



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12 /7/2019

C O R A M

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.11846 of 2009

T.Sankararaghavan ... Petitioner

Vs

The Chief Engineer/Personnel  
Tamil Nadu Electricity Board  
800 Anna Salai  
Chennai 2. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified mandamus to call for the records of the respondent in Letter No.043533/117/G1/G11/2006-6, dated 6/11/2007 and quash the same and consequently, direct the respondent to apply the seniority as on 9/1/1986.

For petitioners ... Mr.S.Ravee Kumar  
for Mr.B.B.Senthil Kumar  
For respondent ... Mr.P.R.Dhilip Kumar

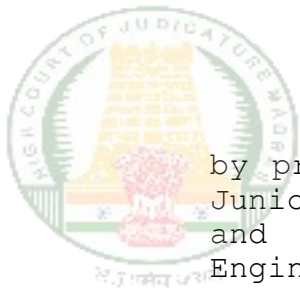
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O R D E R

Instant writ petition, is for a certiorarified mandamus, to quash the order of the Chief Engineer/Personnel, Tamil Nadu Electricity Board, Chennai, sole respondent, in letter No.043533/117/G1/G11/2006-6, dated 6/11/2007 and consequently, direct the respondent, to apply the seniority, as on 9/1/1986.

2. Facts in brief as set out, in the writ petition, are as follows:-

Petitioner joined the Electricity Board, as a Junior Engineer, in 1970. Petitioner, underwent a training programme and his services were regularised, in 1971. Petitioner appeared for the Electricity Department Accounts Test, conducted by the Tamil Nadu Public Service Commission, in May 1972, and passed in the said examination. An increment was also awarded, by communication, dated 13/2/1973, By proceeding, dated 5/6/1974, an incentive for the drawal of one advance increment was given by the respondent. Respondent Board,



by proceeding, dated 6/4/1977, re-designated the post of Junior Engineers (Degree Holders) as Assistant Engineers and Assistant Engineers as Assistant Executive Engineers/Assistant Divisional Engineers.

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3. Vide, proceeding, dated 9/1/1986, respondent Board regularised the services of Assistant Divisional Engineers to Category I Division II of Class II. In the proceeding, seniority was fixed and petitioner was ranked at 189 and Mr.V.K.Ramasamy was placed at 190. Even though the petitioner had passed the mandatory accounts test, by May 1972, itself, even prior to the appointment of the said V.K.Ramasamy, petitioner was placed below Mr.V.K.Ramasamy.

4. In the year 1993, Mr.V.K.Ramasamy was shown above the petitioner.

5. Grievance of the petitioner is that he cannot be placed below V.K.Ramasamy, for the reason that when a person fails to pass the mandatory accounts tests, within two years, from the date of probation or such extended period, within the limits prescribed by the regulations, Board has to discharge the employee from the services. If he is not discharged, the Board can relax the condition. However, relaxation should be made within two years. Only when relaxation is given, seniority of such person cannot be affected.

6. Petitioner objected to the placement of Mr.V.K.Ramasamy above him and had gave a representation. Representation was not considered and the seniority was confirmed. Petitioner, very strongly states that final seniority list was not intimated to the petitioner. He was transferred from one place to another and ultimately, he attained superannuation, on 30/9/2003.

7. After retirement, he has made several requests, for correcting the seniority. He also states that he approached this Hon'ble Court, by way of W.P.No.20255 of 2006 and this Court, vide, order, dated 3/7/2006, directed the respondent therein, to dispose of the representation dated 12.1.2005, within a period of four weeks, from the date of receipt of a copy of the said order. Petitioner states that in compliance with the order of the High Court, respondent has passed the impugned order, rejecting the representation. This impugned order, rejecting the representation has been challenged, in the instant writ petition.



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8. On notice, respondent has filed counter. It is stated in the counter that Mr.V.K.Ramasamy was absorbed, in the Board and an order was issued, vide B.P.Ms.No.591 (Adm.Branch), dated 30/9/1981. It is stated in the said proceedings that the absorbed persons shall be given notional promotion, taking into account the qualification of passing Electricity Department Account test. Notional promotion was not given at that time and hence he was placed below the petitioner.

