

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.A.No.3124 of 2019

M.Thirunavukkarasu

... Appellant

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

2. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

3. The Joint Director of School Education (Personnel),
Chennai District,
Chennai.

.... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the Order dated 28.03.2019 made in W.P.No.26548 of 2018.

Petition praying to issue of a Writ of Mandamus, directing
the respondents to consider the representation submitted by the
petitioner dated 11.1.2017 for grant of promotion to the post of
B.T. Assistant (Maths) retrospectively with effect from
18.6.2002 based on the seniority and qualification of the
petitioner with all consequential and other attendant benefits
including arrears of salary.

For Appellant : Mr.G.Sankaran

For Respondents: Mr.K.Karthikeyan
Government Advocate.

J U D G E M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

Instant writ appeal is directed against the order dated 28.03.2019 made in W.P.No.26548 of 2018.

2. Short facts leading to the filing of writ appeal are as follows:

(i) Writ petitioner was initially appointed as a Secondary Grade Teacher in Elementary Education on 29.09.1999. Thereafter, he was transferred to School Education by Unit Transfer on 04.07.2001. Writ petitioner was also qualified with B.Sc. Statistics in the year 1988 and B.Ed. in the year 1993 and therefore, eligible for promotion to the post of B.T.Assistant (Maths)

(ii) Grievance of the writ petitioner is that though he was eligible for promotion, based on his seniority and qualification, he was not considered on the premise that he was qualified with B.Sc. (Statistics) instead of B.Sc. (Maths.). Accordingly, his promotion to the post of B.T.Assistant (Maths) was deferred for getting clarification as to whether he is eligible. Though, his promotion was due in the year 2002, he was not considered for promotion. Hence, he sent representations to the authority concerned. Thereafter, based on the clarification from the Teachers Recruitment Board, he was promoted as B.T.Assistant (Maths) only on 08.07.2009, instead of 18.06.2002.

(iii) Placing reliance on G.O.Ms.No.133, School Education Department dated 04.06.2012, declaring equivalence of B.Sc. (Statistics) with B.Sc. (Maths), petitioner has contended that person qualified with B.Sc. (Statistics) is also eligible for promotion to the post of B.T. Assistant (Maths). He further submitted that as per the order of the Hon'ble Full Bench of this Court in Nadar Thanga Shubha Laxman, Vs. State of Tamil Nadu, reported in 2014(3) CTC 433, declaration of equivalence would date back to the date of acquisition of the degree.

(iv) Therefore, petitioner submitted representation seeking to give promotion to the post of B.T.Assistant (Maths) with effect from 18.06.2002, on which date, he was entitled for promotion to the post of B.T.Assistant (Maths), based on his seniority and eligibility. As there was no response, petitioner has filed WP No.26548 of 2018, for a writ of mandamus, directing the respondents to consider his representation dated 11.01.2017 for grant of promotion to the post of B.T.Assistant (Maths)

retrospectively with effect from 18.06.2002, based on his seniority and qualification, with all consequential and other attendant benefits including arrears of salary.

(v) After hearing the learned counsel for the parties, writ Court, dismissed the plea of the writ petitioner vide order dated 28.03.2019, made in WP No.26548 of 2018. Relevant portion of the order is as follows:

"2. The very relief sought in the present writ petition is absolutely misconceived.

3. The grievance in relating to the promotions are to be adjudicated by the employees within the reasonable period of time. Even as per the Rules in respect of objections to be raised for promotion of juniors or the dispute relating to seniority is three years.

4. However, the present writ petition is for a direction to consider the representation dated 11.1.2017 in order to consider the case of the writ petitioner for grant of promotion to the post of B.T.Assistant (Maths) retrospectively with effect from 18.6.2002. The person whose left over is ready for long back, he cannot woke up one fine morning and knocked the doors for the purpose of redressal of his grievances.

5. This apart, the Hon'ble Supreme Court of India also held that such a direction to dispose of the representation do not serve to the cause of justice, the litigant is back again before this Court. This apart, in the present case, the writ petitioner has not established any ground for such a long delay in filing the writ petition as well as the representation dated 11.01.2017.

