

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/01/2020

C O R A M

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.2843 of 2010

R.Subramanian ... Petitioner

Vs

1. The Government of Tamil Nadu,
Rep. By its Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai - 600 009.
2. The Director of Municipal Administration,
Chepauk, Chennai - 600 005.
3. The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore 641 001. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for the issuance of Certioararified Mandamus, calling for the records pertaining to the impugned Government letter (2D) No.123/MC4/2008-6, MA&WS Dept., dated 26.08.2008 issued by the 1st respondent and consequently direct the respondents to give promotion to petitioner at par with his juniors already promoted and also the benefits from the date on which his juniors were appointed.

For petitioner

... Mr.M.Manivasagam
for M/s.M.Manivasagam Associate

For respondents ... Mr.R.Sivakumar for R3

ORDER

The present writ petition arises out of the petitioner's claim that he is entitled to be promoted to the post of Administrative Officer.

2. The writ petitioner was appointed as a Junior Assistant in the office of the Coimbatore City Municipal Corporation on 18.03.1974. At this point of time, the post of Junior Assistant was under Clause-VII of the Tamil Nadu Municipal General Service Rules,1970. The present actions of the writ petitioner refer to the promotion of three other individuals namely Mr.R.Prabakaran, Mr.P.Thangaraj and Mr.A.Masanan, who were appointed as License Inspectors on 14.03.1974 and 15.03.1974. The post of License Inspector was under Clause VI(B) of the Tamil Nadu Municipal General Service Rules,1970. By G.O.Ms.No.2208 Rural Development and Local Administration Department, amendments were made to the Tamil Nadu Municipal General Service Rules,1970, bringing the post of Junior Assistant and the post of License Inspector under a single

Clause i.e., Clause VII. However, these posts were treated as separate categories within this Clause.

3. Soon after his appointment to the post of Junior Assistant in the Coimbatore Municipal Corporation, the petitioner sought a transfer to the Thanjavur Municipality and the same was granted. On 12.04.1983, vide G.O.Ms.No.545, Rural Development and Local Administration Department, the post of 14 License Inspectors were upgraded to the cadre of Assistant. On 24.01.1985, vide G.O.Ms.No.47, Mr.Prabakaran and Mr.Masanan, were upgraded to the post of License Inspector Assistant Grade by relaxing Rule 26 of the Tamil Nadu Municipal General Rules 1970. This relaxation was granted as the two individuals had adequate outdoor experience. On 12.06.1991, a similar Government Order (G.O.Ms.No.182) was issued to Mr.Thangaraj who was also appointed as an Assistant Grade License Inspector on relaxation under Rule 26 of the Tamil Nadu Municipal General Rules 1970. On 28.03.1989, vide G.O.Ms.No.191, Municipal Administration and Water Supply Department, the petitioner was transferred back to the Coimbatore Municipality under the Coimbatore Municipal Corporation on the condition that he

will be the junior most individual in the category of Junior Assistant. On 31.03.1992, the petitioner submitted a representation to the Government of Tamil Nadu requesting that the condition imposed in G.O.Ms.No.191 be deleted and his seniority be restored from his original date of joining the Coimbatore Municipal Corporation on 18.03.1974. This request of the petitioner was accepted on 29.07.1994. Several requests were made by the petitioner for promotion on the same lines as Mr.Prabakaran, Mr.Thangaraj and Mr.Masanan, as he claimed that they were junior to him. On 11.02.2003, the petitioner was promoted to the post of Assistant. On 29.11.2005, following numerous representations by the petitioner, the Coimbatore Municipal Corporation replied and recommended the petitioner's case to the Government of Tamil Nadu for promotion. On 24.02.2006, the Director of Municipal Administration also recommended the case of the petitioner for promotion to the Government of Tamil Nadu. Subsequent to these recommendations, on 21.03.2006, the Coimbatore City Municipal Corporation was directed by the first respondent to produce a detailed statement. On 21.08.2006, the petitioner was promoted to the post of Superintendent. On 22.03.2007, the Coimbatore Municipal

