

Order Reserved on : 14.11.2016
Order Delivered on : 21.09.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.09.2017

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.12218 of 2010

C.Suviseshamuthu

... Petitioner

Vs.

1.The Director of Public Health and
Preventive Medicine,
D.M.S. Complex,
Teynampet,
Chennai-600 006.

2.The Deputy Director of Health Services,
Boovanathapuram,
Sivakasi Panchayat Union,
Virudhunagar District.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 1st respondent made in R.No.138893/MP.I/S3/07, dated 23.01.2009, quash the same and direct the respondents to promote the petitioner to the post of Basic Health Inspector, Block Health Supervisor, grant of Selection Grade Health Inspector and Selection Grade Block Health Supervisor, Special Grade Health Inspector with effect from the date on which his immediate junior Mr.S.Kalaivanan has been given and disburse all the arrears due to the petitioner including the revised pensionary benefits within a short date that may be fixed by this Court.

For Petitioner : Mr.K.Raj Kumar

For Respondents : Mr.V.Jayaprakash Narayanan,
Special Government Pleader

O R D E R

The prayer in the Writ Petition is for a Writ of Certiorarified Mandamus, to call for the records and to quash the proceedings of the 1st respondent in R.No.138893/MP.I/S3/07, dated 23.01.2009 and to direct the respondents to promote the petitioner to the post of Basic Health Inspector, Block Health Supervisor, grant of Selection Grade Health Inspector and Selection Grade Block Health Supervisor, Special Grade Health Inspector with effect from the date on which his immediate junior one S.Kalaivanan had been given such promotions and to disburse all the arrears due to the petitioner including the revised pensionary benefits within the time stipulated by this Court.

2.The case of the petitioner, as has been culled out from the affidavit filed by the petitioner is that, the petitioner was appointed as Surveillance Worker on 09.08.1963. The said post was re-designated as Surveillance Field Worker. The service of the petitioner in the post of Surveillance Field Worker was regularised from 01.07.1966 and it was re-designated as Basic Health Worker. Thereafter, the petitioner had passed the Sanitary Certificate Course in the month of January 1972. Subsequently, the petitioner had been given promotion to the post of Basic Health Inspector on 04.12.1973, however, for want of vacancy, he was reverted to the post of Basic Health Worker on 19.07.1975.

3.The petitioner again joined at the post of Basic Health Worker on 01.08.1975. Thereafter, he was given promotion to the post of Multi Purpose Health Supervisor on 01.02.1999. The said promotion was given, pursuant to the integration to the post of Multi Purpose Health Supervisor. Since then, the petitioner had been continuously working either as Multi Purpose Health Supervisor or as Health Inspector Grade-I in the Primary Health Level Sector.

4.Originally, the petitioner was given Special Grade in the post of Basic Health Worker in the year 1988. However, consequent to the V Pay Commission Recommendations, he was given Special Grade scale of pay in the post of Multi Purpose Health Supervisor. The petitioner therefore had been working as Multi Purpose Health Supervisor, presently known as Health Inspector Grade-I and he retired from service on attaining the age of superannuation on 29.02.2000.

5.In these track records of service of the petitioner, the grievance of the petitioner appears that though the petitioner's service was regularised as Basic Health Worker from 01.07.1966,

some of the juniors of the petitioner, who had also worked as Basic Health Worker, had been given re-designation to the post of Basic Health Inspector with effect from 01.07.1966. It is also the case of the petitioner that when he was working as Multi Purpose Health Supervisor, an integrated seniority list in the post of Multi Purpose Health worker was released by the 1st respondent vide his proceedings dated 09.08.1995. On perusal of the said integrated seniority list, it discloses that the petitioner's seniority had been fixed or has been shown as Sl.No.359, whereas the seniority of one S.Kalaivanan had been shown as Sl.No.806.

6.It is the further case of the petitioner that after some years only, the petitioner came to know that the said Kalaivanan had got his promotion to the post of Basic Health Inspector with effect from 01.07.1966, i.e., the date exactly on which his service has been regularised as Basic Health Worker like the petitioner.

7.Further, it is the case of the petitioner that the said individual, namely, Kalaivanan was originally appointed as Surveillance Field Worker only subsequent to the petitioner's appointment on 03.05.1965, at Thanjavur Health Unit. The petitioner earned his promotion to the post of Multi Purpose Health Supervisor on 01.02.1989, whereas the said Kalaivanan was given promotion to the post of Multi Purpose Health Supervisor on 01.01.1990. Therefore, comparing with the two dates and other dates between the petitioner and the individual in all aspects i.e., the date of appointment, date of regularisation, date of further promotion, etc., the petitioner was ahead of the said individual Kalaivanan and accordingly, the integrated seniority list dated 09.08.1995 had also shown that the petitioner's place is at seniority list as Sl.No.359 and the said individual had been placed at Sl.No.806.