9. It is further stated that after examination of the representation of Mr.V.K.Ramasamy, rule relating to passing of Electricity Department Account Test had been relaxed by the Board. Since, the actual absorption was done in the year 1981, the seniority of Mr.V.K.Ramasamy was revised and fixed above the petitioner. It is further stated that services rendered by the petitioner and Mr.V.K.Ramasamy, as temporary casual labourer has not been taken into account and seniority was fixed only from the date of absorption. It is stated that seniority is being counted from the time the incumbents were absorbed. In the regular service, time spent as casual labourer is not being considered.

10. Heard Mr.S.Ravee Kumar, learned counsel for the petitioner and Mr.P.R.Dilip Kumar, for the respondent and perused the materials available on record.

11. Admittedly, seniority list was prepared in the year 1993. Writ petition has been filed in 2009. Representations was given in 1993 and also after retirement in 2005. Representation given in 1993 would show that the petitioner was well aware of the proposal or the decision of the Government to place the said V.K.Ramasamy ahead of the petitioner. Petitioner now seeks to challenge the seniority list prepared, by sending a representation after twelve years in 2005, and then the writ petition. No reason was given by the petitioner as to why the petitioner kept quiet for twelve long years.

12. Rule 97 of the Tamil Nadu Electricity Service Regulations, deals with seniority. The said Rule, reads as under:-

"a. The seniority of a person in a class of service, category or grade shall, unless he has been reduced to a lower rank as a casual labourer, be determined by the rank obtained



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by him in the list of approved candidates drawn up by the Board or other appointing authority, as the case may be. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.

Provided that the seniority of Assistant Engineers (Electrical)/(Civil)/(Mechanical) recruited both by internal selection and direct recruitment in the ratio of 1:1 in a particular calendar year shall be fixed in the following cyclic order:

1. Internal Selection
2. Direct Recruitment

(b). The transfer of a person from the category or grade in a class of service to another category or grade in the same class of service carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purpose of seniority and the seniority of a person so transferred shall be determined with reference to the rank in the category or grade from which he was transferred. Where any difficulty or doubt arises in applying this Sub-Regulation, seniority shall be determined by the appointing authority.

(c). Where a member of a class of service, category or grade is reduced to a lower class of service, category or grade, he shall be placed at the top of the latter unless the authority ordering such reduction directs that he shall take rank in such lower class of service, category or grade, next below any specified member thereof.

(d). Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years, from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts."



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13. A perusal of the said Rule would show that an application for representation of seniority should be made, within three years and not thereafter. Representation was given in 1995 and after that petitioner has been keeping quiet. Petitioner has not challenged the writ petition within a reasonable time. There is an inordinate delay, on the part of the petitioner.

14. Though reasonable time is not prescribed in the rules framed under Article 309 of the Constitution of India, the words "reasonable time", as explained in *Veerayeeammal v. Seeniammal* reported in 2002 (1) SCC 134, at Paragraph 13, is extracted hereunder:

"13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's *The Law Lexicon* it is defined to mean:

"A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than "directly"; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

15. There is an inordinate delay and laches on the part of the appellant. What is laches is as follows:



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"Laches or reasonable time are not defined under any Statute or Rules. "Latches" or "Lashes" is an old french word for slackness or negligence or not doing. In general sense, it means neglect to do what in the law should have been done for an unreasonable or unexplained length of time. What could be the latches in one case might not constitute in another. The latches to non-suit, an aggrieved person person from challenging the acquisition proceedings should be inferred from the conduct of the land owner or an interested person and that there should be a passive inaction for a reasonable length of time. What is reasonable time has not been explained in any of the enactment. Reasonable time depends upon the facts and circumstances of each case.'"

16. Statement of law has also been summarized in Halsbury's Laws of England, Para 911 , pg. 395 as follows:

"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 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."