Corporation submitted its remarks stating that the request of the petitioner for promotion to the post of Assistant Commissioner may be rejected. The remarks of the Coimbatore Municipal Corporation was forwarded and the Director Municipal Corporation has also requested to submit his specific remarks on the issue. On 06.09.2007, the issue of the promotion of the petitioner was considered by the Government of Tamil Nadu and was rejected in Government letter No.25529/MC4/2005-10. The petitioner filed WP.No.14288 of 2008 and on 19.06.2008, an order was passed directing the Government of Tamil Nadu to consider the representation made by the petitioner for promotion. On 26.08.2008, Government letter (2D) No.123/MC4/2008-6 MA & WS Department, rejected his request for a promotion. The petitioner has thus filed the present writ petition.

4. The petitioner claims that his juniors, Mr.Prabakaran, Mr.Thangaraj and Mr.Masanan, were allotted promotions without him being considered for the same. The petitioner claims that he was senior to these three individuals and owing to G.O.Ms.No.2208 of 1974, the posts of Junior Assistant and License Inspector were now a

part of the same category. The petitioner has also claimed that as per Rule 27(d) of the Coimbatore City Municipal Corporation Service Rules, a separate panel should have been prepared only for each category of the service for which the qualification and scale of pay are different, however the qualification and scale of pay for License Inspectors and Junior Assistants are not different and thus it should not apply. Further the petitioner claims that this case cannot be dismissed on account of delay in filing of applications as Rule 25(b) of the Coimbatore City Municipal Corporation Service Rules, does not apply to rectifying orders arising out of a mistake of fact.

5. The respondents firstly contend that the present claims are unduly delayed and that the present case does not fall into the exemption provided under Rule 25(b) of the Coimbatore City Municipal Corporation Service Rules and thus the present writ petition must be dismissed for laches. They further claim that the Government Order Ms.No.2208 was only passed on 14.10.1974 which was subsequent to the appointment of the petitioner as Junior Assistant on 18.03.1974. This was also subsequent to the appointment of Mr.Prabakaran, Mr.Thangaraj and Mr.Masanan, to the

post of License Inspector. Further, even after the amendment of the Tamil Nadu Municipal General Service Rules, 1970, the posts of License Inspector and Junior Assistant were only brought under the same clause i.e., Clause VII, but these categories were still distinct. Thus the issue of seniority within different categories cannot arise. Further, it is claimed that there were several other individuals senior to the petitioner as a result of which he would not have been entitled to the promotions granted to Mr. Prabakaran, Mr. Thangaraj and Mr. Masanan. The relaxation was only granted to these three individuals due to their outdoor service experience which the petitioner lacked and he is not similarly placed. It is also submitted that the petitioner was posted in the Thanjavur Municipality when these promotions were granted to the post of Assistant and thus he clearly could not have been entitled to the same.

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

7. On the issue of delay Section 25(B) of the Coimbatore City Municipal Corporation Service Rules, 1987, reads as under:-

“(b) Application for the revision of seniority of a person appointed to any class or category of the service shall be submitted to the appointing authority within a period of three years from the date of appointment to such class or category of, within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts.”

It is thus clear that applications for revision of seniority can only be entertained if they are filed within three years of such appointment. The only exemption to this is when orders are rectified owing to mistakes of fact. In the present case, it is evident that this condition is not met as the order is not sought to be rectified on a mistakes of fact. The respondents have placed reliance on the judgment of the Hon'ble Supreme Court in ***P.S.N.Rao Vs. State of Orissa***, (2002) 6 SCC 478. The relevant paragraphs read as under:-

