



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) Nos.15799 to 15813 of 2012

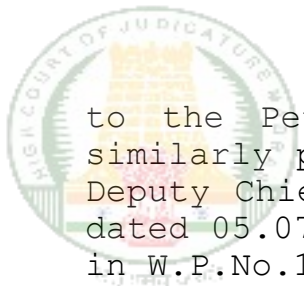
M.P. Parasuraman,	... Petitioner(s) in WP(MD). 15799/ 2012
N. Mamundi Raj,	... Petitioner(s) in WP(MD). 15800/ 2012
R. Shanmugam,	... Petitioner(s) in WP(MD). 15801/ 2012
S.Jayakumar David,	... Petitioner(s) in WP(MD). 15802/ 2012
V. Duraichamy,	... Petitioner(s) in WP(MD). 15803/ 2012
Y.Asif Ali Khan,	... Petitioner(s) in WP(MD). 15804/ 2012
T.A. Balasubramanian,	... Petitioner(s) in WP(MD). 15805/ 2012
R. Rangarajan,	... Petitioner(s) in WP(MD). 15806/ 2012
P.Mariyappan,	... Petitioner(s) in WP(MD). 15807/ 2012
A.Kaliyamoorthy,	... Petitioner(s) in WP(MD). 15808/ 2012
P. Kalaichelvan,	... Petitioner(s) in WP(MD). 15809/ 2012
R.Chandrasekaran,	... Petitioner(s) in WP(MD). 15810/ 2012
K.Kandasamy,	... Petitioner(s) in WP(MD). 15811/ 2012
W. Jayalani,	... Petitioner(s) in WP(MD). 15812/ 2012
S. Shanmugam,	... Petitioner(s) in WP(MD). 15813/ 2012

vs.

The General Manager (HR),
Bharat Heavy Electricals Limited,
(A Govt. of India undertaking),
High Pressure Boiler Plant,
Tiruchirappalli - 620 014. ... Respondent in all WP's

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of **Writ of Certiorarified Mandamus**, calling for the entire records pertaining to the orders passed in Ref. No.TP.HR-LAW dated 27.07.2012 on the file of the respondent herein and quash the same by directing the respondent herein to implement the order passed by the Deputy Chief Inspector of Factories, Trichirappalli in Proceedings in Rc.No.C1/3088/98 dated 05.07.1999 and grant the service benefits as directed therein

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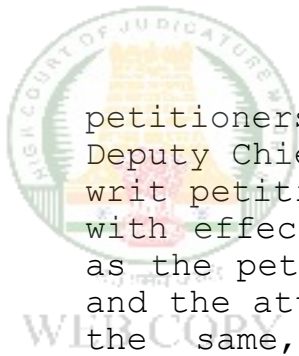
to the Petitioner in the same way as has been granted to the similarly placed employees on implementing the orders passed by the Deputy Chief Inspector of Factories in Proceedings Rc.No.C1/3088/98 dated 05.07.1999 based upon the orders passed by this Court, Madurai in W.P.No.1006 of 2000 dated 23.12.2009.

For Petitioner : Mr.K. Vamanan
For Respondent : Mr.A.V. Arun

COMMON ORDER

The instant Writ Petition is filed to quash the impugned order Ref. No.TP.HR-LAW dated 27.07.2012 passed by the respondent and also sought for a direction to the respondent to implement the order passed by the Deputy Chief Inspector of Factories, Trichirappalli in his Proceedings in Rc.No.C1/3088/98, dated 05.07.1999 and grant the service benefits as directed therein to the Petitioner in the same way as has been granted to the similarly placed employees on implementing the orders passed by the Deputy Chief Inspector of Factories in Proceedings Rc.No.C1/3088/98 dated 05.07.1999 based upon the orders passed by this Court.

2. According to the petitioners, the petitioners are employees of the respondent's company. Originally, they were engaged as Casual Labourers. They filed a petition under Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, before the Deputy Chief Inspector of Factories, Trichy and on 22.12.1993 declared that the petitioners and similarly placed persons were entitled to conferment of permanent status and were declared as permanent employees. This Order was challenged by the respondent in W.P. Nos.1843 and 1999 of 1994 and the same was dismissed by the learned Single Judge. Subsequently, the respondent has preferred an appeal in W.A. Nos.312 & 313 of 1995, dated 05.11.1997 the same was allowed and directed the respondent to issue orders conferring permanent status. Thereafter, the petitioners have approached the management and submitted a letter, dated 16.09.1999. The respondent has also agreed to give an appointment order to the petitioners as fresh entrants against regular vacancies and the proposal was submitted before the Deputy Chief Inspector of Factories, Trichirappalli who in turn in his proceedings No.C/8510/99, dated 24.09.1999 directed the management to appoint them after foregoing the continuity of employment as per offer of appointment, dated 23.09.1999 and accordingly, the petitioners were appointed. However, four persons who were not agreeable to the offer made, have filed a writ petition in W.P. No. 1006 of 2000 seeking permanent employment and other attendant benefits in terms of the order of the Deputy Chief Inspector of Factories, Trichirappalli, dated 05.07.1999. The respondent also preferred another writ petition in WP No.15347 of 2000 to quash the order, dated 05.07.1999 and this Court by its order, dated 23.12.2009 directed the management to pay all the consequential benefits to the