6. Thus, the writ petition is devoid of merits and the same stands dismissed. However, there shall be no order as to costs."

3. Aggrieved over the abovesaid order, writ petitioner has filed the instant writ appeal on the following grounds.

(a) Writ Court has not appreciated the fact that declaration of equivalence of B.Sc. (Statistics) was ordered only as per G.O.Ms.No.133, School Education Department dated 04.06.2012 and therefore, the appellant is accrued with the right of promotion to the post of B.T.Assistant (Maths) only based on the

Government Order.

(b) Writ Court has not appreciated the fact that the Hon'ble Full Bench of this Court passed orders in A.Nadar Thanga Shubha Laxman Vs. The State of Tamil Nadu reported in 2014 (3) CTC 433 making it clear that declaration of equivalence would be date back to the date of acquisition of degree. Accordingly, the appellant having acquired B.Sc., (Statistics) qualification in the year 1988 and B.Ed., (Maths) in the year 1993 is eligible for promotion to the post of B.T.Assistant (maths) retrospectively on par with juniors.

(c) Writ Court has not appreciated the fact that even in the year 2007, the claim of the appellant was returned by CEO, Trichy, vide proceedings dated 23.04.2007 by stating that the appellant is not entitled for promotion to the post of BT Assistant (Maths) since he is qualified in a different subject.

(d) If the appellant is not given the benefit of promotion based on the qualification acquired which remains to be eligible qualification, the same will be against the dictum laid down by this Court declaring equivalence with retrospective effect from the date of acquiring the qualification.

(e) Writ Court has not appreciated the fact that the Government have issued orders in similar cases granting retrospective promotion for the individuals based on the Government Order declaring equivalence of subject issued subsequently. While so, the appellant cannot be discriminated.

(f) When there are records to show that the juniors are given promotion overlooking the appellant, he cannot be denied the service benefits of pay and post parity on par with juniors based on subsequent Government Order declaring equivalence of degree and High Court order.

4. On the above grounds and inviting the attention of this Court to the Hon'ble Full Bench Decision in A.Nadar Thanga Shubha Laxman Vs. The State of Tamil Nadu reported in 2014 (3) CTC 433, Mr.G.Sankaran, learned counsel advanced arguments seeking reversal of the order, impugned in this appeal and prayed for consequential orders.

5. On this day, when the matter came up for admission, Mr.K.Karthikeyan, learned Government Advocate was put on notice.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. G.O.Ms.No.133, School Education Department dated 04.06.2012, reads as under:

ABSTRACT

School Education - Equivalence Committee - Considering the Educational qualification obtained from various Universities as equivalent to the qualification prescribed for the post of B.T.Teachers - Recommendation of the Equivalence Committee - Orders - Issued

School Education (M2) Department
G.O.Ms.No.133 Dated: 04.06.2012

திருவள்ளூர், 2043

வைகாசி -22

Read:

1. From the Chairman, Teachers Recruitment Board letter RC.No.5727/ M2/2010 dated 29.09.2010
2. Government letter NO.31796/M2/2010-2 dated 22.11.2010
3. Orders of High Court of Madras in W.A. Nos 1197/2009 and M.P. Nos.1 & 2/2010 dated 28.01.2010
4. G.O.(Ms) No.24 Personnel and Administrative Dept. dated 4.2.2011
5. From the Secretary, Tamil Nadu Public Service Commission letter No.7140/ RND-F1/2010 dated 09/04/2012

ORDER:

In the letter first read above, the Chairman, Teachers Recruitment Board has stated that based on the equivalence certificate issued by various universities, candidates are applying for the recruitment for the post of B.T. Teachers and in this regard he has requested to issue clarification regarding the equivalence of 23 subjects. In the Government letter second read above the Secretary, Tamil Nadu Public Service Commission was requested to place the above subjects before the Equivalence Committee for considering as Equivalent to the qualification prescribed for the post of B.T. Teachers.

2. The High Court of Madras in its order third read above granted four weeks time to the Government to communicate the decision of the Committee.