“8. From the case pleaded and the reliefs sought in the writ petition, it is clear that the grievances made by the appellant relate to the period from his very entry into service and at different stages during the period of his service. He has made a grievance that by treating 1959 to be the year of his entry into service he lost a period of four

years of service as a consequence of which he lost his seniority over Respondents 2 and 3. Thereafter he has made the grievance about upgrading the scale of pay of Lecturer, Mining in 1960, giving Respondent 3 Class I scale of pay in 1961, his appointment to the post of Principal, Orissa School of Mining Engineering, Keonjhar done by the Public Service Commission in 1962, his appointment as Joint Director with effect from 1968 and finally his appointment as Director of Technical Education and Training in 1980. As noted earlier, the writ petition was filed in the High Court in 1980 which subsequently stood transferred to SAT. By then more than two decades had elapsed since the appellant's entry to the service. Appointment to higher posts of Principal of the School of Mining Engineering, Joint Director of Industries and Director of Industries were made in consultation with the Public Service Commission and the appellant's name was sent to the Commission when the appointments to the posts of Joint Director and Director were considered. The Commission did not consider him suitable for appointment to the said posts. For the post of Principal, the appellant was not possessed of the prescribed qualification of a degree in Mining Engineering and therefore, the question of considering him for appointment did not arise. It cannot be disputed that the State Government had the power to prescribe proper qualification for the post keeping in view the job requirement, nature of work to be handled by the holder of the post and other relevant factors. Therefore, no exception could be taken to the order of the State Government prescribing a degree in Mining Engineering as

eligibility qualification for the post of Principal, Orissa School of Mining Engineering. It may be noted here that the entire case of the appellant is based on his assumed seniority over Respondents 2 and 3. But it was not his case that appointment/promotion to the higher posts noted earlier was to be made solely on the basis of seniority. It is trite law that in making appointment to higher posts merit assumes importance. Therefore, even assuming that the appellant was senior to Respondents 2 and 3 thereby he could not have claimed as a matter of right to be appointed to the higher posts.

9. In the context of the facts and circumstances of the case, the Tribunal cannot be faulted for having come to the conclusion that the writ petition filed by the appellant was devoid of merit. Further, any interference in the matter at such a belated stage would have resulted in disturbing the chain of settled positions and would have created confusion and complications in the cadre. Therefore, the Tribunal rightly dismissed the writ petition filed by the appellant. Accordingly, the appeal is dismissed, but in the circumstances of the case, without any order for costs."

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8. They further place reliance on the judgment of the Hon'ble Supreme Court in ***Union of India Vs. A.Durai Raj***, (2010) 14 SCC 389. The relevant paragraphs read as under:-

“13. It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the court/tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the court/tribunal belatedly, grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage to effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

14. This is a typical case where an employee gives a representation in a matter which is stale and old, after two decades and gets a direction of the Tribunal to consider and dispose of the same; and thereafter again approaches the Tribunal alleging that there is delay in disposal of the representation (or if there is an order rejecting the representation, then file an application to challenge the rejection, treating the date of rejection of the representation as the date of cause of action).”

A perusal of the above two judgments reveals that Courts can hold that delays have led to an issue becoming stale and can justify non-interference on these grounds.

9. The petitioner has however relied on the judgment of this Court in ***C.Suviseshamuthu Vs. Director of Public Health and Preventive Medicine***, CDJ 2017 MHC 6079. The relevant paragraphs read as under:-

40. A learned Judge of this Court in (2001) 1 M.L.J. 105 cited *supra*, has held as follows:

“7. The upper forum of law have more often held that even if the delay is not properly explained, the petitioner should not be punished with denial of opportunity to prosecute the case, wherein his valuable rights are involved and when once such petitioners are not allowed to participate in the further proceedings by dismissing the condonation applications filed to condone the delay on certain technicalities, the other side whether has any genuine rights or not, wins the entire case and the petitioner loses all his rights in the suit and to avoid such calamities, the petitioners could only be punished with costs and not with denial of opportunity to prosecute the case wherein his valuable rights are involved.”

