

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 02.12.2019
CORAM
THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R.HEMALTHA

WP.Nos.27056, 27074, 27079, 27081, 27084, 27087, 27089 & 27091,
27095 & 27096 of 2019
and
W.M.P.Nos.26436,26443, 26444, 26446. 26447, 26448, 26449, 26450,
26451, 26458, 26461, 26462, 26463, 26464, 26466, 26470,
26472 & 26473 of 2019

W.P.No.27056 of 2019

- 1.Union of India rep.by
The General Manager,
Southern Railway
Park Town, Chennai 600 003.
- 2.The Chief Personnel Officer,
Southern Railway,
Park Town, Chennai-600 003. : RR1 & 2 in Wps.27056,
27074, 27079, 27081, 27084, 27087, 27089, 27091, 27095
& 27096/2019
- 3.The Deputy Chief Personnel Officer / M&E and Tfc.,
Southern Railway
Park Town, Chennai 600 003. : R3 in WPs.27056,
27074, 27079, 27081, 27084, 27087, 27089, 27091,
& 27095/2019
- 4.The Cheif Workshop Manager,
Carriage & Wagon Works, Southern Railway
Perambur, Chennai 600 023. : R4 in WPs.27056,
27074, 27079, 27081, 27084, 27089, 27091,
& 27095/2019
: R3 in WP.27087 & 27096/2019
- 5.The Secretary,
Railway Board,
Raj Bhavan,
New Delhi 110 001. : R5 in WPs.27056, 27074, 27079,
27081, 27084, 27089, 27091 & 27095/2019
: R4 in WP.27087 & 27096/2019

Vs

1.The Registrar,
Central Administrative Tribunal,
Chennai bench,
Chennai 600 104. : R1 in all

2.Hector David Clark : R2 in WP.27056/2019

3.K.R.Mani : R2 in WP.27074/2019

4.K.Geetha : R2 in WP.27079/2019

5.M.Ganesan : R2 in WP.27081/2019

6.S.Murali : R2 in WP.27084/2019

7.N.Raghunathan : R2 in WP.27087/2019

8.M.S.Rajaraman : R2 in WP.27089/2019

9.B.A.Samuel : R2 in WP.27091/2019

10.S.Jayanandam : R2 in WP.27095/2019

11.K.S.Rajan : R2 in WP.27096/2019

PRAYER in W.P.No.27056 of 2019:-Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorari to call for the records of the 1st respondent Tribunal relating to its order in O.A.Nos.936, 674,1015,1025,1031,1032,1033,1034, 1035 & 1452 of 2018 passed on 20.11.2018 in all & 29.10.2018 in WP.No.27096 of 2010) and quash the same as illegal and without jurisdiction.

For Petitioner in all W.P.s : Mr.A.Radhakrishnan
Senior Counsel for
Mrs.A.Srijayanthi

For Respondents in W.P.s : Mr.R.Pandian

ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.,]

The official respondents in O.A.1452 of 2018 and M.A.No.310/364/2018 in O.A.Nos.310/936 of 2018, 674/2018, 1015/2018, M.A.No.423/2018 and O.A.No.1025 of 2018; O.A.NO.1031 & 1032, 1033, 1034 & 1035 of 2018 are the writ petitioners and aggrieved by the orders dated 29.10.2018 made in O.A.No.1452 of

2018 and common orders dated 20.11.2018 made in O.A.No.936 of 2018 and etc., batch, in and by which, all applications came to be allowed at the admission stage itself, had filed these Writ Petitions.

2. It is not in dispute that the private respondents had worked as Kalasi in the Inspection Wing of the Production Control Organisation, Carriage Works, Perambur, Chennai 600 023 and all of them retired from service on attaining the age of superannuation and some of them started giving representations from the year 2002 onwards to revise the Scale of Pay. Thiru.T.Chandrasekaran and Mr.D.Selvaraj and others had filed O.A.No.302/2002 and 460/2002 respectively on the file of the Central Administrative Tribunal, Madras Bench, praying for conferment of higher pay scale of Rs.8000/- and also other consequential reliefs. The Tribunal, vide impugned common order dated 09.12.2002, had quashed the impugned order, denying them the said relief and further directed the respondents therein to consider the case of the applicants in those Original Applications for grant of pay scale of Rs.5000-8000 with effect from 01.01.1996, entitling for consequential benefits and also stipulated four months time limit to comply with the said order.