3. Based on the orders of the High Court, Madras the question as to whether the degrees mentioned in Column 2 are considered as equivalent to the degrees mentioned in Column 3 in the following table.

S.No.	Name of the Subject / Awarded by the University / Instruction	Consider as equivalent to
1	B.Sc., Statistics	B.Sc. Maths
2	B.Sc., Applied Science	B.Sc. Maths
3	B.Sc. Bio-Physics	B.Sc. Physics
4	B.Sc., Industrial Electronics (Bharathidasan University)	B.Sc. Physics
5	B.Sc. M.Sc. Bio Chemistry	B.Sc., M.Sc., Chemistry
6	B.Sc., M.Sc., Organic Chemistry	B.Sc., M.Sc., Chemistry
7	B.Sc. in Organic Chemistry	B.Sc., Chemistry
8	B.Sc. Chemical Science	B.Sc., Chemistry
9	Integrated Chemistry 5 years Course (University of Madras)	B.Sc., Chemistry
10	B.Sc. Polimer Chemistry	B.Sc., Chemistry
11	B.Sc. Physical Chemistry	B.Sc., Chemistry
12	B.Sc. Industrial Chemistry	B.Sc., Chemistry
13	B.Sc. Environment Biology (Madurai Kamaraj University)	B.Sc. Botany

S.No.	Name of the Subject / Awarded by the University / Instruction	Consider as equivalent to
14	B.Sc. Environment Biology	B.Sc. Botany
15	B.Sc. Plant Biology (University of Madras)	B.Sc. Botany
16	B.Sc. Plant Bio-Technology (University of Madras)	B.Sc. Botany
17	B.Sc. Marine Biology	B.Sc. Botany
18	B.Sc. Environment Zoology (University of Madras)	B.Sc. Zoology
19	B.A.Special English	B.A.English
20	B.A.Commerce English	B.A.English
21	B.A. in English - Computer Application	B.A.English
22	B.A.Functional English	B.A.English
23	B.A. Oriental Culture	B.A.English

4. Orders have been issued in the G.O. fourth cited stating that the Degree of B.Sc. (Bio-Chemistry) is not equivalent to B.Sc. (Chemistry) for the purpose of employment in public Services based on the recommendations of the Equivalence Committee.

5. In the letter fifth read above, the Secretary, Tamil Nadu Public Service Commission has stated that the matter of considering the educational qualifications possessed by the candidates obtained from various Universities as Equivalent to the qualification prescribed for the post of Teachers in School Education Department was placed before the 33rd Equivalence Committee Meeting held on 27.03.2012 for its recommendation and the Committee has recommended as follows:

S. No .	Name of the Subject / Awarded by the University / Instruction	To be Considered as equivalent to	Equivalent / No Equivalent
1	B.Sc. Statistics University of Madras	B.Sc. Maths	B.Sc. Maths provided that the candidates are qualified B.Ed. in Maths
2	B.Sc. Plant Bio Technology University of Madras	B.Sc. Botany	Equivalent
3	B.Sc. Environmental Zoology University of Madras	B.Sc. Zoology	Equivalent
4	B.Sc. Plant Biology University of Madras	B.Sc. Botany	Equivalent
5	B.A. Special English University of Madras	B.A. English	Not Equivalent
6	B.A.Commerce English University of Madras	B.A. English	Not Equivalent
7	M.Sc. (Chemistry 5 Year Integrated Course) University of Madras	B.Sc. Chemistry	Equivalent
8	B.Sc. Environmental Biology Madurai Kamaraj University	B.Sc. Botany	Equivalent
9	B.Sc. (Industrial Electronics) Bharathidhasan University	B.Sc. Physics	B.Sc. Industrial Electronics and B.Ed. in Physics are eligible to teach physics in School level

S. No .	Name of the Subject / Awarded by the University / Instruction	To be Considered as equivalent to	Equivalent / No Equivalent
10	B.A. (English Computer Application) Periyar University	B.A. English	Equivalent
11	B.A.Functional English Avinashilingam Deemed University	B.A. English	Equivalent

5. The Government after careful consideration, have decided to accept the recommendation of the Equivalence Committee and accordingly directs that in table- I, the degrees mentioned in column 2 are EQUIVALENT to the degrees mentioned in column 3 of the table- I and in table- II, the degrees mentioned in column 2 are NOT EQUIVALENT to the degrees mentioned in column 3 of the table- II mentioned below, with regard to the qualification prescribed for recruitment to the post of BT. Teachers in the State.

