

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY
W.A. No. 2178 of 2013

1. The Secretary to Government
Finance (OP-I) Department,
Fort St. George,
Chennai - 9.

2. The Principal Secretary to Government
Personnel & Administrative Reforms Department,
Fort St. George,
Chennai - 9.

... Appellants

Vs.

N. Sarojini Ammal

... Respondent

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 31-08-2012 in W.P. No. 6793 of 2009 on the file of this Court.

Prayer in W.P. No. 6793 of 2009:

Petition Praying to issue a Writ of Mandamus directing to the 1st Respondent to implement the GO.M.S.NO.17, Finance (OP-I) Department dated 16.05.2007 in Proper manner and re-fix the pay of the Petitioner on pay with the Petitioner's junior with effect from 29.05.98 and sanction arrears of pay and allowance to the Petitioner and grant all consequential monetary benefits with interest within a reasonable time frame.

For Appellants : Mr. P.H. Aravind Pandian,
Additional Advocate General
assisted by
Ms. A. Sri Jayanthi,
Special Government Pleader

For Respondent : No appearance

J U D G M E N T
(Delivered by M.M.Sundresh,J.)

Heard Mr. P.H. Aravind Pandian, learned Additional Advocate General appearing for the appellants.

2. There is no representation on behalf of the respondent.

3. The respondent, since attained the age of superannuation, has come forward to file the writ petition seeking a writ of mandamus directing the 1st respondent/1st appellant herein to implement the G.O.Ms.No.170, Finance [OP-I] Department, dated 16.05.2007 for the purpose of re-fixing the pay on par with her immediate junior with effect from 29.05.1998.

4. Though the learned Single Judge has allowed the writ petition, considering the very same issue, a Division Bench of this Court in The Secretary to Government, Finance (OP-I) Department, Fort St. George, Chennai and another v. A. Velusamy reported in 2015-5-L.W 158 was pleased to take a contra view. The relevant paragraphs reads as follows:-

"20. In the case on hand before us, the writ petitioners/respondents herein have, as aforestated, filed writ petitions subsequently claiming relief with retrospective effect. During the pendency of the writ petitions, the State appellant had come up with a policy to implement the same with effect from 13th July, 2012. The petitioners have not produced any material to establish that the cut-off date fixed by the State was discriminatory and arbitrary and as such, the court should refrain from interfering with the policy decision.

21. In the case on hand, the laches and delay are the important factors in exercise of discretionary relief under Article 226 of the Constitution of India. A person is required to be vigilant of his right and if he acquiesces with the situation, he cannot claim parity on the same ground after a long laches and delay. In the case on hand, the writ petitioners are claiming re-fixation of salary with effect from 29th May, 1998 with consequential benefits and arrears. The instant petitions were filed in the year 2009-2010. Thus, they

are not entitled to same relief with retrospective effect. [See: Govt. of W.B. v. Tarun K. Roy (2004) 1 SCC 347; U.P. Jal Nigam v. Jaswant Singh (2006) 11 SCC 464; and New Delhi Municipal Council v. Pan Singh (2007) 9 SCC 278.

22. Even otherwise, the effective date for enforcement of G.O.Ms.No.112 dated 13th July, 2012 was under consideration in W.A. No.914 of 2013, which was upheld. The learned Senior counsel appearing for the writ petitioners/respondents herein has not produced any material to take a contrary view as the writ petitioner therein as well as the writ petitioners herein are similarly situated. Only those persons, who satisfy the conditions enumerated in G.O.Ms.No.112, P&AR Department dated 13th July, 2012 and who has not superannuated on the date of issuance of the said G.O., are entitled to benefits.

23. Resultantly, all the writ appeals are allowed, setting aside the impugned orders dated 31st August, 2012 and 5th September, 2012 passed by the learned Single Judge separately. Consequently, those writ petitions are dismissed. No costs. The connected miscellaneous petitions are closed."

5. We have perused the order passed by the learned Single Judge as well as the relevant materials available on record. We are of the view that the decision rendered by the Division Bench in The Secretary to Government, Finance (OP-I) Department, Fort St. George, Chennai (supra) squarely covers the present case also.

6. In such view of the matter, the writ appeal stands allowed and the order of the learned Single Judge stands set aside and, consequently, W.P. No. 6793 of 2009 is dismissed. Consequently, M.P. No. 1 of 2013 is closed. No costs.

Sd/-

Assistant Registrar (CS iii)

//True Copy//

Sub Assistant Registrar

ssm

To,

1. The Secretary to Government
Finance (OP-I) Department,
Fort St. George,
Chennai - 9.
2. The Principal Secretary to Government
Personnel & Administrative Reforms Department,
Fort St. George,
Chennai - 9.

+1 CC TO GOVERNMENT PLEADER SR.NO. 1465

A.SK(12/02/2019)

W.A. No. 2178 of 2013



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