

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.36839 of 2004
and M.P.No.44211 of 2004

G. Karunamoorthy

..Petitioner

Vs

1. State of Tamil Nadu,
represented by its Secretary to Government,
Public Works Department,
Fort St. George,
Chennai-600 009.
 2. The Chief Engineer,
Public Works Department,
Ground Water Division,
Chepauk nowat Tharamani,
Chennai - 600 113.
 3. The Assistant Executive Engineer,
Public Works Department,
Ground Water Division,
No.6, Lal Bahadur Sastri Street,
Periyapalayam, Tiruvallure District.
- ...Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents herein to issue appropriate posting order to the petitioner in accordance with the final orders of the Tamil Nadu Administrative Tribunal dated 25.09.1991 made in O.A.No.1217/1989 and the petitioner's periodical representations, finally on 03.04.2003 with due seniority and regularisation of service, within a time to be stipulated by this Court.

For Petitioner : Mr.G. Thangavelu

For Respondents : Mr.B. Anand
Government Advocate

ORDER

This writ petition has been filed by the petitioner seeking a direction to the respondents herein to issue appropriate posting order to the petitioner in accordance with the final orders passed by the Tamil Nadu Administrative

Tribunal dated 25.09.1991 made in O.A.No.1217/1989.

2. The case of the writ petitioner is that the petitioner was appointed as Nominal Muster Roll (NMR) employee on 16.12.1983 at Dharani Varahapuram Met Station and he had been continuously working on daily wages, under the respondents department. Since the respondents did not allow the petitioner to continue in service after 17.11.1986, the petitioner had filed an Original Application in O.A.No.1217 of 1989 before the Tamil Nadu Administrative Tribunal, Chennai. After analysing the petitioner's case, the Tribunal had passed its final order, dated 25.09.1991 with specific observations as under:

"However, if the work for which they were engaged is continuing and there is need for engagement of persons for such or similar work in the department, the applicants should be engaged with reference to their seniority based on the date of their earlier appointment. The department should have a list of persons who have worked on casual basis on daily wages over extended periods based on the date of their appointment and duration of their service for consideration against regular vacancies arising in existing posts and future sanctions.

Such identification of continuing requirements and sanction of regular posts should be completed within six months from the date of receipt of these orders and appointments made within a further period of three months. The instructions in D.O.No.16803/C2/84-8, dated 12.08.1985 of Commissioner and Secretary to Government, Public Works Department, and D.O.16803/C2/84-9 dated 22.08.1985 of Chief Engineer, Public Works Department are contrary to the letter and spirit of the law and Government should issue revised instructions in the light of the observations in this order within three months from the date of receipt of this order."

Although there was a specific observation by the Tribunal, the respondents failed and neglected to do the needful within the stipulated period. Thereafter, the writ petitioner made a representation on 05.06.1994 and 01.03.1995 before the Authority for passing appropriate orders based on the orders passed by the Tribunal in O.A.No.1217 of 1989. Despite the representation made by the petitioner, the respondents failed and neglected to do the needful to pass appropriate order for posting him in the suitable place although the vacancy is available in various places. Therefore, the writ petitioner has come forward with the present writ petition before this Court.

3. According to the learned counsel appearing for the writ petitioner, the respondents have not followed the order

passed by the Tribunal and therefore, inaction of the respondents is against the basic principles of natural justice and they ought to have appointed him in the available vacancies, but, they have failed to do so. Therefore, a direction may be given to the Authorities again to follow the orders passed by the Tribunal on 25.09.1991.

4. The learned Government Advocate appearing for the respondents submitted that it was the direction of the Tribunal that the applicant should be engaged with reference to the seniority based on the date of their earlier appointment and the department should have a list of persons who have worked on casual basis and on daily wages over extended periods based on the dates of their appointment and duration of their service for consideration against regular vacancies arising in existing posts and future vacancies. Therefore, pursuant to the said order, the petitioner has not been posted for want of regular vacancies. In the meantime, the writ petitioner was superannuated. Therefore, the aforesaid prayer sought for in the writ petition is not maintainable and the same is liable to be rejected.

5. It is seen that the petitioner had filed O.A.No.1217 of 1989 before the learned Tribunal, whereby, the Tribunal, vide order dated 25.09.1991, while disposing the said application, observed that if the work for which the applicants were engaged is continuing and there is need for engagement of persons for such or similar work in the department, the applicants should be engaged with reference to their seniority based on the date of their earlier appointment and the department should have a list of persons, who have worked on casual basis and on daily wages basis over extended periods based on the date of their appointment and duration of their service for consideration against regular vacancies arising in existing posts and future sanctions. Such identification of continuing requirements and sanction of regular posts should be completed within six months from the date of receipt of these orders and appointments made within a further period of three months.

6. Pursuant to the above directions, although the petitioner had approached various respondents on 05.06.1994 and 01.03.1995 as averred in the affidavit filed in support of the writ petition, but, he had failed to get any response from the Authorities. I do not know what precluded the petitioner to approach this Court for about 14 years as against the inaction of the Authorities. He slept over the matter for years together. Had he approached the Court swiftly, may be, he would have succeeded in his claim. Having failed to do so, in my considered view, this Court is unable to consider the prayer of the petitioner on the ground of laches and due to laches in approaching the Court, the relief cannot be granted.

7. It is settled law that the delay defeats justice and equities and the equitable doctrine has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had, provided one has not by his act or conduct given a go-by to his rights. Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of entertaining the prayer of the petitioner, who, as highlighted above, has approached this Court after a period of 14 years, does not and cannot arise in this matter.

8. Therefore, in view of the foregoing reasons, the writ petition fails and it is dismissed as devoid of any merit. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Government of Tamil Nadu,
Public Works Department,
Fort St. George,
Chennai-600 009.
2. The Chief Engineer,
Public Works Department,
Ground Water Division,
Chepauk nowat Tharamani,
Chennai - 600 113.
3. The Assistant Executive Engineer,
Public Works Department,
Ground Water Division,
No.6, Lal Bahadur Sastri Street,
Periyapalayam, Tiruvallure District.

+1cc to the Government Pleader, S.R.No. 89213

W.P.No.36839 of 2004

PA (CO)
GN(14/02/2020)