Table - I

S. No .	Name of the Subject / Awarded by the University / Instruction	To be Considered as equivalent to	Equivalent / Not Equivalent
1	B.Sc. Statistics University of Madras	B.Sc. Maths	B.Sc. Maths provided that the candidates are qualified B.Ed. in Maths
2	B.Sc. Plant Bio Technology University of Madras	B.Sc. Botany	Equivalent
3	B.Sc. Environmental Zoology University of Madras	B.Sc. Zoology	Equivalent
4	B.Sc. Plant Biology University of Madras	B.Sc. Botany	Equivalent

S. No .	Name of the Subject / Awarded by the University / Instruction	To be Considered as equivalent to	Equivalent / Not Equivalent
5	M.Sc. (Chemistry 5 Year Integrated Course) University of Madras	B.Sc. Chemistry	Equivalent
6	B.Sc. Environmental Biology Madurai Kamaraj University	B.Sc. Botany	Equivalent
7	B.Sc. (Industrial Electronics) Bharathidhasan University	B.Sc. Physics	B.Sc. Industrial Electronics and B.Ed. in Physics are eligible to teach physics in School level
8	B.A. (English Computer Application) Periyar University	B.A. English	Equivalent
9	B.A.Functional English Avinashilingam Deemed University	B.A. English	Equivalent

Table-II

S. No .	Name of the Subject / Awarded by the University / Instruction	To be Considered as equivalent to	Equivalent / No Equivalent
1	B.A. Special English University of Madras	B.A. English	Not Equivalent
2	B.A.Commerce English University of Madras	B.A. English	Not Equivalent

(BY ORDER OF THE GOVERNOR)

D.Sabitha

Principal Secretary to Government.

To

The Secretary, Tamil Nadu Public Service Commission,
Chennai-6

The Chairman, Teachers Recruitment Board, Chennai-6

All Sections of School Education Department, Chennai-9

All HODs of School Education Department, Chennai-6/2

Personnel and Administrative Department, Chennai-9

Higher Education Department, Chennai-9

All Secretaries to Government, Secretariat, Chennai-9

The Special Personal Assistant to Minister (School
Education), Chennai-9

The Special Personal Assistant to Minister (Higher
Education), Chennai-9

8. Order passed by the Government in case of a similar
individual read as under.

Department of School Education,
Secretariat,
Chennai-9

Letter No.5955/PK3(2)/2015-3 dated 19.09.2015

From,

Thirumathi.D.Sabitha, I.A.S.,
Principal Secretary to Government

To

The Director of School Education,
Chennai-6.

Sir,

Sub: School Education-Writ Petition No.34227/2013-
Tamil Education Subordinate Services- B.Ed Special
Education MR degree received by Mr.K.Azhagarraj from
Madurai Kamarajar University, who is working as
Graduate Science Teacher in Government Higher Secondary
School, Mugandapatti, Sivagangai District- which is
equivalent to B.Ed General Education- Clarification
given to regularize his employment for the date of his
joining- reg.

Ref: 1) Order of the High Court of Chennai
dated 03.01.2014 in W.P.No.34227/2013

2) Your letters Na.Ka.No. 12115/C2/E1/2009 dated

07.01.2015 and 13.07.2018 .

Your attention is drawn to the references above.

2. Clarification has been sought to regularize the employment of Mr.K.Azhagaraj, Graduate Science Teacher, Government Higher Secondary School, Mundagapatti, Sivagangai District from the date of his joining as he had completed B.Ed Special Education (MR) degree even before the order was passed by the High Court of Chennai stating that it is equivalent to B.Ed General Education.