petitioners therein as fixed by the competent authority viz., the Deputy Chief Inspector of Factories, Trichirappalli. Thereafter, the writ petitioners in W.P No.1006 of 2000 were given permanent status, with effect from the date of their initial appointment. In so far as the petitioners concerned, the benefits of continuity of service and the attendant benefits were not granted to them. Aggrieved over the same, they made representation dated 19.03.2012 to the respondent for extension of the similar benefits to them also. But the said representation was rejected on 27.07.2012. Aggrieved over the same, the petitioners are before this Court.

3. According to the petitioners, while, the Division Bench of this Court passed an order confirming the permanent status, with effect from the date of initial engagement along with other consequential benefits, the order applies to all the petitioners equally. Only, four persons have got the relief with effect from the date of their initial appointment. The petitioners made a representation on 19.03.2012 followed by reminder for extension of those benefits. It was rejected by respondent on 27.07.2012. According to the petitioners the same benefit should be extended to the similarly placed persons like, petitioners and non extension of that benefits is not valid and is violative of Article 14 of Constitution of India.

4. Per Contra, the learned counsel appearing for the respondent would contend that as per order of the Division Bench of this Court, the petitioners were given permanent status and as per their request, they were taken as fresh entrants with approval of the Deputy Chief Inspector of Factories, Trichirappalli. In that view of the matter, it should be understood that the order dated 05.07.1999 stood modified by virtue of the order, dated 24.09.1999 of the Deputy Chief Inspector of Factories, Trichirappalli. The petitioners are not entitled to seek benefits as per the order, dated 05.07.1999 as they have given up their rights to claim backwages and other benefits vide their representation, dated 16.09.1999. They have accepted the offer of appointment, dated 23.09.1999 knowing well that they were not entitled to backwages and other attendant benefits. Those who have not accepted the offer only filed a writ petition and on disposal of the same on 23.12.2009, they got an order of appointment w.e.f., the date of their initial appointment. Therefore, the petitioners cannot be treated as similarly placed persons. They have taken the advantage of the offer made and got appointment and became regular employees and were receiving monthly salary. On the other hand those four persons were standing outside without employment and without any salary till 2009 and therefore, the writ petitioners are not similarly placed and the claim seeking extension of benefits given to those persons is not maintainable. The petitioners having accepted the benefits as per the offer of appointment, dated 23.09.1999 and after giving up their backwages and other benefits, <https://hcservicescourts.gov.in/hcservice/> around and ask for benefits as it is given to other



four persons as per order of this Court. In fact, those four persons were out of employment from 24.04.1999 to 23.12.2009. Therefore, the petitioners cannot approbate and reprobate after having enjoyed the offer of appointment as permanent employee.

5. It is the contention of the respondent that the benefit of order, dated 05.07.1999 of the Deputy Chief Inspector of Factories, Trichirappalli has given to the other four employees. Whereas, the order of the petitioners got modified by virtue of the order in his proceedings of the Deputy Chief Inspector of Factories, Trichirappalli, dated 24.09.1999. Therefore, the benefits also cannot be extended to the petitioners.

6. The other ground taken by the respondent is that the Deputy Chief Inspector of Factories, Trichirappalli is a necessary party for adjudicating the entire issue who is a competent authority to ascertain as to whether the petitioners are entitled to the benefits as per the Tamil Nadu Industrial Establishments (Conferment of permanent status to workmen) Act, 1981. (herein after referred to as the 'Act'). Without impleading the Deputy Chief Inspector of Factories, Trichirappalli as a party, the writ petitions are hit by non-joinder of parties.

7. I have considered the rival submissions made on either side.

8. Originally, the petitioners and other workmen were engaged as casual labourers. There were artificial break in their service and they were re-engaged periodically. On 31.03.1993, all the workers were terminated from service. Petitioners and other workers have challenged the same before the Deputy Chief Inspector of Factories, Trichirappalli, who is the authority under the Act, 1981. The authority by his order dated 22.12.1993 declared that the petitioners and other similarly placed workers were entitled to the benefit of the Act and conferred on them permanent status. However, the respondent management challenged the same by way of W.P.Nos.1843 and 1999 of 1994. After two rounds of litigation, the Division Bench of this Court has directed the authority under the Act to ascertain the entitlement of the workers on the basis of number of days they worked and benefits on pro rata basis. On 05.07.1999, the authority in his proceedings Rc.No.C1/3088/98 dated 05.07.1999 held that the workmen are entitled to absorption into service from the date of their termination. Thus far, all the workers stood in the same pedestal.

