

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.8905 of 2010
MP.No.1 of 2010

N.Anbazhagan

... Petitioner

.Vs.

1. The District Elementary Educational Officer
Salem District.

2. The Asst. Elementary Educational Officer
Athur, Salem District.

3. The Head Master
Panchayat Union Elementary School
Paithur 1st ward, Athur, Salem District.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the records relating the proceedings dated 15.03.2010 in O.Mu.No.404/A/2010 and quash the same for a direction directing the respondents for taking into account the service of the petitioner from 07.10.1996 for the service benefits like promotion and other benefits in accordance with law.

For Petitioner : Mr.K.Vijayaraghavan

For Respondents : Mr.P.Raja, Govt. Advocate

सत्यमेव जयते
O R D E R

The petitioner has challenged the order dated 15.03.2010. It is the case of the petitioner that he was appointed as a Secondary Grade Teacher on 07.10.1996 in Panchayat Union Elementary School, Paithur, Athur Block, Salem. After 3 days he was transferred to Panchayt Union Elementary School, first ward, wherein he joined on 11.10.1996. The petitioner services and seniority is being counted from 11.10.1996 instead of 07.10.1996.

2. The petitioner states that the seniority list was prepared in the year 2006 showing that his services have been counted from 11.10.1996 instead of 07.10.1996. He gave a

representation dated 06.03.2010, which has been rejected by the impugned order. The respondents in the counter stated that no doubt, the petitioner was asked to join on 07.10.1996 in Panchayat Union Elementary School, Paithur, Athur Block, Salem, but since there was no vacancy he was asked to go some other school and he joined there on 11.10.1996 and his seniority has been recorded from 11.10.1996. It is further stated in the counter that every year, a seniority list is prepared and in that list the following information are mentioned clearly in the priority list.

- "1. Date of Joining.
2. Date of Regularisation.
3. Date of Probation declaration.

The Seniority / Priority list is signed by him only after thoroughly verified that the names in the priority list is before and after him."

3. This Court is not inclined to go into the merits of the case as to whether the petitioner joined the school on 07.10.1996 and he transferred on 11.10.1996 or whether his joining on 07.10.1996 since there was no vacancy, does not amount to no joining at all, for the only reason that the petitioner chosen to file a writ petition after 13 years of the joining of the school.

4. 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."

5. 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 Prasad 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."

6. In view of the same, the writ petition is dismissed on the ground of delay and laches. No costs. Consequently, connected MP is closed.
Pkn

Sd/-
Assistant Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

To

1. The District Elementary Educational Officer
Salem District.

2. The Asst. Elementary Educational Officer
Athur, Salem District.

3. The Head Master
Panchayat Union Elementary School
Paithur 1st ward, Athur, Salem District.

+1cc to Mr.E.Veda Bagath Singh, Advocate, SR.No.83317
+1cc to the Govt.Pleader, Vide Sr.No.83650

W.P.No.8905 of 2010

Kak(22/10/2019)