8.It is also the case of the petitioner that only later years, he came to know that the individual had approached this Court and his Writ Petition was transferred to the Tamil Nadu Administrative Tribunal, Chennai, as T.A.No.313 of 1989, where the final order has been passed on 03.10.1989. Pursuant to the said order of the Tribunal, it seemed that the individual had been promoted as Basic Health Inspector with effect from 01.07.1966. On coming to know the said fact very belatedly, as the petitioner's unit is different from the unit of the individual, the petitioner made a request to the 1st respondent on 13.11.2007, where he pointed out that the said junior Kalaivanan had been promoted as Basic Health Inspector with effect from 01.07.1966 and he is the senior to the said individual, even according to the integrated seniority list released by the 1st respondent which has become final. Therefore, he requested for retrospective promotion to the post

of Basic Health Inspector with effect from 01.07.1966, the date on which his junior Kalaivanan was given promotion to the said post.

9. Though the said representation was made on 13.11.2007, the petitioner submitted that no immediate reply came from the respondent. Therefore, series of reminders were given by the petitioner and only thereafter, by proceedings dated 23.01.2009, the 1st respondent has rejected the claim of the petitioner by disposing the said representation stating that since the said individual Kalaivanan has obtained directions from the Tribunal, he was considered for promotion and pay benefits was given to him and therefore, the same cannot be compared to the petitioner and accordingly, his request for retrospective promotion from 01.07.1966 to the post of Basic Health Inspector was rejected by the said order dated 23.01.2009. Aggrieved by the same, the petitioner has approached this Court with this Writ Petition for the aforesaid prayer.

10. The respondents have filed counter affidavit wherein they have stated that the petitioner was initially appointed on 09.08.1963 and his services were regularised from 01.07.1966 and his probation was declared on 01.07.1968. Thereafter, the petitioner was promoted to the post of Basic Health Inspector with effect from 04.12.1973 and for want of vacancy, he was reverted on 19.07.1975. Thereafter, he had been promoted to the post of Multi Purpose Health Supervisor, now known as Health Inspector Grade -I. In the said post, he had been working from 1990 till the date of superannuation and he retired from service on 29.02.2000.

11. The counter affidavit of the respondents would state that the individual Kalaivanan was initially appointed as Surveillance Field Worker in Thanjavur Unit on 03.05.1965. Thereafter, he was promoted to the post of Surveillance Inspector since the service of the individual Kalaivanan was utilised in National Malaria Eradication Programme and the service of the said individual was regularised on 01.07.1966. Thereafter, ad hoc rules were framed in the year 1971 with effect from 01.07.1966 with retrospective effect.

12. The counter of the respondents would further state that the persons, who had already been engaged in the National Malaria Eradication Programme, were regularised which means in the post they were holding on 01.07.1966. After the said regularisation, an integrated common seniority list was prepared in the year 1980. Subsequently, the said list was cancelled and another seniority list was prepared in the year 1983, where persons regularised in a particular posts were assigned seniority with reference to their age as provided under Rule 35 (aa) of the Tamil Nadu State Subordinate Service Rules. The

said seniority list has been accepted by the employees and the same had been acted upon.

13.Further, the counter would state that since the said individual Kalaivanan had approached the Tamil Nadu Administrative Tribunal, by order dated 03.10.1984 in T.A.No.313/89, the Tribunal had directed that the said individual should be promoted/regularised in the post of Surveillance Health Inspector with reference to the persons, who are juniors to him in the admitted seniority list.

14.Only in compliance with the orders and directions given by the Tribunal, the said individual Kalaivanan was promoted to the post of Surveillance Health Inspector, which post had been subsequently re-designated as Basic Health Inspector with effect from 01.11.1967. With regard to the arrears of payment, the same was restricted to 14.06.1972.

15.The counter would further state that since the said Kalaivanan did not possess the required qualification as fixed by the ad hoc rules and accordingly, by relaxing the said qualification, the promotion was given to the said individual. However, he was not granted any arrears of pay and increments prior to 14.06.1972. All these promotions and relaxation of Rules had been done in respect of Kalaivanan only, pursuant to the directions issued by the Tribunal.