9. While those four workmen challenged the order of the Deputy Chief Inspector Factories claiming continuity of service from their date of initial appointment along with backwages, the petitioners have chosen to accept the order. The respondent management has also filed a writ petition in W.P.No.15437 of 2000 against those 4 casual labourers alone. During the pendency of the writ petition, the petitioners appeared to have negotiated with the



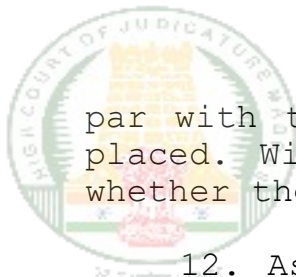
respondents. After negotiations, it appears that the parties have agreed on a settlement. As agreed, the petitioners had given a representation to the respondent for appointment along with a letter of undertaking. The letter of undertaking reads as under:

"After remand and during the pendency of the issue before the DCIF, I had given a representation to the Management to consider me for employment from now onwards and undertaking not to claim any benefit for the period prior to the date of this appointment. While the matter was pending consideration by the Management, the DCIF has passed an order dated 05.07.1999 directing absorption from the date of termination of service with all consequential relief. As the order of the DCIF was passed when my representation for appointment was under the consideration of the Management. I still stand by my earlier request and request you to offer appointment from now onwards, I undertake not to claim any benefit for the period prior to this appointment, in future also. I would also request you not to take up the matter further to Court and agree to my offer made above. I am ready to work in any place / unit to which I am posted.

Considering the past services put by me and to put an end to the legal process. I would request you to consider me for employment as Fitter IV in the regular establishment of the company from now onwards as per the terms and conditions applicable".

10. Pursuant to the same, the respondent has issued an order of appointment dated 23.09.1999. It appears that on the insistence of either one of the parties that it should be submitted to the Deputy Chief Inspector of Factories and with his approval an order should be passed. Accordingly, the Deputy Chief Inspector of Factories has passed an order directing the respondents to issue orders of appointment in terms of the settlement. This order was passed on 24.09.1999. Thereafter, the writ petitioners were given employment as fresh entrants foregoing their claim for continuity of service and back wages.

11. Those four workmen who filed the writ petition No.1006 of 2000 were given benefits of absorption with continuity of service and backwages by order of this Court dated 23.12.2009. Now that, the writ petitioners claim the same benefit be extended to them also on



par with those four workmen on the ground that they are similarly placed. With this background we have to approach the issue as to whether the writ petitioners are entitled to the same.

12. As seen, all the workers stood in the same pedestal up to 05.07.1999. The petitioners have chosen a different path from the one chosen by those four workmen and had consciously taken a decision to accept the offer of appointment as fresh entrants foregoing their claim of continuity of service and backwages. This culminated to an order dated 24.09.1999 passed by the authority under the Act. In other words, the authority who passed the order dated 05.07.1999 granting permanent status and absorption from the date of termination of service with all consequential benefits was modified into one of appointment into regular establishment as fresh entrants. By this order, the petitioners have lost their cause of action on the basis of the order dated 05.07.1999. Their request for conferment of permanent status was satisfied and they were taken as permanent employees w.e.f from 24.04.1999 without the benefits derived as per order dated 05.07.1999.

13. On the other hand the four persons who did not accept the order dated 05.07.1999, have challenged the same before the High Court and were stranding outside without employment, any status or salary during that period. Only after a decade they were given the benefits. Till such time, their condition was precarious and unstable. But at the same time the petitioners have got their job security, status as permanent workers and salary for a period of ten years. While considering the plight of these two classes of workers, I am of the firm belief that they do not belong to the same class and division of status had crept in when the petitioners have accepted offer of appointment by the respondent.

14. The petitioners have taken the advantage of getting salary from the year 1999 to 2009, permanent employment foregoing continuity of service and hence they cannot compare themselves with the persons who were standing outside not accepting the orders of the authority dated 05.07.1999. In effect, the petitioners have accepted the order dated 05.07.1999 and other 4 persons did not accept the said order. Therefore, at any stretch of imagination the petitioners cannot claim themselves as similarly placed with those 4 workmen to continue their fight for getting continuity of service with back wages.

15. It is also to be seen that even assuming that the petitioners are similarly placed and whether they are entitled to file the present litigation after a period of 12 years from the date of their entry into service as fresh entrants. The cause of action for filing this writ petition is said to be on the a representation given by them on 19.03.2012.



