

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4285 of 2019

D. Johnson Jayakumar

.. Appellant

-vs-

1. Tamil Nadu Electricity Board
represented by its Secretary,
VIII Floor, K.R.R. Maaligai,
No.800, Anna Salai,
Chennai - 600 002

2. The Chief Internal Audit Officer,
Tamil Nadu Electricity Board,
K.R.R. Maligai, No.800, Anna Salai,
Chennai - 600 002

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.30322 of 2008 dated 05.02.2019.

Prayer in WP. 30322 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents 1 & 2 to re-fix the seniority of the petitioner from 28.08.1975 and consequently pay him the monetary and pensionary benefits accruing from re-fixation of his seniority from 28.02.1975 onwards and pass such further or other orders and this Honourable Court may deem fit and proper in the circumstances of the case and thus render justice.

For appellant

: Ms.V. Pushpa

For respondents

: Mr.N. Karthik Rajan

: Standing Counsel

JUDGMENT

(Delivered by SUBRAMONIUM PRASAD,J.,)

This writ appeal seeks to challenge the order dated 05.02.2019 passed in W.P.No.30322 of 2008, whereby, the learned Single Judge had refused to entertain the writ petition filed by

the appellant herein for a direction to the respondents to re-fix the seniority of the writ petitioner from 28.08.1975 and consequently pay him the monetary and pensionary benefits accruing from re-fixation of his seniority from 28.02.1975 onwards.

2. The facts which can be seen from the records is that the appellant / writ petitioner was promoted as Assistant in Tamil Nadu Electricity Board in the year 1975 subject to his clearing the departmental examinations within two chances. Since the appellant / writ petitioner did not clear the examination, he was reverted back as Junior Assistant on 09.09.1976. The respondents Board in its Proceeding No.750 dated 30.04.1979, relaxed the condition. The appellant was again promoted as Assistant on 02.06.1980. His promotion was regularised from 02.06.1980.

3. The appellant / writ petitioner gave representations to the respondents seeking for re-fixation of his seniority as Assistant from the date of original date of promotion i.e., 28.08.1975. The respondents Board acceded to the request of the appellant / writ petitioner and other similarly placed persons and the Board decided to promote them from the original date of promotion by an order dated 20.04.1995.

4. The order dated 20.04.1995 was rescinded by the respondent Board by Memo dated 06.04.1996 stating that the re-fixation of seniority of appellant / writ petitioner and other persons after long period of interval will result in unsettling the settled things. The appellant / writ petitioner gave number of representations challenging the order dated 06.04.1996 denying the benefits to the appellant / writ petitioner and other persons. The appellant attained the age of superannuation on 31.05.2006. The order dated 06.04.96 has been challenged in the instant writ petition.

5. The learned Single Judge by the impugned order dated 05.02.2019 rejected the case of the appellant / writ petitioner on the ground of laches.

6. Learned counsel for the appellant strenuously contended that the appellant has been put to lot of prejudice and therefore, there is no reason as to why the benefits given to them by order dated 20.04.1995 was taken away. The appellant / writ petitioner was entitled to be regularised from 28.08.1975 and there is no reason to deny the benefit of promotion of regularisation from the original date of promotion.

7. Be that as it may. The order which is sought to be

challenged in the writ petition was issued on 06.04.1996. The appellant / writ petitioner has challenged the order by approaching this Court only after three years of the retirement of the appellant.

8. It is well settled that a litigant must approach Court for redressal of his grievance in a reasonable period of time.

9. 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."

10. In State of Maharashtra v. Digambar reported in AIR 1995 SC 1991, the Hon'ble Supreme Court, 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 blameworthy 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 14 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.'

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 15 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."

(emphasis supplied)

11. In Hameed Joharan Vs. Abdul Salem, reported in (2001) 7 SCC 573, the Hon'ble Supreme Court of India, observed as under:-

"14. It cannot but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times: even the doctrine of prescription in Roman law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favoured rather than claiming disfavour. Law courts never tolerate an indolent litigant since delay defeats equity – the Latin maxim *vigilantibus et non dormientibus jura subveniunt* (the law assists those who are vigilant and not those who are indolent). As a matter of fact, lapse of time is a species for forfeiture of right. Wood, V.C. in *Manby v. Bewicke*, reported in 1857 (3) K&J 342 = 69 ER 1140 (K&J at p. 352) stated: (ER p. 1144)

"The legislature has in this, as in every civilized country that has ever existed, thought fit to prescribe certain limitations of time after which persons may suppose themselves to be in peaceful possession of their property, and capable of transmitting the estates

of which they are in possession, without any apprehension of the title being impugned by litigation in respect of transactions which occurred at a distant period, when evidence in support of their own title may be most difficult to obtain."

