

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| Reserved on  | 31/08/2018 |
| Delivered on | 24/10/2018 |

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH  
and  
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.Nos.486 of 2018 & C.M.P.Nos.4559, 4904 of 2018,  
W.A.No.835 of 2018 & C.M.P.No.7338 of 2018 and  
W.A.No.837 of 2018 & C.M.P.No.7340 of 2018

W.A.No.486 of 2018

The Chief Executive Officer,  
Perambalur Sugar Mills Limited,  
Eraiyur 621 115.  
Trichy District. .... Appellant

vs.

1.The State of Tamil Nadu,  
Rep. by its Secretary,  
Industries Department,  
Fort St. George, Chennai - 600 009.

2.The Commissioner of Sugars,  
Department of Sugars,  
No.690, Anna Salai,  
Nandanam, Chennai - 35.

3.The Administrator,  
M.R.K. Cooperative Sugar Mills,  
Sethiathope 608 702,  
Cuddalore District.

4.R.Senguttuvan .... Respondents

\* \* \*

W.A.No.835 of 2018

The Administrator,  
M.R.K. Cooperative Sugar Mills,  
Sethiathope 608 702,  
Cuddalore District. .... Appellant

vs.

1. R.Senguttuvan

2.The State of Tamil Nadu,  
Rep. by its Secretary,  
Industries Department,  
Fort St. George, Chennai - 600 009.

3.The Commissioner of Sugars,  
Department of Sugars,  
No.690, Anna Salai,  
Nandanam, Chennai - 35.

4.The Chief Executive Officer,  
Perambalur Sugar Mills Limited,  
Eraiyr - 621 115.  
Trichy District.

... Respondents

\* \* \*

W.A.No.837 of 2018

1.The State of Tamil Nadu,  
Rep. by its Secretary,  
Industries Department,  
Fort St. George, Chennai - 600 009.

2.The Commissioner of Sugars,  
Department of Sugars,  
No.690, Anna Salai,  
Nandanam, Chennai - 35.

... Appellants

vs.

1. R.Senguttuvan

2.The Chief Executive Officer,  
Perambalur Sugar Mills Limited,  
Eraiyr - 621 115. Trichy District.

3. The Administrator,  
M.R.K. Cooperative Sugar Mills,  
Sethiathope 608 702,  
Cuddalore District.

... Respondents

\* \* \*

Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 27.10.2017 passed by a learned Single Judge of this Court in W.P.No.11874 of 2015 filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the 2nd 3rd and 4th respondents award consequential time bound promotions by appoint the petitioner as Deputy chief Chemist as on 27.6.1989 and Chief Chemist as on 27.6.1995 and to award the applicable pay scales to the above posts and effect the payment of retrospective wages for the entire period upto 2011 till the date of the petitioner superannuation and to award the total Gratuity amount for the period of service for 4.10.1978 to 1.6.2011 and any other connected monetary benefits.

For Appellants in  
WA. No. 837 of 2018 and  
R2 R3 in WA.835/18  
R1 & R2 in WA.486/18: Mr.S.T.S.Murthy  
Additional Advocate General  
For Mr.L.P.Shanmuga Sundaram  
Special Government Pleader

For Appellant in WA.835/18  
and R3 in WA. 837/18 and  
486/18 : Mr.Balaramesh

For Appellant in WA. 486/18  
and R4 in WA.No. 835/18  
R2 in WA.No. 837/18 : Mr.V.Parthiban

R1 in WA.Nos.835 and 837/18  
R4 in WA. 486/18 : Mr.R.Sengottuvan  
Party in person

#### C O M M O N J U D G M E N T

HULUVADI G. RAMESH, J. &  
K.KALYANASUNDARAM, J.

Heard Mr.S.T.S.Murthy, learned Additional Advocate General, representing Mr.L.P.Shanmuga Sundaram, learned Special Government Pleader for the appellants and Mr.R.Senguttuvan (Party-in-person) / writ petitioner and perused the materials available on record.

2. The respondents in W.P.No.11874 of 2015 have preferred these appeals, challenging the order of the learned Single Judge dated 27.10.2017.