16.The counter would further proceed to state that subsequently, the individual Kalaivanan filed another O.A.No.3261 of 1991, seeking promotion and regularisation for him in the post of Basic Health Inspector with effect from 01.07.1966. The Tribunal in its order dated 25.11.1993 in O.A.No.3261 of 1991 had given directions that the said individual has to be promoted to the post of Basic Health Inspector with effect from 01.07.1966 and to grant all consequential benefits from the said date. It was claimed in the counter by the respondents that as against the said order of the Tribunal dated 25.11.1993 made in O.A.No3261 of 1991, though the Department preferred Special Leave Petition before the Hon'ble Supreme Court, the Hon'ble Supreme Court in SLP (Civil) No.823/95 had passed an order stating that since the amount involved is only Rs.3,000/-, we are not inclined to interfere with the impugned order and the question of law is kept open.

17.The counter would further state that pursuant to the said order of the Hon'ble Supreme Court made in SLP (Civil) No.823 of 1995 dated 25.11.1993 which has become final, the respondents/Department had implemented the orders of the Tribunal and thus, promotion was given to the petitioner to the post of Basic Health Inspector with retrospective effect from 01.07.1966 and accordingly, the benefits had also been given to

the said individual. Therefore, the counter would further state and conclude that the case of the said individual namely, Kalaivanan cannot be compared with the petitioner's case, as the benefits granted to the said Kalaivanan were given only pursuant to the directions of the Hon'ble Apex Court, since the Department has no other option, granted benefits to the individual Kalaivanan, as directed by the Tribunal.

18. In response to the said counter affidavit filed by the Department, the petitioner has filed a rejoinder wherein he has stated that the petitioner was initially appointed on 09.08.1963 and was regularised on 01.07.1966, whereas the individual Kalaivanan was appointed on 03.05.1965. The petitioner passed the Sanitary Certificate Course in the year 1972, whereas Kalaivanan passed only in the year 1975. The petitioner was promoted as Basic Health Inspector on 04.12.1973 and the said Kalaivanan was not at all promoted as Basic Health Inspector before he approached the Court and obtained orders in his favour. Only because of his Original Application was allowed on 03.10.1989, he was given promotion as Basic Health Inspector with effect from 01.11.1967 since the Department has rejected his claim for promotion from 01.07.1966. Once again, the individual Kalaivanan has approached the Tribunal and the Tribunal has allowed the Original Application on 25.11.1993 which was confirmed by the Hon'ble Supreme Court of India. He had been directed to be given promotion on par with his immediate junior with effect from 01.07.1966 with all consequential monetary benefits.

19. The petitioner has further stated in his rejoinder that the petitioner came to know that the said individual was getting more pay than him only after his retirement. Thereafter, the petitioner had requested information under the Right to Information Act, seeking the service particulars of Kalaivanan and they were obtained through the State Information Commission on 28.04.2009. Only thereafter, the petitioner had sent a representation to the 1st respondent to rectify the anomaly of the promotion and pay benefits which ought to have been given to the petitioner.

20. It is further stated in the rejoinder of the petitioner that as per the seniority list dated 02.08.1995, the petitioner's place was shown as Sl.No.359, whereas the said individual Kalaivanan was ranked as Sl.No.806. There were more than 450 people between the petitioner and the said individual. Therefore, it is quite obvious that the said individual is far far junior than the petitioner, whereas, the said individual was getting the scale of pay of Rs.6500-2000-10500 and the petitioner was getting the scale of pay of Rs.5300-150-8000.

21. Therefore, the pay anomaly of junior getting more pay has to be set right by invoking the statutory provisions under Rule 2 of the Fundamental Rules 22(B). Further, it is stated in the rejoinder that the issue raised by the respondent/Department through their counter that the claim raised by the petitioner is a belated one, cannot be countenanced because, since it is a continuous cause of action as the petitioner is getting lesser pay every month. It cannot be treated as a delayed action and more over, only after the retirement, the petitioner came to know the pay anomaly between the petitioner and the said individual, who is admittedly junior than the petitioner and thereafter, after getting information under the Right to Information Act, for regularisation of the anomaly, the petitioner made request and since the 1st respondent has rejected the same, the petitioner has approached this Court immediately with the present Writ Petition.

22. Mr. K. Rajkumar, learned counsel appearing for the petitioner would submit that from the records, it is obvious that the petitioner right from the day of appointment had been travelling through out the service period as senior to the said individual. He would also submit that even the integrated seniority list issued on 02.08.1995, it clearly discloses that the seniority position of the petitioner as well as the said individual, according to which, the petitioner stood as Sl.No.359, whereas the said individual was at the place of Sl.No.806. After all, the individual has approached the Court i.e., the Tribunal and obtained orders in his favour, that cannot alter the seniority position of the petitioner and if at all, the individual had been conferred with benefits as directed by the Tribunal, certainly, he being a senior than the individual should have also been considered, for extending a similar benefit as the respondent/Department ought not to have waited for every individual to approach the Court of Law for regularisation of their pay anomaly.

