

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.02.2019

Pronounced on : 07.06.2019

CORAM:

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.28512 of 2013

and

WMP.No.35804 of 2016

R.Srinivasan

...Petitioner

Vs

1. The Chairman,
Tamil Nadu Electricity Board,
10th Floor, Eastern Wing,
New No.144, Old No.800,
Anna Salai, Chennai - 600 002.

2. The Chief Engineer / Personnel,
Tamil Nadu Electricity Board,
8th Floor, Eastern Wing,
New No.144, Old No.800,
Anna Salai, Chennai - 600 002.

3. The Senior Personnel Officer,
Recruitment,
Tamil Nadu Electricity Board,
8th Floor, Eastern Wing,
New No.144, Old No.800,
Anna Salai, Chennai - 600 002.

...Respondents

Prayer:

Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, directing the respondents to revise the petitioner's seniority on the basis of his appointment as Junior Assistant with effect from 15.09.1973 vide Boards proceedings order MS No.1423 dated 20.07.1973 by invoking GO.Ms.No.221, Personal Administrative Reforms (Per.s) Department dated 10.05.1990 and the consequent issue to Boards proceedings (Per) B.P.(Ch) No.212 Secretariat Branch dated 06.08.1991 from time to time till his retirement and settle the terminal benefits like arrears of salary, allowance from 15.09.1973 to 30.04.2003 to the petitioner and consequently revise the pension on par with the revised pay.

For Petitioner : Mr. D.Ashok Kumar

For Respondents: Mr. P.R.Dhilip Kumar
Standing Counsel for R1 to R3

O R D E R

The petitioner who has not cleared SSLC exam has appointed in the respondent Board as a Record Clerk on 18.04.1964. He cleared his probation in the category of Record Clerk on 05.05.1967.

2. The Tamil Nadu Electricity Board passed an order vide Board proc.Ms.No.1423, dated 20.07.1973. The order reads as under:-

"PROCEEDINGS:

According to the provisions in Note 2 under Division VII of Class III in Annexure I to the Board's Service Regulations, appointment as Junior Assistant shall be made by recruitment from among employees in Class IV Sendee who passes the minimum General Educational Qualification or an equivalent qualification and who has rendered satisfactory service for not less than 5 years. The approval of the Board should be obtained whenever such recruitment is made.

2The Tamil Nadu Electricity Board Accounts Subordinate Union has represented that

(I) Attenders who have put in a service of 5 years and more should be considered for promotion by relaxing the educational qualification i.e. from possessing Minimum General Educational Qualification to a pass in VIII Standard or equivalent examination; and that

(II) Attenders who possess the required educational qualification viz. Minimum General Educational Qualification or equivalent examination should be considered for appointment as Junior Assistant by lowering the present limit of satisfactory service of 5 years to 2 years.

3. The matter was discussed with the representatives of Tamil Nadu Electricity Board

Accounts Subordinates Union. The Boaid hereby directs that:-

(i) The Attenders who have passed VIII Standard or equivalent examination and who have completed 5 years of

satisfactory service as Attenders as on date may be appointed as Junior Assistants without insisting upon the possession , of the Minimum General Educational Qualification or equivalent service Regulations and

(ii) The Attenders who possess the Minimum General Educational Qualification or equivalent examination and have completed 7 years of satisfactory service as Attenders as on date may be appointed as Junior Assistants without insisting upon the possession of the Minimum General Educational Qualification or equivalent service Regulations and

4. The Chief Engineer (Electricity) is requested to submit necessary' proposals in this regard."

3. In continuance of the Board proceeding, the petitioner was appointed as Junior Assistant, vide Memo No.SETC/S1/A1 of 24C/868. The said proceeding reads as under:-

"Memo. No.SETC/S1 /A 1/OF.24 (c)/837/dt.17.09.73.

Sub: Establishment - Class III Service - Head quarters unit - Attender - As Junior Assistant by conversion - Appointment -

Regarding,

Ref: Chief Engineer (General) Rndt, on letter No.811-D1 / 73-1 0 dt.12.9.73 to the Secretary, T .H. B. Board.

...

With reference to instructions contained in the Chief Engineer (General)'s letter cited and under Regulation 106 (a) (i) of Tamil Nadu Electricity Board. Service Regulations, Thiru R. Srinivasan, Attender is appointed under emergency rules as Junior Assistant (by conversion from class IV service to Class III Service) on a pay of Rs.126/- (Fixed) plus usual allowances as is admissible under the rules, with effect from 15.9.73 P.IT. and retained in this circle,

He is informed that the appointment is purely on temporary basis subject to approval by the Tamil Nadu Electricity Board"

4. It is therefore clear that, the petitioner was appointed as Junior Assistant by virtue of above mentioned order in pursuance to the Board proceeding dated 20.07.1973. The petitioner passed the general educational test conducted by the Tamil Nadu Public Service Commission in 1986. The petitioner was promoted as Assistant by a memo No.089172/KDM.BR./B1-1/87-1. After putting 10 years of service as Assistant, he was granted selection grade in the category of Assistant by an order No.1323/Adm.Br./97.

