

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.4411 of 2013

M.Jayachandran

... Petitioner

Vs.

1. The Chief Engineer,
North Chennai Thermal Power Station,
Chennai - 600 120.

2. The Chief Engineer / Employment,
Tamil Nadu Electricity Board,
No.800, Anna Salai Chennai 600 002.

.... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorari, calling for the records pertaining to the proceedings of the 1st respondent in letter No.C.E/N.C.T.P.S/Suptd./E/Ka.Pa/AEE/JE/D.Employment/No.1095/07 dated 20.08.2007 and quash the same and consequently direct the respondents to provide job opportunity to the petitioner on the basis of land acquired in survey No.811 & 816 to an extent of 2 acres & 78 cents in valoor village ponneri Taluk, Thiruvallur District which was owned by his father Mr.Murugesan and orders of this Hon'ble High Court in WA.No.210/1999 dated 26.09.2003.

For Petitioners : Ms.R.Pushpalatha for
M.Anaimuthuraja

For Respondents : Mr.T.S.Aakash, (for R1 & R2)

O R D E R

This Writ of Certiorarified Mandamus has been filed against the order of the Chief Engineer, North Chennai Thermal Power Station, Chennai, dated 20.08.2007 and quash the same and consequently direct the respondents to provide job opportunity to the petitioner on the basis of Land Acquired in Survey No.811 & 816 to an extent of 2 acres & 78 cents in Vallorr village, Ponneri Taluk, Thiruvallur District which was owned by his father Mr.Murugesan and orders of this Hon'ble High Court in WA.No.210/1999 dated 26.09.2003.

2. The petitioner's land was acquired in 1990. According to the petitioner, there was a scheme for providing employment to such of persons whose lands are acquired. The material on record shows that certain persons approached this Court by filing WP.Nos.10245 of 1997 and 5218 of 1996. The learned Single Judge of this Court had allowed the writ petition. Against the said order the Electricity Board had filed an appeal before the Division Bench of this court in WA.Nos.210 and 280 of 1999. This Court set aside the said order and passed the following directions.

" 23. Thus, while the Board admits that it had provided employment to families of the land owners from whom it had acquired lands, it's stand is that such employment was provided only to persons who had been "displaced" and who had been dependent on those lands as their sole means of livelihood. If the petitioners also are able to establish that they fall into the same category they would also be entitled to the same treatment. As to whether they fulfill that criteria cannot be examined by this Court in this proceedings.

24. We leave it open to the Board to designate one of it's officers to carry out such an inquiry for which purpose it may receive applications from the petitioners. If the Board so desires, it shall be open to the Board to request the District Collector to carry out such an exercise, and in that event, the Board will be at liberty place before him all such materials that it considers to be relevant.

25. After that, the Board shall, subject to the availability of vacancies, nature of job and fitness of the applicants for performing that job, offer employment as Helper (Trainee) to such of those who qualify.

26. It is the case of the petitioners that there are 241 families from Vallur village who, though entitled, have been denied employment for one of their members. The exercise which the Board is required to carry out is confined only to those families. This exercise shall be completed within a period of six months from today.

27. We do not see any justification for the numerous restrictions/conditions imposed in the order under appeal. That order is set aside. The appeal is allowed, subject to the directions given in

this judgment. CMPs.NO.2990, 2300, 6273, 6274 and 9233 of 1999 are closed."

3. The petitioner states that he had given his application for employment. His application has been rejected by the impugned order on the ground that the petitioner was over aged and therefore could not be provided with the employment. It is this order which is challenged in the present writ petition.

4. Heard the learned counsel for the parties.

5. The learned counsel for the petitioner would state that since the petitioner's land has been acquired and it was a policy of the Electricity Board to provide employment, the petitioner was entitled to be given a suitable employment in accordance with the policy. The learned counsel would state that the age of the petitioner of the date when the lands are acquired must be considered and his age when the impugned order was passed could not be the basis of rejecting the application.

6. On the other hand, the learned counsel for the respondent would contend that the impugned order was passed by letter No.C.E/N.C.T.P.S/Suptd./E/Ka.Pa/AEE/JE/D.Employment/No.1095/07, dated 20.08.2007, and writ petition has been filed after 5 years from the date of the impugned order and therefore this writ petition is barred by laches. He would contend that the petitioner has not approached the Court and therefore the petitioner is not entitled for benefit given by the Division Bench as sought for in the instant writ petition.

7. The Tamil Nadu Electricity Board, by its proceedings dated 21.05.1990 has laid down a policy for giving employment to persons whose lands had been acquired. The petitioner was 22 years, on the date of application he did not approach this Court for employment at that point of time. The petitioner's father admittedly, is working in some private organization. Since the petitioner was not eligible on the date when the lands were acquired, he would not be covered under the policy of the Electricity Board. In any event, the writ petition has been filed after 5 years after the impugned order was passed i.e., 20.01.2007.

8. 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 blameworthy 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)

9. 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."

10. 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."

11. 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."

12. 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 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."

13. No reason has been given by the petitioner as to why he did not approach the Court within reasonable time after the impugned order was passed. This Court also cannot lose sight of the fact that the petitioner was probably ineligible on the date when the land were acquired, because his father was employed. The family was not in the need of employment. The purpose of the policy was to ensure that some one in the family must be given some employment, otherwise the family will be faced with economic problem.

14. In view of the fact that the writ petition is filed after 5 years of the impugned order, the writ petition is dismissed. No Costs.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

Pkn.

To

1. The Chief Engineer,
North Chennai Thermal Power Station,
Chennai - 600 120.

2. The Chief Engineer / Employment,
Tamil Nadu Electricity Board,
No.800, Anna Salai, Chennai 600 002.

+1cc to M.Anaimuthuraja, Advocate, SR.No.86384.

+1cc to M/s.T.S.Gopalan & Co., Advocate, SR.No.86185.

W.P.No.4411 of 2013

SAI (CO)
CSR:20/01/2020