3. Clarification is being issued to regularize the employment of the individual from 07.03.2017, the date of his joining the employment, on account of executing the Order of the High Court of Chennai on the basis that the B.Ed Special Education (MR) completed by Mr. Mr.K.Azhagaraj, Graduate Science Teacher, Government Higher Secondary School, Mundagapatti, Sivagangai District, has been ordered equivalent to B.Ed Special Education vide G.O.Ms.No.56, Higher Education, dated 24.12.2012, that the individual had been appointed directly through the Recruitment Board prior to the issuance of the aforesaid order and also on the basis of clarification issued by the Higher Education Department on 18.02.2014 the such a degree is valid from the date it was received based on the G.O.(K) No.22827/Nee.Va.3(2)/2013-6 issued on the recommendation by Equivalent Education Board that the degree awarded by one University is to be considered equivalent to the one awarded by another University.

Yours truly,

For Principal Secretary to Government

9. In 2002, the appellant was not considered for promotion, stating that he did not possess the required qualification viz., B.Sc. (Maths). Equivalence has been declared in the year 2012, vide G.O.Ms.No.133, School Education Department dated 04.06.2012. Appellant has not chosen to approach this Court within a reasonable time.

10. What is reasonable time has not been explained in any enactment. Reasonable time depends upon the facts and circumstances of each case.

(i) The words "reasonable time", as explained in Veerayeeammal v. Seeniammal reported in 2002 (1) SCC 134, at Paragraph 13, is as follows:

"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."

11. The decision of the Hon'ble Full Bench in A.Nadar Thanga Shubha Laxman Vs. The State of Tamil Nadu reported in 2014 (3) CTC 433, was rendered on 29.11.2013.

12. After nearly six years from the date of equivalence, after five years from the date of judgment in A.Nadar Thanga Shubha Laxman's case [quoted supra], writ petition has been filed for a writ of mandamus, directing the respondents to consider his representation dated 11.01.2017 for grant of promotion to the post of B.T.Assistant (Maths) retrospectively with effect from 18.06.2002, based on his seniority and qualification, with all consequential and other attendant benefits including arrears of salary.

13. Certainly, the writ petition is hit by delay and latches. Useful reference can be made to the decision in P.S. Sadasivasamy Vs. State of Tamil Nadu, reported in (1975) 1 Supreme Court Cases 152, wherein the Hon'ble Supreme Court in para:2 has held as follows:-

"2....A person aggrieved by an order or promoting a

junior over his head should approach the Court at least within six months or at the most a year order of suspension such promotion; it is not that there is any period of limitation of the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal".

14. Reference can also be made to few decisions of the Supreme Court, where inordinate delay and laches, on the part of the litigant in approaching the Court has been disapproved:

(i) In State of M.P. v. Bhailal Bhai reported in AIR 1964 SC 1006, the Hon'ble Supreme Court held that unreasonable delay denies to the petitioner the discretionary extraordinary remedy of mandamus, certiorari or any other relief.

(ii) 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."

(iii) In *State of Maharashtra v. Digambar* reported in AIR 1995 SC 1991, the Hon'ble Supreme Court, considered a case, where compensation for the acquired land was claimed belatedly and at Paragraphs 12, 18 and 21, 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 blame-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 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.

18. Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled for grant of such relief was explained

succinctly by Sir Barnes Peacock, long ago, in Lindsay Petroleum Co. v. Prosper Armstrong (1874) 5 PC 221) thus :

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of Justice or injustice in taking the one course or the other, so far as it relates to the remedy."

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 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."

(iv) In State of Rajasthan v. D.R. Laxmi reported in 1996 (6) SCC 445, the Hon'ble Supreme Court observed that though the order may be void, if the party does not approach the Court within a reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner.

(v) 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."

(vi) In S.S. Balu v. State of Kerala, (2009) 2 SCC 479, wherein at paragraph No.17, the Hon'ble Supreme Court held as follows:

"17. It is also well-settled principle of law that "delay defeats equity". The Government Order was issued on 15-1-2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal thereagainst, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage. In NDMC v. Pan Singh this Court held: (SCC p. 283, para 16)

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were

employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction."