5. The petitioner was considered by the promotion panel in the year 2002 for promotion as Superintendent. The petitioner reached the age of superannuation on 30.04.2003, as selection grade assistant and could not be promoted as Superintendent. The petitioner states that, the list of qualified attenders who are entitled to appointment as Junior Assistants by transfer as per the Boards Proceedings MS. No. 1423 dated 20.07.1973, a statement had been furnished with particulars like Name, System Office/Circle Office, Date of Birth, Date of Appointment as Attenders on regular basis, Total service of as Attenders as on 20.07.1973, and the consequent completed years, qualification, etc., and in the statement, 112 names had been given. It is stated that the petitioner was eligible to be considered as Assistant by virtue of the Board proceedings Ms.No.1423 dated 20.07.1973. The respondents were not justified in not considering him for the post of Assistant in 1973 itself. It is stated that, reliance on Board proceedings MS.No.1561 dated 31.10.1975, in denying the petitioner of the post of Assistant is not correct.

6. According to the petitioner one K. Balakrishnan had not acquired such qualification, but had been shown as Assistant and considered over and above the petitioner. It is stated that, appointment of the petitioner as Junior Assistant is as per the Boards Proceedings MS No. 1423 dated 20.07.1973, and appointment of person one K. Balakrishnan, as assistant in the seniority list is irregular and denial to the post of assistant of the petitioner is in violation of the Boards Proceedings. It is stated that, if the petitioner had also been considered in a similar fashion, he would have become assistant earlier. It is settled that, once relaxation is given, the same is automatic for the future promotions as well and therefore the qualification in exams cannot be insisted for each and every stage of promotion. The petitioner relied on Boards Proceedings No. 212, Secretariat Branch, dated 06.08.1991, which states that, once the relaxation is given exempting a person from possessing qualification passing departmental/special test and other obligated test prescribed for the post it should be valid for future promotion where the same qualification is prescribed.

7. The petitioner state that he is entitled for a promotion ever since his appointment as Junior Assistant dated 15.09.1973. The petitioner states that, his seniority be revised on the basis of his appointment as Junior Assistant and be given promotion for settlement of his temporary benefits.

8. The respondents have filed their counter. The respondent submit that the petitioner has not challenged any of his promotion orders. He has filed this petition after 10 years of his retirement and the writ petition is therefore, hit by laches.

9. The respondent also states that, there is suppression of facts. The respondents would submit that, the petitioner has earlier filed W.P.No. 9965 of 1999, praying to quash a recovery order passed in Memo.No.028573/Adm.Br./Bl-1/90-1, dated 31.05.1999 and for consequential refund of amount already deducted during the year 1999. In the said writ petition, the claim was that he was entitled to increment for from 12.11.1982, for passing Departmental Test, but it was granted only from 09.06.1986 (the date of passing the qualifying exam equivalent to SSLC). It is also stated that, the petitioner was making representations since 2010, but did not approach the Court with the prayer sought for. It is contended that the petitioner cannot file repeated petitions on the same facts.

10. Heard both the counsel of the parties.

11. The learned counsel for the petitioner and respondent reiterated their contentions as stated by them in their respective affidavits. Admittedly, the petitioner has attained the superannuation on 30.04.2003. It cannot be said, the petitioner was not aware of the facts on which he has instituted the present writ petition. There is no reason given in the writ petition which justifies the long delay. As rightly stated by the respondent, the petitioner has already approached this Court by filing a Writ Petition No.9965 of 1999, wherein the petitioner had challenged the deduction of Rs.2,592/-made from him, on the ground that he had been paid excess amount of money, while granting promotion as Assistant. The petitioner therefore was well aware of his claim of his claim and has already approached this Court once. This writ petition is therefore cannot be entertained only on the ground of laches.

12. Though reasonable time is not prescribed in the rules framed under Article 229 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."

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

"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."

14. 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 9 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."

15. Also refer i) State of M.P Vs. Bhailal Bhai reported in AIR 1964 SC 1006, ii) Dilbagh Rai Jarry Vs. Union of India, (1974) 3 SCC 554, and iii) P.S.Sadasivasamy Vs. State of Tamil Nadu, reported in (1975) 1 SCC 152, which states that, a person must approach a Writ Court within reasonable time and the Courts must not permit stale claims to be agitated before it.

16. 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 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."

17. 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 blame¹³ 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, 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 14 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 ¹⁵ 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."

(emphasis supplied)

18. In Hameed Joharan Vs. Abdul Salem, reported in (2001) 7 SCC 573, the Hon'ble Supreme Court of India, observed as under:-

"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."

19. 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."

20. In *Prabhakar v. Joint Director, Sericulture Department* reported in 2015 (3) SCC 1, the Hon'ble Supreme Court, at Paragraphs 37 and 38, 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."