3. Subsequently, Mr.R.Ramaswamy and others filed O.A.No.85 of 2003 for the similar relief and it was also ordered by the Central Administrative Tribunal, vide order dated 28.10.2003. The official respondents in O.A.No.460 & 302/2002, aggrieved by the order dated 09.12.2002 filed W.P.No.16193 & 16194 of 2003 and the Division Bench of this Court, vide common order dated 06.01.2006, had upheld the orders passed by the Tribunal and taking into consideration the decision of the Hon'ble Apex Court in State of Haryana Vs. Haryana Civil Secretariat Staff Association (AIR 2002 SC 2589) directed the writ petitioners/official respondents for grant of pay scale of Rs.5000-8000, on parity with the Master Craftment, and also held that it was justifiable. The official respondents, aggrieved by the said order, filed Special Leave petition before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court had entertained those petitions and converted as Civil Appeal No.6300-6301/2010 and the Hon'ble Supreme Court, vide final judgment dated 14.06.2016, had dismissed the Civil Appeals.

4. A perusal of the materials placed before this Court would disclose that only some of them had filed Miscellaneous Applications before the Central Administrative Tribunal for condonation of delay of 14 years 3 months and 29 days and most of them did not even file any such application, despite the fact that Administrative Tribunal prescribed the period of limitation, in the event of representation not being considered, which resulted in adverse orders.

5. The Tribunal, vide impugned order, had straight away allowed the said Original Applications by taking into consideration the dismissal of the Civil Appeals by the Honble Supreme Court cited supra and aggrieved by the same, the official respondents had file these Writ Petitions.

6. Mr.A.Radhakrishnan, learned Senior Counsel assisted by Mrs.A.Srijayanthi, learned counsel appearing for the petitioners/official respondents would submit that though the private respondents are similarly placed like that of the applicants, who have been conferred with the said benefit, the fact remains that they were fenced, despite the fact that some of them started submitting representations about a decade back and did not approach the Court on time. Though it is obligatory on their part to give plausible explanation as to the delay in approaching the Tribunal, only some of them had filed Miscellaneous Applications to condone the delay of 14 years and odd and without even eliciting response from the official respondents in the Original Applications, all the Original Applications came to be allowed straight away. It is also pointed out by the learned Senior Counsel that the conferment of official benefits in favour of the private respondents from 01.01.1996 involve financial implication and grave consequence and therefore in all fairness, the Tribunal ought to have taken into consideration all the said fact and even assuming that the period of limitation has no application to the case on hand, still it is compulsory on the part of the private respondents to explain the delay and laches and in the absence of any tenable or plausible explanation, the impugned order warrants interference.

7. The learned Senior Counsel has also brought to the knowledge of this Court the proceedings of the Government of India (Bharat Sarkar) Ministry of Railways / Rail Mantralaya (Railway Board) RBE No.177/2003, No. PC-III/2003/CRC/6 dated 09.10.2003, Subject:-Restructuring of certain Group 'C' & 'D' cadres and also invited attention of this Court to paragraph no.13 (a) of the said proceedings and would submit that despite the fact that the private respondents did not approach the Tribunal on time, the Railway Administration is willing to confer them some benefits and would alternatively submit that since Original Applications came to be allowed at the admission stage itself, without affording any opportunity, orders may be set aside and may be remanded to the Tribunal for fresh adjudication and consideration.

8. Per contra, the learned counsel appearing for the private respondents has invited the attention of this Court to the judgment dated 13.08.2008 in C.S.No.5151-5152/2008 (Union of India and Others and Tarsem Singh) and would submit that it is

obligatory on the part of the Railway Administration to confer the benefits upon the similarly placed persons, in the light of the judgment of the Apex Court reported in Punjab State Electricity Board and another Vs. Thana Singh and others (2019 (4) SCC 133 and since it is a continuous cause of action, the question of limitation / delay and laches would be put against the private respondents.

9. This Court has carefully considered the rival submissions and also perused the materials placed before it.

10. In M/s.Rup Diamonds and Others Vs. Union of India and Others [1989 (2) SCC 356], the issue relating to laches came up for consideration before the Honble Supreme Court of India and after placing reliance upon the decision in Durga Prashad Vs. Chief Controller, I & E (1969 (1) SCC 185) : 1969 (2) AIR 86, it was observed as follows:

"Petitioners are re-agitating claims which they had not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a Court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate delay in preferring the present writ petition which is brought after almost a year after the first rejection. As observed by the Court in Durga Prashad case, the exchange position of this Country and the policy of the Government regarding international trade varies from year to year. In these matters it is essential that persons who are aggrieved by orders of the Government should approach the High Court after exhausting the remedies provided by law, rule or order with utmost expedition. Therefore, these delays are sufficient to persuade the Court to decline to interfere. If a right of appeal is available, this order rejecting the writ petition shall not prejudice petitioners' case in any such appeal."

11. It is not even the case of the private respondents that they were not aware of the legal remedies availed by the Government employees / persons similarly placed and it appears that they waited on the side lines and after becoming aware of the fact that co-employees, who are similarly placed got succeeded in their endeavour, had belatedly approached the Tribunal and as pointed out earlier, most of them not even filed any application for condonation of delay and only very few of

them had filed Miscellaneous Petitions for condonation of delay of 14 years and odd.