41. The next Judgment of the Apex Court is (2011) 1 SCC 484 cited *supra*, wherein the Apex Court has held as follows:

“14. The power to mould relief is always available to the Court possessed with the power to issue high prerogative writs. In order to do complete justice it can mould the relief, depending upon the facts and circumstances of the case. In the facts of a given case a writ petitioner may not be entitled to the specific relief claimed by him but this itself will not preclude the Writ Court to grant such other relief which he is otherwise entitled. Further delay and laches does not bar the jurisdiction of the Court. It is a matter of discretion and not of jurisdiction. The learned Single Judge had taken note of the relevant facts and declined to dismiss the writ petition on the ground of delay and laches.”

42. *In a similar issue also considered by the Hon'ble Supreme Court in the Judgment reported in (2011) 9 SCC 65 cited supra, the Hon'ble Apex Court had held as follows:*

“19. The contention advanced on behalf of the appellant that the writ petition was filed by respondent 1 on 10.11.1990 i.e., seven years after he had superannuated from service, and therefore, the writ petition should have been dismissed on the ground of delay and laches, cannot be accepted. The impugned order nowhere shows that such a point was argued by the appellant before the High Court. No grievance is made in the memorandum of SLP that point regarding delay and laches was argued before the High Court but the same was not dealt with by the High Court when impugned judgment was delivered.

20. Further, from the facts noticed, it becomes evident that by order dated 09.11.1989, passed in CWJC No. 4862 of 1987, the High Court had directed respondent 1 to submit representation to the High Court on its administrative side claiming benefits which were given to his juniors but were denied to him, pursuant to which respondent 1 had filed last representation on 23.06.1990 which was rejected by the High Court on 17.09.1990. The question of delay and laches will have to be

considered from the communication dated 17.09.1990 by which claim made by respondent 1 to give him benefits which were given to his juniors was rejected and not from the date of superannuation. Thus, respondent 1 is not liable to be non-suited on the ground of delay and laches in filing Writ petition after his superannuation from service.”

43. Similarly, in (2011) 13 SCC 574 cited supra, the delay because of representation to the authority and its disposal, then all further proceedings had been taken into account for getting the matter delayed and on that account, the Hon'ble Apex Court has accepted the delay and the relevant portion of the Judgment is reproduced hereunder for better appreciation.

“29. The three appellants had contended that the petition filed by the first respondent suffered on account of laches and delay in moving the High Court. We have already pointed out that when the order dated 7.11.2000 was issued, the first respondent represented on 2.11.2001, but the representation was rejected on 15.11.2003. He moved for a review on 19.2.2004, but the same was not responded. When the seniority of the Computer Operators was published by notification dated 23.9.2005 and objections were invited, the first respondent submitted his objection on 10.10.2005. That representation was rejected by the High Court's Proceeding dated 6.11.2007 and the first respondent was placed junior to the three appellants. He challenged that communication by his W.P. No. 11920/2008. Thus, there was no delay or laches on the part of the first respondent in moving the High Court.”

44. Therefore, from the principles as enumerated in all those Judgments referred to above, would undisputedly disclose that on the ground of delay and laches in approaching the authorities, or in turn approaching the Court of Law for getting the remedy arising out of the statute the avenue cannot be closed by taking a different view. A consideration of delay and laches is only the matter of discretion of the Court and it does not affect the

jurisdiction of the Court. Moreover, if acceptable reasons are given by the litigant for the delayed approach to the Court of Law, the same can be accepted in order to decide as to whether, the petitioner can get any relief arising out of his substantive right flow from the statute. Therefore, by applying these broad principles as enumerated in the above cases, in the present facts and circumstances of the case projected before this Court, this Court has no hesitation to hold that the prayer sought for by the petitioner cannot be denied.

A perusal of the above judgment and the cases that it has relied on reveals that mere delays cannot take away the jurisdiction of a Court to examine a matter and pass orders on merits. Though there has clearly been a delay in the present instance an examination will be conducted on the merits of the case.