21. Even in case of pension, *Shiv Dass vs. Union of India and others* reported in (2007) 9 SCC 274, the Hon'ble Supreme Court of India observed as under:-

"10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each in case. If petition is 34 filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone. 11. In the peculiar circumstances, we remit the matter to the High Court to hear the writ petition on merits. If it is found that the claim for disability pension is sustainable in law, then it would mould the relief but in no event grant any relief for a period exceeding three years from the date of presentation of the writ petition. We make it clear that we have not expressed any opinion on the merits as to whether appellant's claim for disability pension is maintainable or not. If it is sans merit, the High Court naturally would dismiss the writ petition."

22. The Board has also passed an order on 31.10.1975 in Ms.No.1561. The said order reads as under:-

"B.P.Ms..No.1561 Dated: 31.10.1975

B.P.Ms.No. 1423/dt. 20.7.1973

Board's Memo No.7029.G3/73-2/dt. 11.10.1974.

From C.E./G1. Lr.No. 811/D1/73-23/ dt. 29.9.1975.

PROCEEDINGS:

In B.P. Ms.No. 1423/dt. 20.7.73 it was ordered that the Attender who have passed VIII Standard or equivalent examination and who have completed 5 years of satisfactory service as Attenders as on that date may be appointed as Junior Assistants without insisting upon the possession of the Minimum General Educational qualification or equivalent examination by relaxing the relevant provisions in the Service Regulations; and that the Attenders who possess to the minimum General educational Qualification or equivalent examination and have completed 2 years of satisfactory service of Attenders as on date may be appointed as Junior Assistants in relaxation of the relevant provisions in Note 2 under Division-VII of Class III in Annexure I to Regulation 92 of the TNEB Service Regulations. The

Attenders have now been re-designated as Record Clerks.

2. In pursuance of the above orders, the Chief Engineer / General has submitted proposals for the appointment of 118 Record Clerks as Junior Assistants by transfer, in relaxation of the provisions in the TNEB Service Regulation referred to in Para 1 above. Since all the 118 Record Clerks satisfy the conditions in the B.P. cited, the Chief Engineer / General has stated that he has issued instructions to the Superintending Engineers and Financial Controller to appoint the Record Clerks as Junior Assistants in anticipation of Board's approval. The Chief Engineer / General have requested that the action of the Superintending Engineers in having arranged to appoint the individuals in anticipation of the approval of the Board may be ratified. The Chief Engineer/General has also certified that the Record Clerks concerned have not been involved in any disciplinary proceedings and that the service of the Record Clerks had been satisfactorily for a period of 5 years 2 years, as the case may be before their appointment as Junior Assistants.

3. The Tamil Nadu Electricity Board after careful consideration hereby directs that in relaxation of Regulation 92 of the Tamil Nadu Elec. Board Service Regulations, the Services of the 118 (One Hundred and Eighteen) Junior Assistant mentioned in the Annexure to these proceedings be regularized with retrospective effect from the date of their appointment. They will be eligible for their first increment and consequential arrears of their one year of qualifying service from the date of such regularization. The Board directs that the 118 (One hundred & Eighteen) appointed as Junior Assistants mentioned in the Annexure to these proceedings be regularized with retrospective effect from the date of their appointment. They will be eligible for their first increment and consequential arrears after one year of qualifying service from the date of such regularization. The Board directs that the 118 (One hundred and eighteen) appointed as Junior Assistants mentioned in the Annexure to these proceedings will not be eligible for further promotion until and unless they acquire the minimum General qualification or pass an equivalent examination.

4. The action of the Chief Engineer/General and the Superintending Engineers in having appointed these persons in anticipation of the approval of the Board is ratified."

23. Admittedly, the petitioner became eligible for promotion only much after 1973. The petitioner in the absence of

having a SSLC certificate in the year 1973, cannot claim the benefits of assistant without the minimum educational qualification. He is therefore, even on merits not eligible for the relief as such sought for in the present writ petition. The petitioner cannot rely only on the Board proceeding dated 20.07.1973 in Ms.No.1423 in the light of subsequent Board proceeding 31.10.1975.

24. Accordingly the writ petition fails and dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Pkn

To

1. The Chairman,
Tamil Nadu Electricity Board,
10th Floor, Eastern Wing,
New No.144, Old No.800,
Anna Salai, Chennai - 600 002.
2. The Chief Engineer / Personnel,
Tamil Nadu Electricity Board,
8th Floor, Eastern Wing,
New No.144, Old No.800,
Anna Salai, Chennai - 600 002.
3. The Senior Personnel Officer,
Recruitment,
Tamil Nadu Electricity Board,
8th Floor, Eastern Wing,
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+1cc to Mr.D.Ashokkumar, Advocate, S.R.No.46039

SSD(CO)

RRS (02/07/2019)

WP.No.28512 of 2013

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