



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P. (MD) No.1879 of 2015

C.Rajendran

... Petitioner

Vs.

The Management of
Tamilnadu State Transport Corporation (Madurai) Ltd.,
Madurai Region,
Rep.by it;s General Manager (Corporate),
Madurai.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records from the respondent relating to the impugned order, dated 23.06.2014, passed in Reference Legal/WP/8510/14, quash the same and consequently, direct the respondent to provide continuity of service to the petitioner by counting his earlier service period from 28.12.89 to 16.06.98 as well as the period of his non-employment 17.06.98 to 30.03.00 as part of his continuous service and to re-fix his scale of pay from 01.04.00 by taking into account his scale of pay at the time of discharge of his service I.e., June 1998 in accordance with Sec.47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and to pay him all consequential benefits, including arrears in difference of wages from 01.04.2000 to 30.06.14 and accordingly fix and pay his terminal and pension benefits.

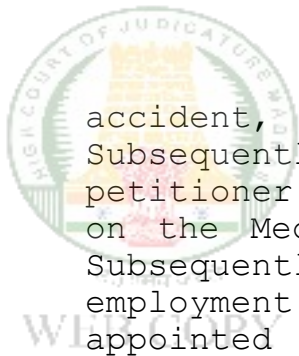
For Petitioner : Mr.Rm.Sivakumar

For Respondent : Mr.J.Senthilkumaraiah

O R D E R

The relief sought for in the present Writ Petition is to quash the order, dated 23.06.2014, rejecting the claim of the Writ Petitioner to provide continuity of service, by counting the earlier services, for the period from 28.12.1989 to 16.06.1998 as well as the period of non-employment from 17.06.1988 to 30.03.2000.

2. The petitioner was appointed as driver in the Respondent Corporation. He was working as permanent employee. He met with an



accident, while on duty and sustained serious borne fractures. Subsequently, the Medical Board issued a Certificate that the petitioner was not fit to perform the duties of the driver and based on the Medical Report, the petitioner was relieved from service. Subsequently, his case was considered for providing an alternate employment and as per the consent of the Writ Petitioner, he was appointed afresh, with effect from 01.04.2000. The petitioner, at that point of time, had not raised any objections, joined in the post and served for about 14 years. The petitioner reached the age of superannuation on 04.06.2014 and the present Writ Petition is filed on 09th February 2015, after a lapse of about 15 years from the from the date of providing an alternate employment, on certain terms and conditions.

3. The Writ Petitioner accepted the fresh appointment order and accordingly joined the services and completed his probation on 31.03.2002. Thereafter, he worked upto the year 2014 and retired from service. The respondent in the impugned order has clearly stated that the Writ Petitioner accepted the fresh appointment by consent and served for 14 years and attained the age of superannuation. Thus, he has now made his claim after a lapse of about 14 years.

4. This Court is of the considered opinion that the lapsed claim cannot be restored after a lapse of many years. The petitioner was medically declared not fit to perform the duties of Driver and relieved from service. Based on his request, his case was considered for providing alternate employment and a fresh employment was given to the Writ Petitioner in the year 2000. He served about 14 years and retired from service. After retirement, he filed the Writ Petition seeking the benefit of the past services.

5. This Court is of the considered opinion that if at all the petitioner aggrieved, during the relevant period of time, he would have approached the Competent Authority and the Court of Law, within a reasonable period of time. Contrarily, the petitioner allowed his claim to lapse and now after a lapse of 14 years, he filed the present Writ Petition. Thus, the petitioner slept over his right and therefore, he cannot now seek for any redressal. Regarding such lapsed claim and restoration of the cause through back door method, this Court has laid down the principle in W.P.(MD)No.12782 of 2015, dated 08.07.2019 and the relevant paragraphs are extracted hereunder : -

"7. A trend has been created through some legal brains that the lapsed cause of actions are reopened by sending a representation to the authority concerned and thereafter, filing a writ petition with a prayer for a direction to the authority concerned to consider the representation and pass orders. Normally, the High Courts are

<https://hcservices.ecourts.gov.in/hcservices/> such reliefs by issuing a direction to the



authorities concerned to consider the representation and pass orders. However, the other part of the intention has not been taken into account by the Courts in normal circumstances. In fact, the intention of the litigants is to reopen the lapsed cause of action.