15. Even taking it for granted that a writ petition is maintainable, the petitioner has not chosen to implead those teachers, whose seniority is likely to be affected, if the prayer is ultimately granted. Not impleading them, is fatal to the writ petition. It is trite law, that if necessary parties are not impleaded in a lis, then the lis has to be dismissed, on this ground alone.

16. Even though Code of Civil Procedure is not strictly applicable to writ petitions, but the principles underlying Code of Civil Procedure, which is based on principles of natural justice, are applicable to the writ petition. Order I Rule 9 of Code of Civil Procedure reads as under:

9. Misjoinder and nonjoinder- No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:

[Provided that nothing in this rule shall apply to nonjoinder of a necessary party.]

17. Proviso clearly states that non-joinder of necessary parties, would entail in dismissal of the suit.

18. The Hon'ble Supreme Court, in several judgments held that a writ petition under Article 226 of the Constitution of India cannot be entertained, if necessary parties, whose rights would be affected are not impleaded as parties.

(i) In Prabodh Verma v. State of U.P. reported in 1984 (4) SCC 251 the Hon'ble Supreme Court has held as follows:

"20. The real question before us, therefore, is the correctness of the decision of the High Court in the Sangh's case. Before we address ourselves to this question, we would like to point out that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects. The first defect was that of non-joinder of necessary parties. The only

respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties-not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties. "

50.To summarize our conclusions:

(1) A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties.

(2) The Allahabad High Court ought not to have proceeded to hear and dispose of Civil Miscellaneous Writ No. 9174 of 1978 – Uttar Pradesh Madhyamik Shikshak Sangh v. State of Uttar Pradesh [1979 All LJ 178] – without insisting upon the reserve pool teachers being made respondents to that writ petition or at least some of them being made respondents thereto in a representative capacity as the number of the reserve pool teachers was too large and, had the petitioners refused to do so, to dismiss that writ petition for non-joinder of necessary parties."

(ii) In K.H. Siraj vs High Court Of Kerala & Ors , reported in 2006 (6) SCC 395, the Hon'ble Supreme Court has observed as under.

"The writ petitions have also to fall on the ground of absence of necessary parties in the party array. Though the appellants/petitioners contend that they are only challenging the list to a limited extent, acceptance of their contention will result in a total re-arrangement of the select list. The candidates will be displaced from their present ranks, besides some of them may also be out of the select list of 70. It was, therefore, imperative that all the candidates in the select list should have been impleaded as parties to the writ petitions as otherwise they will be affected without being heard. Publication in the newspaper does not cure this defect. There are only a specified definite number of candidates who had to be impleaded namely, 70. It is not as if there are a large unspecified number of people to be affected. In such cases, resort cannot be made to Rule 148 of the Kerala High Court Rules. That Rule can be applied only when very large number of candidates are involved and it may be not able to pin point those candidates with details. In our view, the writ petitions have to fail for non-joinder of necessary parties also.

(iii) Similarly, in Ishwar Singh v. Kuldip Singh reported in 1995 Supp (1) SCC 179, the Hon'ble Supreme Court observed as under.

"4. It is not disputed by the learned counsel for the parties that except Ishwar Singh, no other selected candidate was impleaded before the High Court. The selection and the appointments have been quashed entirely at their back. It is further stated that even Ishwar Singh, one of the selected candidates, who was a party, had not been served and as such was not heard by the High Court. We are of the view that the High Court was not justified in hearing the writ petition in the absence of the selected candidates especially when they had already been appointed. We, therefore, set aside the judgment of the High Court dated December 8, 1992 and send the case back for fresh decision after notice to the parties. The appeals are allowed in the above terms. No costs. "

19. In the light of the above discussion and decisions, this Court is not inclined to interfere with the order of the writ Court. Hence, the writ appeal is dismissed. No Costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
State of Tamil Nadu,
School Education Department,
Secretariat, Fort St. George,
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2. The Director of School Education,
DPI Campus, College Road,
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3. The Joint Director of School Education (Personnel),
Chennai District,
Chennai.

+lcc to Mr.G.Sankaran, Advocate sr.79469
+lcc to Government Pleader sr.79702

W.A.No.3124 of 2019

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