23. The learned counsel appearing for the petitioner would also submit that, the plea raised by the respondents stating that the petitioner has raised the issue belatedly that too, after his retirement with the prayer sought for by the petitioner is to be rejected on the ground of delay and laches, he would submit that this is a statutory benefit to rectify the anomaly in pay scale and therefore, the plea of delay and laches as has been advanced by the respondents' side against the settled principles of law cannot be accepted, because, there is no estoppel against the statute.

24. In support of the claim of the petitioner and the proposition being projected by the learned counsel appearing for the petitioner, he has relied upon the following decisions:

- 1) (2001) 3 SCC 436
State of Orissa and another vs. Mamata Mohanty
- 2) 1985 (2) SCC 648
Inder Pal Yadav and others, etc., vs Union Of India and others, etc.
- 3) 1989 Supplemental (1) SCC 671
Elson Machines (P) Ltd vs Collector Of Central Excise
- 4) (1995) 31 Administrative Tribunals Cases 186
M.R.Gupta v. Union of India and others
- 5) 1997 (6) SCC 721
K.C.Sharma and others v. Union of India and others
- 6) 2001 (1) MLJ 105
R.M.Arunachalam vs. PL.R.Arunachalam Chettiar and others
- 7) (2011) 1 Court Cases 484
M.Sudakar v. V.Manoharan and others
- 8) (2011) 9 Supreme Court Cases 65
High court of Judicature of Patna vs. Madan Mohan Prasad and others
- 9) (2011) 13 Supreme Court Cases 574
K.Balarama Raju vs. V.Subramanya Sarma and others

25. Per contra, Mr. V. Jayaprakash Narayanan, learned Additional Government Pleader appearing for the respondents would submit that admittedly, the petitioner has not approached the Court of law to rectify the pay anomaly in any time earlier. If at all, the petitioner claimed seniority over the individual, since the said seniority was issued on 02.08.1995 and thereafter, pursuant to the directions issued by the Tribunal, the benefits have been given to the said individual, the petitioner should have agitated the issues long back i.e., in the late 1990s. However, the petitioner till his superannuation in the year 2000 and even thereafter, had not acted upon and after a long slumber, suddenly, he had come forward with the plea only in the year 2007, by making a representation to the 1st respondent which was rightly rejected by the 1st respondent stating that the comparison of the petitioner along with an individual cannot be considered or accepted for the reason that the individual had been given benefit, only pursuant to the directions issued by the Tribunal. Since the petitioner neither

had agitated the issue in time nor had approached the Court of Law, he would not be permitted to agitate the issue, after such a long years and therefore, on the ground of delay and laches itself, the Writ Petition has to be dismissed.

26. The learned Additional Government Pleader appearing for the respondents would rely upon a Judgment of the Hon'ble Apex Court in (2011) 3 SCC 436 in the matter of State of Orissa and another v. Mamata Mohanty, where the learned Additional Government Pleader would rely upon the following observations made by the Hon'ble Supreme Court which reads thus:

"52. In the very first appeal, the respondent filed Writ Petition on 11.11.2005 claiming relief under the Notification dated 6.10.1989 w.e.f. 1.1.1986 without furnishing any explanation for such inordinate delay and on laches on her part. Section 3 of the Limitation Act 1963, makes it obligatory on the part of the court to dismiss the Suit or appeal if made after the prescribed period even though the limitation is not set up as a defence and there is no plea to raise the issue of limitation even at appellate stage because in some of the cases it may go to the root of the matter. (See: Lachmi Sewak Sahu v. Ram Rup Sahu & Ors., AIR 1944 Privy Council 24; and Kamlesh Babu & Ors. v. Lajpat Rai Sharma & Ors, (2008) 12 SCC 577).

53. Needless to say that Limitation Act 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the respondent claimed the relief from 1.1.1986 by filing a petition on 11.11.2005 but the High Court for some unexplained reason granted the relief w.e.f. 1.6.1984, though even the Notification dated 6.10.1989 makes it applicable w.e.f. 1.1.1986.

54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a

similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time. (See: M/s Rup Diamonds & Ors., v. Union of India & Ors., AIR 1989 SC 674; State of Karnataka & Ors. v. S.M. Kotrayya & Ors., (1996) 6 SCC 267; and Jagdish Lal & Ors. v. State of Haryana & Ors., AIR 1997 SC 2366)."