12. 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."

13. In *Prabhakar v. Joint Director, Sericulture Department* reported in 2015 (3) SCC 1, the Hon'ble Supreme Court, at Paragraphs 37 and 38, held as follows:

"37. Let us examine the matter from another aspect viz. laches and delays and acquiescence.

38. It is now a well-recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity "delay defeats equities".

40. Likewise, if a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while the act is in progress he cannot afterwards complain. This principle is based on the doctrine of acquiescence implying that in such a case the party who did not make any objection acquiesced into the alleged wrongful act of the other party and, therefore, has no right to complain against that alleged wrong."

14. Even in case of pension, *Shiv Dass vs. Union of India and others* reported in (2007) 9 SCC 274, the Hon'ble Supreme Court of India observed as under:-

"10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each in case. If petition is 34 filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone. 11. In the peculiar circumstances, we remit the matter to the High Court to hear the writ petition on merits. If it is found that the claim for disability pension is sustainable in law, then it would mould the relief but in no event grant any relief for a period exceeding three years from the date of presentation of the writ petition. We make it clear that we have not expressed any opinion on the merits as to whether appellant's claim for disability pension is maintainable or not. If it is sans merit, the High Court naturally would dismiss the writ petition."

15. It is well settled that repeated representations cannot give a fresh right to file a writ petition to enable a person to approach the Court at his will. The appellant / writ petitioner has no explanation for his long silence and inaction and he cannot be permitted to sleep like Rip Van Winkle and approach this Court after arising from his slumber to exercise his right.

16. In view of the above we do not find any merit in the writ appeal. Accordingly, the writ appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

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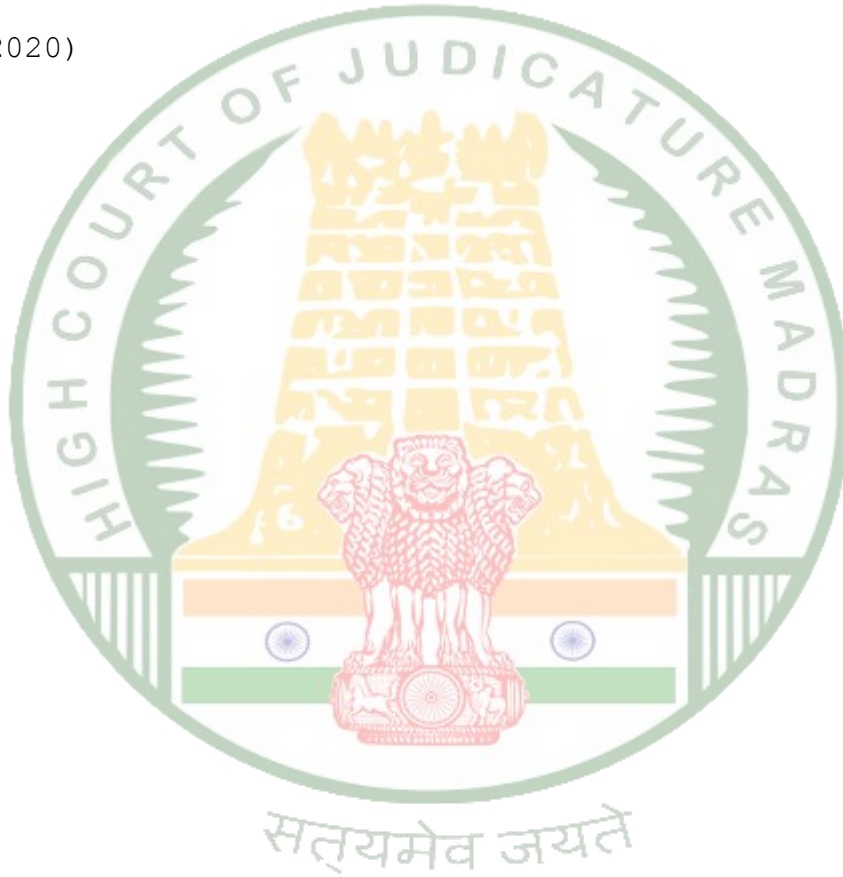
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+1cc to Mr.V.Pushpa, Advocate, S.R.No. 15914
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W.A.No.4285 of 2019

PM(CO)
GN(17/03/2020)



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