3. Brief facts necessary for disposal of these appeals are as follows:-

The writ petitioner after passing the Pre-University Course (PUC) from Madras University had successfully completed Diploma in Sugar Technology (DST) in the year 1977. Thereupon, pursuant to the advertisement given by the Perambalur Sugar Mills Limited, he attended interview for the post of Apprentice Manufacturing Chemist on 23.05.1978 and was appointed as Assistant in the Manufacturing Section in Perambalur Sugar Mills Limited on 27.06.1978 on a consolidated pay of Rs.350/- per month for 3 full seasons. The order states that after successful completion of the period, if found suitable, he will be considered for appointment as Manufacturing Chemist. According to the writ petitioner after successful completion of 3 full seasons, he was re-designated as Manufacturing Supervisor instead of Manufacturing Chemist. However, after lapse of 10 years of re-designation, he filed a Writ Petition in W.P.No.15740 of 1992 for issuance of Writ of Mandamus, directing the respondents to place him as Manufacturing Chemist with effect from 17.05.1981. This Court, on 09.09.1996 disposed of the Writ Petition, directing the respondents to consider the representation on merits and in accordance with law.

4. The Commissioner of Sugars, in compliance of the order passed in the above Writ Petition, considered the representation and rejected the same on 05.12.1996 stating that he did not possess the required qualification. In W.P.No.19005 of 1996, the order of rejection dated 05.12.1996 was challenged by the writ petitioner. The Writ Petition was allowed by this Court on 27.06.2001 by directing the respondents to consider the claim of the writ petitioner as on date of his completion of 3 full seasons viz., 27.06.1981 and to grant him all incidental benefits. The Writ Appeal No.1876 of 2003 preferred by the Official respondents came to be dismissed on 14.10.2008. Thereafter, the officials implemented the orders passed in W.P.No.19005 of 1996 by an order dated 26.10.2009.

5. In the interregnum, it seems that the writ petitioner absented himself from attending the duty for a period of 594 days, i.e., from 19.12.1997 to 04.08.1999 and 14.06.2000 to 29.04.2001 and hence a charge memo was issued for his unauthorized absence and the Enquiry Officer found that the charges were proved against him. Based on the report of the Enquiry Officer, the writ petitioner was terminated from service vide order dated 30.04.2001. After lapse of 14 years, Writ Petition in W.P.No.28156 of 2015 was filed, challenging the order of termination dated 30.04.2001. He also filed another Writ Petition in W.P.No.11874 of 2015 for issuance of Writ of Mandamus, directing the official respondents to award

consequential time bound promotion by appointing him as Deputy Chief Chemist as on 27.06.1989 and Chief Chemist as on 27.06.1995 and to award applicable pay scales. By a common order dated 11.07.2016, both the Writ Petitions were disposed of by directing the respondents to pay only gratuity amount as payable and eligible for him for the period prior to date of termination.

6. Subsequently, in a Review Application No.110 of 2016 in W.P.No.11874 of 2015, the matter was reheard and the Writ Petition was also allowed on 27.10.2017, directing the second respondent to calculate and pay a consequential benefits to the writ petitioner by granting him time bound promotion to the post of Deputy Chief Chemist and Chief Chemist within a period of eight weeks along with interest at the rate of 6% per annum. Assailing the order, these Writ Appeals have been preferred.

7. The learned Additional Advocate General for the appellants vehemently contended that the Writ Petition ought to have been dismissed on the grounds of delay and laches and non possession of prescribed educational qualification for the promotional post of Deputy Chief Chemist and Chief Chemist. Elaborating the grounds, it is contended that though the Rule was amended with effect from 01.06.1982, however, even before amendment, the Rule prescribes higher educational qualification, viz., B.Sc (Chemistry) with ANSI with 5 years experience as Shift Chemist or B.Sc (Chemistry) with 8 years experience for the post of Deputy Chief Chemist. As per the unamended Rule upto 01.06.1982, the qualification for the post of Chief Chemist was B.Sc (Chemistry) with ANSI or a Degree in Chemical Engineering with 10 years as Chemist in Sugar Factory, but admittedly, the writ petitioner is not qualified to be promoted as Deputy Chief Chemist and Chief Chemist. The writ petitioner though attained the age of superannuation on 30.05.2009, chose to file the Writ Petition seeking notional promotion mainly on the basis of the order passed in the Writ Petition in W.P.No.19005 of 1996.

8. The learned Additional Advocate General for the appellants further contended that for the promotion to the post of Deputy Chief Chemist and Chief Chemist, there is no Rule or Regulation is available for time bound automatic promotion to the post and if any other appointments made in contravention of the Rule, would not entitle the writ petitioner to seek promotion by relying on the decisions of the Hon'ble Supreme Court in AIR 1998 SC 902 = 1988 (2) SCC 233 [R.Prabavathi Vs. Government of India] and AIR 1977 SC 3108 = 1997 (6) SCC 766 [I.C.A.R. Vs. T.V.Suriyanarayanan].

9. Per contra, Mr.R.Parthiban (Party-in-person) argued

in support of the reasonings and findings of the learned Judge and prayed for dismissal of Writ Appeals.