27.The learned Additional Government Pleader would also rely upon the Judgment of this Court rendered by a learned Single Judge made in a batch of cases in W.P.No.26325 of 2015, etc., batch dated 27.01.2016, where also, the attempt made by some employees of the Police Department, after coming to know the verdict of the Court of Law, seek for a similar benefit belatedly, on the ground of delay itself, was rejected.

28.The learned Additional Government Pleader would in fact rely upon some orders passed by the learned Single Judge of this Court in W.P.Nos.32050, 33228 and 34372 of 2006. In all these cases, the respective Writ Petitioners have approached the Tamil Nadu Administrative Tribunal, by filing Original Applications and some of them have also approached this Court by filing Writ Petitions, seeking a similar relief as the same has been claimed by the Writ Petitioners on the ground that the said individual Kalaivanan had succeeded before the Tribunal in O.A.No.3261 of 1991 by order dated 25.11.1993. These individuals who were similarly placed, since had made representations to the Department and subsequently, they had approached the Tribunal or this Court.

29.Only in these cases, the learned Single Judge by individual orders in each of the Writ Petitions has rejected the claim of the said respective petitioners only on the ground of delay and laches. At least one order for the reference, he has reproduced herein for better appreciation of the issues:

W.P.No.34372 of 2006 dated 28.04.2009
M.Iango ..Petitioner

vs.

1.Govenrment of Tamil Nadu represented by its
Secretary, Health and Family Welfare Department,
Chennai and another ..Respondents

Order

The petitioner filed O.A.No.736 of 1998 before the Tribunal seeking for the grant of promotion with effect from 01.07.1966 in the post of Health Inspector Grade I and also to pay

the monetary benefits attached to the said post.

2.The inspiration for the petitioner to move the Tribunal came because of one Kalaivanan who also moved the Tribunal with O.A.No.3281 of 1991 challenging the inter se seniority list dated 09.01.1990. The Tribunal allowed the said Original Application by its order dated 25.11.1993. The petitioner neither moved the Tribunal either at the time of publication of the seniority list nor immediately after the Kalaivanan's case was decided by the Tribunal. He chose to send a representation to the respondents on 01.09.1997 after a period of 18 years as per the publication of the seniority list and after four years from the date of order passed in favour of Kalaivanan.

3.The petitioner by sending a belated representation cannot revive the stale cause of action. This Court in similar circumstances negatived the claim of the similarly placed persons.

4.In view of the abolition of the Tribunal, the matter stood transferred to this Court and was re-numbered as W.P.No.34372 of 2006.

5.In the light of the same, the Writ Petition stands dismissed. However, there will be no order as to costs."

30.By quoting all these decisions, the learned Additional Government Pleader would submit that on the ground of delay and laches, the Writ Petition has to be dismissed and he would also submit that a number of Origination Applications which are subsequently transferred to this Court as Writ Petitions had been dismissed as referred to above by the learned Judge of this Court, whereas the similar prayers sought for by the respective Writ Petitioners were absolutely not entertained.

31.I have considered the rival submissions made by both the learned counsel appearing for the parties and also perused the materials placed before this Court.

32.The factual matrix as has been averred by the petitioner in his affidavit filed in support of the Writ Petition has not been controverted by the respondents in the counter affidavit except for a few aspects.

33.Insofar as the petitioner is concerned, the initial appointment, subsequent regularisation, promotion, reversion, then given promotion, there is no much controversy on those facts.

34. However, when the respondent issued the integrated seniority list on 02.08.1995, this is the fact that the petitioner had been shown as Sl.No.359, whereas the said individual Kalaivanan has been shown as Sl.No.806. This factor would clearly show that the petitioner is far far senior to the said individual in seniority, which means that for all promotional avenue and the consequential benefits are concerned, the petitioner should have been considered before the said individual, at least at the time or along with the said individual for such promotion and consequential benefits. Merely because the said individual had approached the Court of Law and obtained directions and accordingly, he was given the service benefits as directed by the Court of Law, the similarly placed persons like the petitioner cannot be denied such benefits. It is the settled proposition that whenever service benefit is due and if the similarly placed persons are, of course, entitled to the service benefits, the employer cannot wait for each of similarly placed employees must also approach the Court and get similar orders and only there upon, they will act and extend the same benefits to those individual employees.