12. Section 21 of the Administrative Tribunal Act, 1985 (Central Act 13/1985) prescribed the period of limitation and it is relevant to extract the same:

"21. Limitation.—(1) A Tribunal shall not admit an application,

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where— (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

13. The Tribunal, while allowing M.A.No.364/2018 etc., vide common order dated 20.11.2018, not even adverted to the huge delay of the applicants/private respondents in approaching the Tribunal and allowed the Miscellaneous Petitions as well as the Original Applications at the admission stage itself.

14. It is also brought to the knowledge of this Court that the above said proceedings of the Ministry of Railways dated 09.10.2003 has been implemented and benefits have already been granted in favour of the private respondents.

15. The judgment in C.A.No.5151-5152/2008 relied on by the learned counsel for the private respondents would actually come to the aid of the writ petitioners for the reason that in paragraph no.6 of the said judgment, the Honble Supreme Court observed that the High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of Writ Petition, or from the date of demand to date of Writ Petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances. Therefore in real and technical sense, if at all the applicants are entitled for any benefits, in terms of arrears, it should have been three years prior to the date of Original Applications i.e., 2018. However taking into consideration the fair stand taken by the Railway Administration, this Court is inclined to pass the following order.

16. In the result, these Writ Petitions are partly allowed and the impugned order dated 29.10.2018 in O.A.No.310/01452/2018 dated 20.11.2018 in M.A.No.310 & 364/2018 in O.A.No.310 & 936/2018; O.A.No.674 & 1015/2018; M.A.No.423/2018 in O.A.Nos.1025 & 1031/2018; O.A.No.1032 to 1035/2018 are set aside, in the light of the conferment of benefits in terms of paragraph no.13(a) of proceedings of the Government of India (Bharat Sarkar) Ministry of Railways / Rail Mantralaya (Railway Board) RBE No.177/2003, No. PC-III/2003/CRC/6 dated 09.10.2003. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-/-

सत्यमेव जयते
Assistant Registrar(CS-III)

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Sub Assistant Registrar

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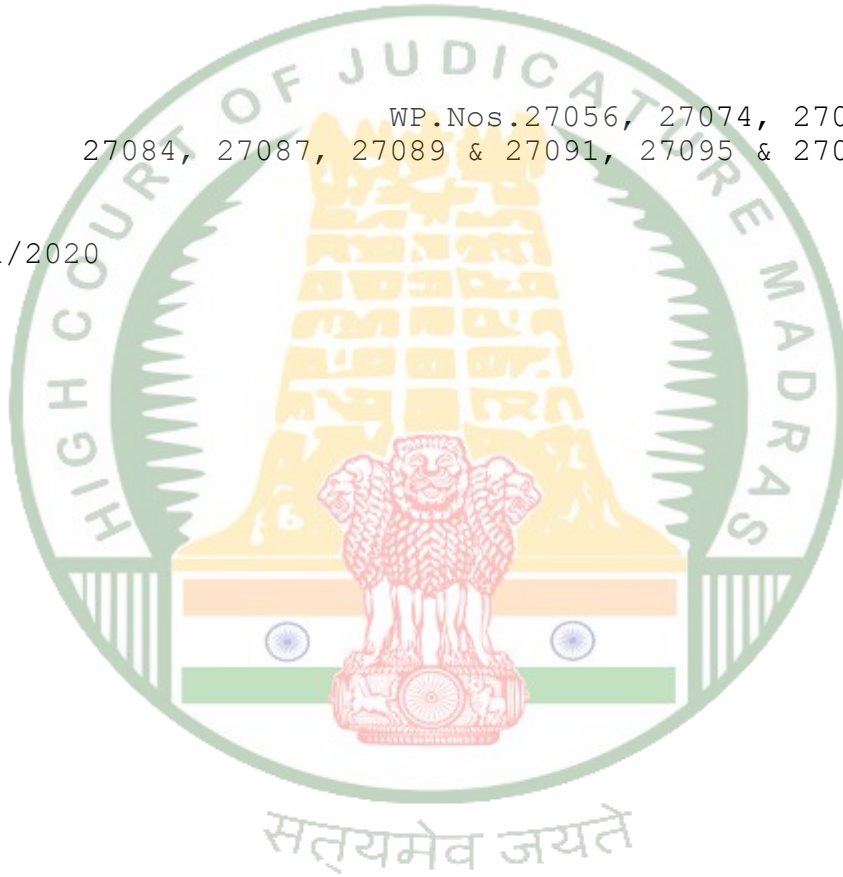
To

The Registrar,
Central Administrative Tribunal,
Chennai bench,
Chennai 600 104.

+10ccs to Mr.S.Saravaprakash, Advocate, SR.Nos.10139 to 101048.
+1cc to Ms.A.Srijayanthi, Advocate, SR.No.100616.

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27084, 27087, 27089 & 27091, 27095 & 27096 of 2019

RV (CO)
CSR: 27/01/2020



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