10. It is to be noted that the relief sought for by the writ petitioner was seriously resisted by the appellants herein contending that the writ petitioner did not possess requisite qualification for promotion to the post of Deputy Chief Chemist and Chief Chemist and the Writ Petition was filed with an unexplained delay. However, the learned Single Judge allowed the Writ Petition observing that in W.P.No.19005 of 1996, the Writ Petition was allowed, directing the respondents to consider the claim of the petitioner to the post of Manufacturing Chemist with effect from 27.06.1981 and grant him all incidental expenses and the order was upheld by the Division Bench in W.A.No.1876 of 2003, hence the official respondents cannot deny the further promotion on the ground of qualification, which was amended on 01.06.1982. The learned Judge also accepted the explanation offered by the writ petitioner for the delay on the ground that he was repeatedly making representations, but it was not acted upon by officials in time.

11. In the instant case, this Court has to first see whether the writ petitioner had possessed qualification and experience to be promoted as Deputy Chief Chemist and Chemist. The tabular column extracted in paragraph No.8 of the order of the learned Single Judge would reveal that the qualification prescribed for the post of Deputy Chief Chemist, for those who have joined before 01.06.1982 is B.Sc (Chemistry) with ANSI with 5 years experience as Shift Chemist or B.Sc (Chemistry) with 8 years experience and the qualification and experience, who have joined after 01.06.1982 is B.E. (Chemistry) with ANSI / B.Tech (Chemistry) with ANSI / M.Sc (Chemistry) with ANSI or B.Sc (Chemistry) with ANSI 7 years experience as Manufacturing Chemist. For the post of Manufacturing Chemist, qualification and experience those who have joined before 01.06.1982 was B.Sc (Chemistry) with ANSI with 5 years experience as Shift Chemist or BSC (Chemistry) with 8 years experience. Admittedly, the writ petitioner has passed Diploma in Sugar Technology and the Certificate was issued by the State Board of Technical Education and Training. Even though, the writ petitioner was called for an interview by the Managing Director, Perambalur Sugar Mills Limited for the post of Apprentice Manufacturing Chemist, to be noted that he was appointed as an Assistant in the Manufacturing Section of Perambalur Sugar Mills Limited and the order further states that after successful completion of three full seasons, if the writ petitioner is found suitable, he will be considered for the post of Manufacturing Chemist. This Court, mainly on the grounds of legitimate expectation and amendment of Rules prescribing educational qualification, became effective only from 01.06.1982, allowed the Writ Petition, directing the

Authorities to promote him as Manufacturing Chemist, however, no further directions were issued to promote him to the post of Deputy Chief Chemist and Chemist, for which, the writ petitioner had not possessed the required qualification.

12. In the present case, the facts narrated supra would show that at each and every stage, the writ petitioner approached the Court belatedly and the Writ Petitions have been filed after a long delay. For instance, the writ petitioner was appointed as an Assistant on 27.06.1978 and re-designation order was passed on 22.10.1982, but the order was challenged in the year 1992 i.e, after lapse of 10 years. Further, the order of termination of the petitioner dated 30.04.2001, was challenged after lapse of 14 years in W.P.No.28156 of 2015. The writ petitioner was promoted as Manufacturing Chemist in pursuance of the order passed in W.P.No.19005 of 1996, vide order dated 26.10.2009, but seeking consequential time bound promotions to the post of Deputy Chief Chemist and Chief Chemist, a Writ Petition was filed in the year 2015. However, the learned Judge rejected the contention of the official respondents on the ground that the writ petitioner was making representations and hence, there was no delay.

13. The Hon'ble Supreme Court have time and again held that by making repeated representations would not entitle the writ petitioner to approach the Court after a long delay. The Hon'ble Supreme Court in the following cases has held as follows:-

(i) AIR 1990 SC 10 [S.S.Rathore v. State of M.P.]

"22. It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the head of the establishment shall not be taken into consideration in the matter of fixing limitation."

(ii) AIR 2007 SC 1365 [New Delhi Municipal Council v. Pan Singh]

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the

reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. (See Govt. of W.B. v. Tarun K. Roy [(2004) 1 SCC 347 : 2004 SCC (L&S) 225] , U.P. Jal Nigam v. Jaswant Singh [(2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500 : (2006) 12 Scale 347] and Karnataka Power Corpn. Ltd. v. K. Thangappan [(2006) 4 SCC 322 : 2006 SCC (L&S) 791] .)"