17. In P.S.Sadasivasamy Vs. State of Tamil Nadu, reported in (1975) 1 Supreme Court Cases 152, wherein, the Supreme Court, at Paragraph 2, held as follows:-

"2....A person aggrieved by an order or promoting a junior over his head should approach the Court at least within six months or at the most a year order of suspension such promotion; it is not that there is any period of limitation



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of the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal"

18. In State of M.P., v. Nandlal Jaismal reported in 1986 (4) SCC 566, the Hon'ble Supreme Court, at Paragraph 24, held as follows:

"24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs the High Court in deciding whether or not to exercise such jurisdiction. We do not



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think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal. ....Of course, this rule of laches or delay is not a rigid rule which can be cast in a strait jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it."

19. In State of Maharashtra v. Digambar reported in AIR 1995 SC 1991, the Hon'ble Supreme Court, held as follows:

"12. How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State invoking writ jurisdiction of the High Court under article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decision of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blame-worthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a welfare State, is also difficult to comprehend. Where the relief sought under Article 226 of the Constitution by a person against the welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief,



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should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blame-worthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State.

21. Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement of such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily."



(2001) 7 SCC 573, the Hon'ble Supreme court observed, as under:-

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14. It cannot but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times: even the doctrine of prescription in Roman law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favoured rather than claiming disfavour. Law courts never tolerate an indolent litigant since delay defeats equity – the Latin maxim *vigilantibus et non dormientibus jura subveniunt* (the law assists those who are vigilant and not those who are indolent). As a matter of fact, lapse of time is a species for forfeiture of right. Wood, V.C. in *Manby v. Bewicke*, reported in 1857 (3) K&J 342 = 69 ER 1140 (K&J at p. 352) stated: (ER p. 1144)

"The legislature has in this, as in every civilized country that has ever existed, thought fit to prescribe certain limitations of time after which persons may suppose themselves to be in peaceful possession of their property, and capable of transmitting the estates of which they are in possession, without any apprehension of the title being impugned by litigation in respect of transactions which occurred at a distant period, when evidence in support of their own title may be most difficult to obtain."

21. In *Chairman, U.P.Jal Nigam and another v. Jaswant Singh* reported in AIR 2007 SC 924, the Hon'ble Supreme Court, after considering a catena of decisions, on the aspect of delay, at Paragraph 13, held as follows:

"13.....Therefore, whenever it appears that the claimants lost time or while 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."

22. In *Chennai Metropolitan Water Supply and Sewerage Board v. T.T.Murali Babu* reported in 2014 (4) SCC 108, at Paragraphs 16 and 17, the Hon'ble Supreme Court held as follows:

16. Thus, the doctrine of delay and



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laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant - a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground



alone the writ court should have thrown the petition overboard at the very threshold."

23. In *Prabhakar v. Joint Director, Sericulture Department* reported in 2015 (3) SCC 1, the Hon'ble Supreme Court, at Paragraphs 37 to 41, held as follows:

"37. Let us examine the matter from another aspect viz. laches and delays and acquiescence.

38. It is now a well-recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity "delay defeats equities".

40. Likewise, if a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while the act is in progress he cannot afterwards complain. This principle is based on the doctrine of acquiescence implying that in such a case the party who did not make any objection acquiesced into the alleged wrongful act of the other party and, therefore, has no right to complain against that alleged wrong.

41. Thus, in those cases where period of limitation is prescribed within which the action is to be brought before the court, if the action is not brought within that prescribed period the aggrieved party loses remedy and cannot enforce his legal right after the period of limitation is over. Likewise, in other cases even where no limitation is prescribed, but for a long period the aggrieved party does not approach the machinery provided under the law for redressal of his grievance, it can be presumed that relief can be denied on the ground of unexplained delay and laches and/or on the presumption that such person has waived his right or acquiesced into the act of other. As mentioned above, these principles as part of equity are based on principles relatable to sound public policy that if a person does not exercise his right for a long time then such a right is non-existent."





To,

The Chief Engineer/Personnel  
Tamil Nadu Electricity Board  
800 Anna Salai  
Chennai 2.

+1cc to Mr.S.Ravee Kumar , Advocate SR.No. 59331

+1cc to Mr.P.R.Dhilipkumar, Advocate SR.No. 59431

W.P.No.11846 of 2009

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A.SK(14/08/2019)