner, disciplinary proceedings were already underway and the petitioner was only waiting for the disciplinary proceedings to come to an end and in case the disciplinary proceedings ended up in his favour, there would have been an occasion for the Department to treat the entire period of his absence from service as 'period spent of duty'. Obviously, the writ petitioner was apprehensive of the fact that if he makes any claim for compulsory wait, at that stage, the Department without showing any leniency, may penalise him heavily. Therefore, he waited for the State Government to exercise its power in his favour and only when the State passed orders through G.O.(3D) No.50 dated 13.04.2007, imposing on him, the minor punishment of withholding of one annual increment without cumulative effect, he took a chance of staking a claim for the period between 1st March 2000 and 8th January, 2002, to be treated as compulsory wait, so that he can reasonably retrieve the loss of receipt of salary and allowance for 22 months, without rendering corresponding service to the State. It is time for us to remind ourselves that the salary/allowances are liable to be treated and paid by the Government, for the services rendered by the employee concerned. Without rendering service, only when the earned leave or any other privileged leave available is availed/granted, salary and allowances can be drawn for that period

and paid. But, not otherwise.

16.We see, therefore, no error on record warranting review of our order.

17.For all the aforesaid reasons, we see no merit in this Review Application and it stands accordingly dismissed. We impose costs of Rs.5,000/- to be paid by the petitioner, within a period of thirty days from the date of receipt of a copy of this order to the High Court Legal Services Authority.

(N.R.R.J.,) (S.M.S.J.,)
17.03.2017

Index :Yes/No

Internet:Yes/No

rpa

To

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

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S.M.SUBRAMANIAM, J.,
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