16. In the case of **T. Santhappan vs. The Director of Medical and Rural Health Services and The District Health Officer, (MANU/TN/2711/2009)**. It is held as under:

" 9. By sending a belated representation, the petitioner cannot revive a stale or death cause of action in the light of the judgment of the Supreme Court in C.Jacob V. Director of Geology & Mining and Anr. Reported in 2008 AIR SCW 7233. In paragraphs 6 to 8 of the said judgment, the Supreme Court has observed as follows:

6. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on



account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

7. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim."

17. In that view of the matter, the Hon'ble Supreme Court has also in the case of **State of Orissa vs. Mamata Mohanty, 2011 3 SCC 436** at page 457 held as follows:

" ...

52. In the very first appeal, the respondent filed writ petition on 11-11-2005 claiming relief under the Notification dated 6-10-1989 w.e.f. 1-1-1986 without furnishing any explanation for such inordinate delay and on laches on her part. Section 3 of the Limitation Act, 1963, makes it obligatory on the part of the court to dismiss the suit or appeal if made after the prescribed period even though the limitation is not set up as a defence and there is no plea to raise the



issue of limitation even at the appellate stage because in some of the cases it may go to the root of the matter. (See *Lachhmi Sewak Sahu v. Ram Rup Sahu* [AIR 1944 PC 24] and *Kamlesh Babu v. Lajpat Rai Sharma* [(2008) 12 SCC 577])

53. Needless to say that the Limitation Act, 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the respondent claimed the relief from 1-1-1986 by filing a petition on 11-11-2005 but the High Court for some unexplained reason granted the relief w.e.f. 1-6-1984, though even the Notification dated 6-10-1989 makes it applicable w.e.f. 1-1-1986.

54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time. (See *Rup Diamonds v. Union of India* [(1989) 2 SCC 356 : AIR 1989 SC 674] , *State of Karnataka v. S.M. Kotrayya* [(1996) 6 SCC 267 : 1996 SCC (L&S) 1488] and *Jagdish Lal v. State of Haryana* [(1997) 6 SCC 538 : 1997 SCC (L&S) 1550 : AIR 1997 SC 2366] .)"

From the foregoing judgment, it is very clear that by repeated representations the cause of action will not revive the stale claim and therefore, the present writ petition filed by the petitioners after 12 years is hit by delay and laches.



18. That apart, whether a person can approbate and reprobate. The petitioners herein have taken the advantage of the order of Deputy Chief Inspector of Factories dated 05.07.1999 and secured their appointment as fresh entrants and for that purpose they have conscientiously foregone certain rights and accepted to join service as fresh entrants. Once they have taken conscientious decision, after giving a letter of undertaking for securing permanent job, they cannot claim themselves as similarly placed persons and that they are entitled the same benefits they are estopped by their conduct. In effect they are estopped by their conduct. As submitted by the learned counsel for the respondent, they were acting like fence sitters.

19. The Hon'ble Supreme Court in **State of Punjab and Ors vs Dhanjit Singh Sandhu (MANU/SC/0202/2014)**

22. The doctrine of "approbate and reprobate" is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (vide C.I.T. vs. Mr. P. Firm Maur, AIR 1965 SC 1216).

It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground. (Vide Maharashtra State Road Transport Corporation vs. Balwant Regular Motor Service, Amravati & Ors., AIR 1969 SC 329). In R.N. Gosain vs. Yashpal Dhir, AIR 1993 SC 352, this Court has observed as under:

"Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage."

23. This Court in Sri Babu Ram Alias Durga Prasad vs. Sri Indra Pal Singh (Dead) by Lrs., AIR 1998 SC 3021, and P.R. Deshpande vs. Maruti Balram Haibatti, AIR 1998 SC 2979, the Supreme Court has observed that the doctrine of election is based on the rule of



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approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had."

20. Therefore, the petitioners having taken advantage of a particular order and enjoyed the benefits, cannot turn around and say that the benefits given to those four workmen, who suffered for a decade without employment should be given to them also.

21. As stated supra, Writ petitioners by their conduct are estopped from claiming such benefits. To sum up, the petitioners are not similarly placed and having taken advantage of the order of the authority under the Act cannot at this distance of time claim extension of such benefits as similarly placed persons. Such claim is not sustainable in law and is hit by delay, laches and estoppel.

22. In fine, the writ petition merits no consideration and accordingly dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

+15 CC to M/s.K. VAMANAN, Advocate (SR-100096[F] dated 21/11/2019)

Common Order made in
W.P. (MD) Nos.15799 to
15813 of 2012
19.11.2019

ksa/kpr
SDS(08.01.2020) 11P-16C