

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2019

CORAM:

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.NO.16686 OF 2017

A. Sahayam

.. Petitioner

Vs

1. The Chief Educational Officer,
Pannayar Street,
Manjakuppam,
Cuddalore 607 001.
2. The District Educational Officer,
Pennayar Street,
Manjakuppam,
Cuddalore 607 001.
3. The Correspondent,
St. Joseph's Higher Secondary School,
Manjakuppam,
Cuddalore 607 001

.. Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Mandamus to direct the respondents to enter petitioner's service register from 01.2.1988 and consequently to pay petitioner arrears of salary of Rs.4,73,075/-.

For Petitioner : Mr.R. Gururaj

For Respondents 1 & 2 : Mrs.P.Kavitha, G.A.

No appearance

ORDER

The writ petition is filed praying for issuance of writ of Mandamus directing the respondents to enter petitioner's Service register from 01.02.1988 and consequently to pay arrears of salary of Rs.4,73,075/- with interest to the petitioner.

2. The petitioner joined the 3rd respondent school as P.G.Assistant (Chemistry) on 22.11.1987 and he is continuing the same till date. During the period 1978 to 1979, the 3rd respondent school became a Higher Secondary School. The Government passed G.O.Ms.No.317 dated 1.2.1998 approving petitioner's post as P.G.Assistant. The petitioner was working

as P.G. Assistant (Chemistry) from 2.11.1987 and since then, he has been carrying out the same work .

3. According to the petitioner, though the approval has been given on 1.2.1998, but it has to be given effect to from 2.11.1987. The petitioner was not paid regular scale of pay for the period between 1.11.1987 and 1.2.1998. From 1.2.1988 to 3.6.1997, the difference of amount which comes to Rs.4,73,075/- is due to the petitioner towards arrears of salary. The petitioner sent a representation on 13.2.2017 to the respondents seeking disbursement of Rs.4,73,075/- towards arrears of salary. On 14.3.2017, the petitioner sent another representation, for which, the 3rd respondent has sent a belated communication stating that the approval has not been given from the date of initial appointment.

4. According to the learned counsel appearing for the petitioner, , the Government has passed GO.Ms.317 Education Department dated 1.2.1998 approving the post held by the petitioner as PG Assistant in the 3rd respondent School. Thereafter the 1st respondent has approved the petitioner's appointment with effect from 4.6.1997. Pursuant to the order of Government in GO.Ms.317 dated 1.2.1998, the writ petitioner was paid the salary from the date of his approval granted by the 1st respondent and the writ petitioner is still continuing as PG Assistant in the aforesaid school. Hence left with no other alternative, the writ petitioner has approached this Court seeking the aforesaid prayer.

5. On the other hand, learned Govt. Advocate appearing for the official respondents refuted such contention of the writ petitioner and based on the counter affidavit, he would state that the Government has sanctioned the post of PG Assistant, Chemistry in GO.Ms.317, dated 1.2.1998. Pursuant to the abovesaid Government Order, the Education Authority has approved the appointment of the petitioner with effect from 4.6.1997. Now the writ petitioner has filed the writ petition seeking arrears of salary for the period between initial date of appointment till the date of approval, which, he is not entitled to, thus he prayed for dismissal of this Writ Petition.

6. I have considered the aforesaid submissions of the parties and perused the materials available on record.

7. According to the learned counsel for the petitioner, the writ petitioner joined in the 3rd respondent school on 2.11.1987 as B.T. Assistant (Chemistry) and he has been continuing in service as PG Assistant in the 3rd respondent School till now. The Education authority has approved the writ petitioner's appointment with effect from 4.6.1997, but the petitioner has sought for the approval from the date of his initial appointment namely 2.11.1987.

8. It is useful to extract the relevant portions of the judgments of the Hon'ble Apex Court and the Hon'ble Division Bench of this Court. The Hon'ble Apex Court, in a case, reported in 1994 SCC, Supl.(2) 195 [Ex-Capt. Harish Uppal vs. Union of India), has held as follows;

'8. The petitioner sought to contend that because of laches on his part, no third party rights have intervened and that by granting relief to the petitioner no other person's rights are going to be affected. He also cited certain decisions to that effect. This plea ignores the fact that the said consideration is only one of the considerations which the court will take into account while determining whether a writ petition suffers from laches. It is not the only consideration. It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of Constitution of India and that is what precisely the Delhi-High Court has done. We cannot say that the High Court was not entitled to say so in its discretion.'

The Hon'ble Division Bench of this Court, in the case of S.Vaidhyanathan Vs.Government of Tamil Nadu reported in 2018 SCC OnLine, in para 14, it is held as under ;

'14. 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. "Laches" 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 laches in one case might not constitute in another. The laches to non-suit, an aggrieved 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."

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In para 16 of the judgment cited supra, it is held as under;

12. Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting into depriving of the remedy, is a principle based on public policy and utility and not equity alone....."

(x) In Karnataka Power Corpn. Ltd. v.k. Thangappan reported in (2006) 4 SCC 322, the Hon'ble Supreme Court, at Paragraph 6, held as follows:

'6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party'.

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' 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.

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(xviii) In Chennai Metropolitan Water Supply and Sewerage Board v. T.T.Murali Babu reported in (2014) 4 SCC 108, at Paragraphs 16 and 17, the Hon'ble Supreme Court held as follows:

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant - a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

9. In the instant case, the writ petitioner's appointment was approved by the Educational Authority with effect from 4.6.1997 and the writ petitioner has accepted the said approval and has been continuing his services till now and he has been receiving salary from the respondents without any objection and also he has not challenged the aforesaid Government Order, by appraising his post as P.G. Assistant from the date of initial appointment. Now after a lapse of 20 years, the writ petitioner filed the instant writ petition seeking approval be given effect to from the date of his initial appointment viz., 2.11.1987 without furnishing any satisfactory explanation in the affidavit for the inordinate delay in approaching the court. Therefore, the act of the petitioner seeking arrears of salary from the date of initial appointment, after a lapse of nearly 20 years, clearly attracts the Doctrine of principles of laches.

10. Further, it is submitted by the learned counsel for petitioner that though the approval might have been given by the respondents on 1.2.1988, it has to be given effect to from

2.11.1987, since the petitioner is discharging the same work from 2.11.1987. It is seen from the records that the Government has sanctioned the said post in GO.Ms.No.317 dated 1.2.1998 and the same is accepted by the petitioner and acted upon without any objection till his representation made in the year 2017, therefore, the writ petitioner is estopped from claiming benefits w.e.f. 2.11.1987 and the claim of the petitioner also attracts the doctrine of laches. Therefore, accepting the statement of the respondent, there is no merit in the contention of the writ petitioner to grant the relief to the writ petitioner for the reasons stated above.

11. In view of the facts and circumstances of the case and the decisions made in the judgments cited supra, this court is of the opinion that the writ petition is devoid of merits and the same is liable to be dismissed. Accordingly, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msr

To

1. The Chief Educational Officer, Pannayar Street,
Manjakuppam, Cuddalore 607 001.
2. The District Educational Officer,
Pennayar Street, Manjakuppam,
Cuddalore 607 001.
3. The Correspondent, St. Joseph's Higher Secondary School,
Manjakuppam, CUDDALORE 607 001

+1cc to Mr.D.Baskar, Advocate, S.R.No.103956

+1cc to the Government Pleader, High Court, Madras S.R.No.10463/19.

W.P.No.16686 of 2017

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