(iii) AIR 2012 SC 2274 [Vijay Kumar Kaul vs. Union of India]

19. In Karnataka Power Corpn. Ltd. v. K. Thangappan [(2006) 4 SCC 322 : 2006 SCC (L&S) 791 : AIR 2006 SC 1581] this Court had held thus that Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the court as pointed out in Durga Prashad v. Controller of Imports and Exports [(1969) 1 SCC 185 : AIR 1970 SC 769] . Of course, the discretion has to be exercised judicially and reasonably."

14. When the earlier Writ Petition in W.P.No.19005 of 1996 was allowed, this Court did not have an occasion to consider whether the writ petitioner would be entitled for promotion to the post of Deputy Chief Chemist and Chief Chemist, and hence no order was passed to that effect. It is not disputed that even as per the unamended Rules before 01.06.1982, the prescribed qualification for the post of Deputy Chief Chemist, possession of B.Sc (Chemistry) with ANSI with 5 years experience as Shift Chemist or B.Sc (Chemistry) with 8 years experience and admittedly, the writ petitioner has not possessed the prescribed notional qualification for the promotion to post of Deputy Chief Chemist.

15. It was contended on behalf of the writ petitioner that relaxation was given for promoting other persons and therefore, no discrimination to be shown in the case of the writ petitioner. The Hon'ble Supreme Court in I.C.A.R. Vs. T.V.Suriyanarayanan (referred supra) has held as follows:-

" incorrect promotion either given erroneously by the department by misreading the Service Rules or such promotion given pursuant to judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of Statutory Service Rules."

16. For the foregoing reasons, in the considered view of this Court, these Writ Appeals have to be allowed on two grounds viz., firstly, the writ petitioner has not possessed the requisite qualification, secondly, on the ground of delay and laches. In such view of the matter, the order of the learned Single Judge is set aside and these Writ Appeals are allowed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

r n s

TO

1.The Secretary,  
State of Tamil Nadu,  
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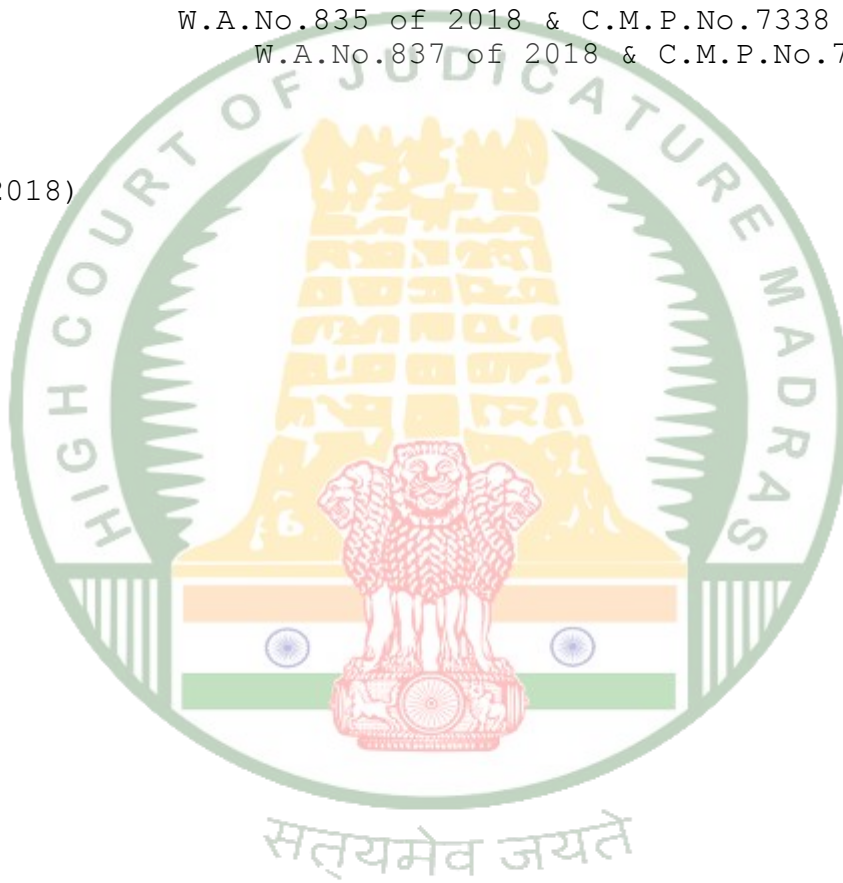
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4.The Administrator,  
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Cuddalore District.

+1cc to Mr.R.Parthiban, Advocate, S.R.No. 72547  
+1cc to Mr.R.Senguttuvan, Party in person, S.R.No. 72597  
+1cc to the Government Pleader, S.R.No. 73467

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EV(CO)  
GN(28/11/2018)



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