35. Therefore, even at the time when the anomaly was rectified in respect of the individual Kalaivanan, similar anomalies, pay benefits, service benefits, etc., should also have been rectified. Insofar as the other similarly placed persons, whose plea had been rejected by this Court on delay and laches as has been projected by the respondents are concerned, the learned counsel appearing for the petitioner has cited a number of Judgments of the Hon'ble Apex Court, as has been cited supra.

36. In (1985) 2 Supreme Court Cases 648 cited supra, the Hon'ble Supreme Court has held at Para 5 of the Judgment, which reads thus:

".....Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court. Burdened by all these relevant considerations and keeping in view all the aspects of the matter, we would modify part 5.1 (a) (i) by modifying the date from 1.1.1984 to 1.1.1981. With this modification and consequent rescheduling in absorption from that date onward, the Scheme framed by Railway Ministry is accepted and a direction is given that it must be implemented by re-casting the stages consistent with the change in the date as herein directed."

37. In 1989 Supp. (1) Supreme Court Cases 671 cited supra, the Hon'ble Apex Court has held as follows:

"10. The next submission on behalf of the appellant is that the Classification Lists had been approved earlier and the Excise Authority was estopped from taking a different view. Plainly there can be no estoppel against the law. The claim raised before us is a claim based on the legal effect of a provision of law and, therefore, this contention must be rejected."

38. In (1995) 31 Administrative Tribunals Cases 186 cited supra, the Hon'ble Supreme Court has held as hereunder:

"5. The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Others vs. Mattapalli Raju and Others, AIR 1950 Federal Court 1).

6. Learned counsel for the respondents placed strong reliance on the decision of this Court in S.S. Rathore vs. State of Madhya Pradesh, [1989] Supp. 1 SCR 43. That decision has no application in the present case. That was a case of termination of service and, therefore, a case of one time action, unlike the claim for payment of correct salary according to the rules throughout the service giving rise to a fresh cause of action each time the salary was incorrectly computed and paid. No further consideration of that decision is required to

indicate its inapplicability in the present case.

7. For the aforesaid reasons, this appeal has to be allowed. We make it clear that the merits of the appellant's claim have to be examined and the only point concluded by this decision is the one decided above. The question of limitation with regard to the consequential and other reliefs including the arrears, if any, has to be considered and decided in accordance with law in due course by the Tribunal. The matter is remitted to the Tribunal for consideration of the application and its decision afresh on merits in accordance with law. No costs."

39. In (1997) 6 Supreme Court Cases 721 cited supra, the Hon'ble Supreme Court has held as follows:

"5. The correctness of the decision of the Full Bench of the Tribunal has been affirmed by this Court in Chairman, Railway Board & Ors. V. C.R. Rangadhamaiah & Ors., Civil Appeals Nos. 4174-4182 of 1995 and connected matters decided today.

6. Having regard to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside, the delay in filing of O.A. No. 774 of 199 is condoned and the said application is allowed. The appellants would be entitled to the same relief in matter of pension as has been granted by the Full Bench of the Tribunal in its judgment dated December 16, 1993 in O.A. Nos. 395-403 of 1993 and connected matters. No order as to costs."

40. A learned Judge of this Court in (2001) 1 M.L.J. 105 cited supra, has held as follows:

"7. The upper forum of law have more often held that even if the delay is not properly explained, the petitioner should not be

punished with denial of opportunity to prosecute the case, wherein his valuable rights are involved and when once such petitioners are not allowed to participate in the further proceedings by dismissing the condonation applications filed to condone the delay on certain technicalities, the other side whether has any genuine rights or not, wins the entire case and the petitioner loses all his rights in the suit and to avoid such calamities, the petitioners could only be punished with costs and not with denial of opportunity to prosecute the case wherein his valuable rights are involved."

41.The next Judgment of the Apex Court is (2011) 1 Supreme Court Cases 484 cited supra, wherein the Apex Court has held as follows:

"14.The power to mould relief is always available to the Court possessed with the power to issue high prerogative writs. In order to do complete justice it can mould the relief, depending upon the facts and circumstances of the case. In the facts of a given case a writ petitioner may not be entitled to the specific relief claimed by him but this itself will not preclude the Writ Court to grant such other relief which he is otherwise entitled. Further delay and laches does not bar the jurisdiction of the Court. It is a matter of discretion and not of jurisdiction. The learned Single Judge had taken note of the relevant facts and declined to dismiss the writ petition on the ground of delay and laches."