10. It can be seen that the posts of Junior Assistant and License Inspector were merged into the same clause, but these two posts remained in different categories. This merger only took place through Government Order dated 14.10.1974. As the petitioner as well as Mr.Prabakaran, Mr.Thangaraj and Mr.Masanan, were appointed to these posts prior to this date, the petitioner's claim that they were junior to him in the same category cannot be accepted. Further, the petitioner was not even employed under the

Coimbatore Municipal Corporation when this promotion was given and thus cannot claim that he should have been considered for the same.

11. The petitioner has placed reliance on the judgment of this Court in *A.Babu Vs. The State of Tamil Nadu*, CDJ 2018 MHC 5122, to contend that the grounds on which the relaxation was given to Mr.Prabakaran, Mr.Thangaraj and Mr.Masanan, should have been offered to the petitioner as well. The relevant portion of the judgment reads as under:-

“13. Equal opportunity in public employment is a constitutional mandate. Thus, the very relaxation granted to a particular person alone can never be upheld under the law. Even in case where an exigency arises for grant of appointment to a particular post, then all eligible in-service candidates must be considered for grant of relaxation in accordance with law. In other words, the persons, who were appointed in a particular cadre of Fitter, must be treated as homogeneous class and there cannot be any discrimination amongst the persons working in that particular category. The officials cannot pick and chose one person and grant relaxation without considering the cases of all other similarly placed persons. Thus, the very procedure adopted for grant of relaxation itself is objectionable.

...24. In this view of the matter, this Court is of an opinion that the grant of relaxation in respect of all these persons are to be reviewed by the government with reference to the legal principles settled in the matter of grant of relaxation. The Constitutional Courts across the country as well as the Apex Court, time and again

reiterated that the rules for appointment and promotions are to be followed scrupulously. Granting relaxation in favour of one person or group of persons shall not cause injustice or prejudice in respect of other employees who are all working in the same cadre. In the event of granting such relaxation in favour of few persons, the same will demoralise the administration and further will create issues in respect of all further and future promotions to the eligible persons, who are all otherwise eligible for promotions or appointments.

25. Thus, the Government must be cautious while exercising the discretionary powers of relaxation in the appointment of few individuals. Such an exercise should not cause any injustice or prejudice in respect of all other similarly placed persons, who are all parties before this Court for the relief of grant of relaxation on par with the persons, who are already granted relaxation.

26. Courts would not normally grant relaxation directly. In the event of injustice, the Court can direct the authorities to consider the cases. However, in the present cases, the grant of relaxation in favour of one person, namely, Mr.T.Gnanavel, was a heart burning issue amongst all other similarly placed employees, who were already appointed in the same cadre of Fitter. Mr.T.Gnanavel, who was appointed as a Fitter, is now working as an Executive Engineer and all other colleagues, who were appointed as Fitters, are unable to get promotions or relaxations on par with him. Such being the factum of the case, the Government has to review all such cases and take appropriate decision by reviewing the facts and circumstances.

27. In this regard, the Secretary to Government, Municipal Administration and Water Supply Department, has to look into the issues in relation to the grant of relaxation to the writ petitioners as well as the said Mr.T.Gnanavel and review the cases in the light of the legal principles settled and observed in the aforementioned paragraphs and pass revised orders. In the event of granting relaxation, it must

be granted uniformly considering the facts and circumstances and the rules in force. In the event of not granting relaxation, then also appropriate orders are to be passed settling the issues in this regard amongst the employees and at the outset, the equality and uniformity are the basic principles to be implemented by the Government, while granting relaxation to all other similarly placed persons and working on par with the cadre.”

However, in the present instance, it can be seen as contended by the respondents in their counter affidavit that this relaxation was only offered owing to the outdoor service experience of Mr.Prabakaran, Mr.Thangaraj and Mr.Masanan. Thus the petitioner would not have been entitled to this relaxation even if he was considered for the same.

12. For the above reasons, the writ petition is dismissed. No Costs.

08/01/2020

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order

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SUBRAMONIUM PRASAD, J

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To

1. The Secretary,
Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai - 600 009.
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