

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :26.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.14178 of 2010

Ravindran Selvaraj Samuel,
Senior Lecturer / Electrical Engineering,
Chengalvaraya Naicket Polytechnic (College),
Vepery, Chennai 600 007

... Petitioner

Vs

1. The Director of Technical Education,
Guindy, Chennai - 600 025.
2. The Chairman,
Governing Counsel,
Chengalvaraya Naicker Polytechnic (College),
Chennai 600 007

... Respondents

Prayer :

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records in the impugned order in Ref.No.3419/A3/2002 dated 19.09.2002 of the 2nd respondent and to quash the same and consequently, direct the 2nd respondent to allow the petitioner to retire from service and to sanction pension with all attached terminal benefits on petitioner's service rendered from 08.12.1982 to 18.03.2002.

For Petitioner : Mr.G.Thangavel

For Respondents : Mr.A.Zakir Hussain,
Government Advocate for R1
Mr.M.R.Jothimanian for R2.

O R D E R

The instant writ petition is one for certiorarified mandamus calling for records in Ref.No.3419/A3/2002 dated 19.09.2002 passed by the 2nd respondent, dismissing the petitioner from service and also treating the period from 24.03.2002 to 19.09.2002 as absent.

2. The petitioner is an Engineering graduate and employed in the post of U.G.Senior Lecturer in the 2nd respondent institute. He stated that he tried for an appointment in a foreign country and got an assignment to work abroad. He submitted two separate applications, one for "no objection certificate" from the department and another one for "permission to go abroad and work". The petitioner further states that he left for work on the hope that he will get the no objection certificate from the 2nd respondent in terms of G.O.Ms.No.295 (Personnel and Administrative Reforms (FR.II) Department dated 14.09.1995. He would further state that he had no knowledge of the fact that No objection Certificate had not been given and on returning from foreign country in May 2010, he found that he was dismissed from service vide order Ref No.3419/A3/2002 dated 19.09.2002. The petitioner states that enquiry proceedings have been conducted behind his back. Left with no other option, the petitioner is challenging the order of the 1st respondent refusing to give the no objection certificate and the order of termination passed by the 2nd respondent, by way of present writ petition.

3.The learned counsel for the petitioner very vehemently contends that he is entitled to get no objection certificate in terms of G.O.Ms.No.295. The learned counsel for the petitioner would rely on paragraph 6 of the clause 4 of the G.O.Ms.295 to submit that to get a no objection certificate is a matter of right. Clause 6 of G.O.Ms.No.295 reads as under :-

"6. The period of absence on leave for employment abroad would be counted as service for purposes of pension, if necessary pension contributions are paid"

The learned counsel further states that the 2nd respondent by his letter dated 17.01.2002 had infact recommended leave to the petitioner by stating that he is permitted for leave up to 23.03.2002. The 1st respondent on receiving the letter refused to grant permission on the ground that the time available is too short for arrangement and therefore, did not accept the recommendation of the 2nd respondent. Since the petitioner did not report for duty from 03.07.2001, enquiry proceedings were initiated against the petitioner and the petitioner was dismissed from service by the impugned order in Ref.No.3419/A3/2002 dated 19.09.2002.

4. This writ petition has been filed in the year 2010. The learned counsel for the petitioner states that the petitioner was expecting a reply from the respondents as to whether permission has been granted to him or not. No recent address was given by the petitioner. The petitioner states that he did not

get any intimation because he was abroad. There is nothing on record to show that the petitioner had intimated the recent address to the respondents at any point of time and the respondents therefore had written letters only to the last known address of the petitioner. After lapse of eight years, challenging the order of dismissal, the writ petition has been filed by the petitioner. The same is barred by the principles of delay and laches and moreso, because there is no worthwhile explanation, which would persuade this Court to entertain this writ petition, after a period of eight years.

5. It is the settled law that unexplained delay in approaching Court in Article 226 of the Constitution of India, acts against the petitioner. In *Vijay Kumar Kaul V. Union of India*, reported in (2012) 7 SCC 610, the Hon'ble Supreme Court held that belated approach in filing writ petition is impermissible and at paragraphs 26 and 27, it is held as follows:

"26. From the aforesaid pronouncement of law, it is manifest that a litigant who invokes the jurisdiction of a court for claiming seniority, it is obligatory on his part to come to the court at the earliest or at least within a reasonable span of time. The belated approach is impermissible as in the meantime interest of third parties gets ripened and further interference after enormous delay is likely to usher in a state of anarchy.

27. The acts done during the interregnum are to be kept in mind and should not be lightly brushed aside. It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time."

6. Another case in *Karnataka Power Corporation Limited V. K.Thangappan and Anr* reported in (2006) 4 SCC 322, the Hon'ble Supreme Court, at paragraph 6, held as follows:

"6. 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.Chief Controller of Imports and Exports[(1969) 1 SCC 185 : AIR 1970 SC 769]. Of course, the discretion has to be exercised judicially and reasonably."

7. In view of the same, the writ petition is dismissed on the ground of delay and laches. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Director of Technical Education,
Guindy, Chennai - 600 025.
2. The Chairman,
Governing Counsel,
Chengalvaraya Naicker Polytechnic (College),
Chennai 600 007.

+1cc to Mr.G.Thangavel, Advocate, S.R.No.82935
+1cc to Mr.M.R.Jothimanian, Advocate, S.R.No.83157
+1cc to the Government Pleader, S.R.No.83206

W.P.No.14178 of 2010

NRL(CO)
CS/04/12/2019

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