42.In a similar issue also considered by the Hon'ble Supreme Court in the Judgment reported in (2011) 9 Supreme Court Cases 65 cited supra, the Hon'ble Apex Court had held as follows:

"19.The contention advanced on behalf of the appellant that the writ petition was filed by respondent 1 on 10.11.1990 i.e., seven years after he had superannuated from service, and therefore, the writ petition should have been dismissed on the ground of delay and laches, cannot be accepted. The impugned order nowhere shows that such a point was argued by the appellant before the High Court. No grievance is made in the memorandum of SLP that point

regarding delay and laches was argued before the High Court but the same was not dealt with by the High Court when impugned judgment was delivered.

20. Further, from the facts noticed, it becomes evident that by order dated 09.11.1989, passed in CWJC No.4862 of 1987, the High Court had directed respondent 1 to submit representation to the High Court on its administrative side claiming benefits which were given to his juniors but were denied to him, pursuant to which respondent 1 had filed last representation on 23.06.1990 which was rejected by the High Court on 17.09.1990. The question of delay and laches will have to be considered from the communication dated 17.09.1990 by which claim made by respondent 1 to give him benefits which were given to his juniors was rejected and not from the date of superannuation. Thus, respondent 1 is not liable to be non-suited on the ground of delay and laches in filing Writ petition after his superannuation from service."

43. Similarly, in (2011) 13 Supreme Court Cases 574 cited supra, the delay because of representation to the authority and its disposal, then all further proceedings had been taken into account for getting the matter delayed and on that account, the Hon'ble Apex Court has accepted the delay and the relevant portion of the Judgment is reproduced hereunder for better appreciation.

"29. The three appellants had contended that the petition filed by the first respondent suffered on account of laches and delay in moving the High Court. We have already pointed out that when the order dated 7.11.2000 was issued, the first respondent represented on 2.11.2001, but the representation was rejected on 15.11.2003. He moved for a review on 19.2.2004, but the same was not responded. When the seniority of the Computer Operators was published by notification dated 23.9.2005 and objections were invited, the first respondent submitted his objection on 10.10.2005. That representation was rejected by the High Court's Proceeding dated 6.11.2007 and the first respondent was placed junior to the three appellants. He challenged that communication by his W.P. No.11920/2008. Thus, there was no delay or laches on the part of the first respondent in moving the High Court."

44. Therefore, from the principles as enumerated in all those Judgments referred to above, would undisputedly disclose that on the ground of delay and laches in approaching the authorities, or in turn approaching the Court of Law for getting the remedy arising out of the statute the avenue cannot be closed by taking a different view. A consideration of delay and laches is only the matter of discretion of the Court and it does not affect the jurisdiction of the Court. Moreover, if acceptable reasons are given by the litigant for the delayed approach to the Court of Law, the same can be accepted in order to decide as to whether, the petitioner can get any relief arising out of his substantive right flow from the statute. Therefore, by applying these broad principles as enumerated in the above cases, in the present facts and circumstances of the case projected before this Court, this Court has no hesitation to hold that the prayer sought for by the petitioner cannot be denied.

45. Moreover, if we perused the impugned order passed by the 1st respondent, it merely says that the said individual Kalaivanan was given retrospective promotion as Basic Health Inspector with effect from 01.07.1966 and had been retrospectively regularised from the date on which orders have been passed by the Tamil Nadu Administrative Tribunal and the Hon'ble Supreme Court of India, therefore, the same cannot be compared with the case of the petitioner. Nowhere in the impugned order it is stated that the petitioner had approached the respondent belatedly.

46. It is a settled law, whenever orders or proceedings are questioned before the Court of Law, the ingredients and recitals of the orders shall be the matter and the same can alone be considered as sustainable or not in the eye of Law and in this regard, either the orders or proceedings cannot be permitted to be improved qualitatively during the course of hearing of the case either by filing counter affidavit or by way of arguments.

47. This kind of attempt made on the side of the respondent cannot be permitted as per law. In this regard, Law has been well settled in the matter of Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others reported in 1978 SCR (3) 272.

48. Therefore, this Court feels that even according to the impugned order, the plea of delay and laches had not been raised at all by the respondents. The said plea as has been mainly projected by the respondents' side through the learned additional Government Pleader by citing the decision of this Court and similar orders passed by the learned Single Judge, would no way helpful to the respondents in this case and therefore, the issue of delay and laches raised by the

respondents is hereby rejected.

49.As has been discussed in the aforesaid paras, the factual matrix with regard to the appointment, regularisation and seniority of the petitioner is not in dispute and admittedly, the petitioner is far senior to the individual, who has been compared with the petitioner. Though the petitioner retired from service in the year 2000, as has been rightly pointed out by him he came to know about the lesser salary and benefits than his junior only after his retirement and then only, he swung into action and tried to get information under the Right to Information Act and the petitioner was able to get the required information. On that basis only, representations to set right the anomaly in respect of service and pay benefits were made in the year 2007. The said representations were disposed of only in the year 2009 through the impugned order. Immediately, he had approached this Court by filing this present Writ Petition. Therefore, these factors would go to show that the petitioner has not suddenly raised the issue to establish his rights to set right the pay anomalies, which the petitioner was facing all along in his service. Once the petitioner has rightly approached the respondent by triggering the issue by way of giving representations, after getting necessary information, it is the duty of the respondents to act upon immediately on the representations made by the petitioner. However, belatedly, the said request was rejected by the respondents, through the impugned order with the reason that the individual case cannot be compared with the petitioner.

50.As this Court has already noted supra that similarly placed persons can be extended the same benefits by the employer, without waiting for the employees to approach the Court of law to get orders, this type of dry attitude on the part of the employer in many occasions have been either deprecated or chided by the Court of Law. Nevertheless, the very same attitude has once again been adopted in the case of the petitioner and therefore, the very reason cited in the impugned order can never be considered to be the sustainable reasons in the eye of law and accordingly, the impugned order is liable to be interfered with.

51.In the result, the impugned order is quashed. The respondents are directed to rectify the anomalies of the service benefits including pay benefits of the petitioner by providing all service benefits on par with his junior i.e., the said individual S.Kalaivanan with effect from 01.07.1966 and accordingly, the difference of pay arrears as well as the pension arrears shall be calculated and disbursed to the petitioner within a period of three months from the date of receipt of a copy of this order.

With the above direction, this Writ Petition is allowed. No costs.

s/d-
Assistant Registrar (CS-III)

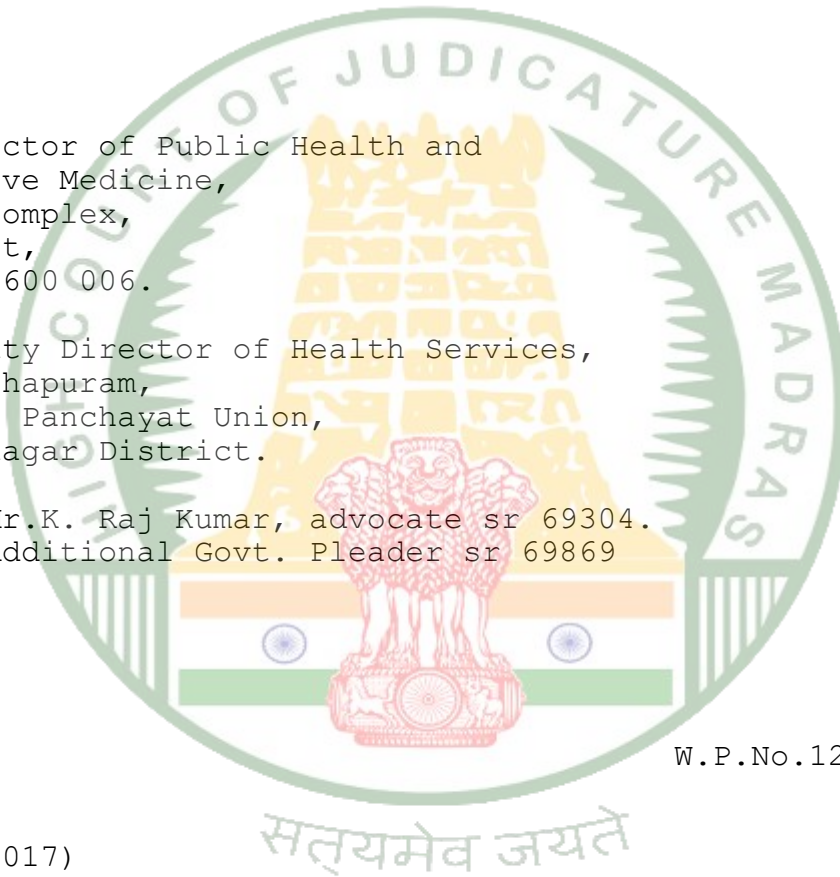
True Copy

Sub-Assistant Registrar

mps

To

1. The Director of Public Health and Preventive Medicine,
D.M.S. Complex,
Teynampet,
Chennai-600 006.
 2. The Deputy Director of Health Services,
Boovanathapuram,
Sivakasi Panchayat Union,
Virudhunagar District.
- +1 CC to Mr.K. Raj Kumar, advocate sr 69304.
+1 CC to Additional Govt. Pleader sr 69869



W.P.No.12218 of 2010

MR (CO)
sp(01/11/2017)

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