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8. The constitutional Courts across the country reiterated that any grievances must be redressed within a reasonable period of time. Even in case there is no limitation period prescribed, then also, the litigants must approach the Court of law within a reasonable period of time. In the event of allowing the claim to get lapsed, thereafter, the same cannot be reopened one way or the other by citing the representation or otherwise. Thus, the aggrieved persons, slept over their rights, cannot wake up one fine morning and knock the doors of Court of law for the redressal of their grievances. The rights are to be established at the earliest possible time or at least within a reasonable period of time. More specifically, in service matters, the employees are very much aware of their service rules and conditions. Ignorance of law can never be pleaded by the employees of the State or Union or its Organizations. Thus, the limitation period though not prescribed, the reasonable period within which, the litigations have been filed, are to be taken into consideration before admitting the writ petitions.

9. However, large number of writ petitions are filed in the High Courts, merely on the ground that the writ petitioner sent several representations to the respondents and the respondents have not considered the same, taken a decision and passed orders. Under these pretexts, arguments are advanced by stating that the authorities competent are duty bound to pass orders on the representations. The Courts also in a routine manner issuing a direction to the authorities concerned to consider the representations.

10. Such an exercise of the power of judicial review, under Article 226 of the Constitution of India, cannot be done for the purpose of providing a scope to the litigant to reopen the lapsed cause of actions. Once an aggrieved person allowed the cause of action to get lapsed, then the Courts would not entertain any writ petition thereafter

<https://hcservices.ecourts.gov.in/hcservices> Article 226 of the Constitution of India.



Mere submission of representation after number of years would not provide any cause of action for the aggrieved persons for filing a writ of mandamus.

11. There is no provision to submit repeated appeals, so also it is not necessary that repeated representations are to be sent to the authorities concerned. One appeal or one representation with all particulars and details to be acknowledged by the authorities competent is the requirement for moving a writ petition for issuing a writ of mandamus. However, the practice of sending representations on several occasions in order to fill up the gap or time limit cannot be entertained by the Courts under Article 226 of the Constitution of India.

12. Most of the times, even these representations are not supported with any acknowledgment. The litigants are typing representations and enclosing it in the typed set of papers and filing it in the Court. In a writ jurisdiction, the High Courts are also not questioning the genuinity of these representations enclosed in the typed set of papers by the litigants. Such a conduct of the litigants amounts to abuse of judicial process. Thus, any representation sent to the authorities competent must be sealed and acknowledged by the authorities competent enabling them to deal with the appeal / representation, take a decision and pass orders by following the procedures contemplated under law. Thus, to entertain a writ of mandamus, it is a precondition that the aggrieved person should have approached the authorities competent against whom such a direction is sought for and the said representation / appeal acknowledged by the authorities competent must be available in the file of the authority concerned. This being the mandatory requirement for the purpose of entertaining a writ petition to direct the authorities concerned to consider the representation, this Court is of the considered opinion that even the legal rights regarding the claim established should also be set out in the writ petition. Once again, it is a precondition that the person approaching the High Court, under Article 226 of the Constitution of India, must establish his legal right. In the absence of establishing any such legal rights, no writ petition can be entertained under Article 226 of the Constitution of India.



13. Thus, for entertaining a writ of mandamus to consider the appeal / representation, the following requirements are to be adhered to:

(i) The person filing a writ petition should have approached the authority concerned by preferring appeal / representation setting out all the facts and details along with the cause of action arose for filing such appeal / representation.

(ii) Such an appeal / representation must be duly acknowledged by the authority concerned.

(iii) The person, who files a writ petition, should establish that he has established the legal rights for the purpose of redressing his grievances before the competent authority. In other words, it is a precondition that the person, who files a writ petition, should establish the legal rights for the purpose of approaching the competent authority as well as the High Court under Article 226 of the Constitution of India.

(iv) Such an appeal / representation must have been preferred within the time limit prescribed in the Service Rules or at least within a reasonable period.

(v) The normal period of limitation prescribed in the Service Rules of various Departments of the State and Union is that 60 days or 90 days from the date of arising of cause of action. If there is no order affecting the rights of a person, then such an appeal / representation must be filed at least within a period of six months from the date of arising of cause of action. Thus, any appeal or representation must be submitted to the competent authority within a period of six months from the date of arising of cause of action.

(vi) On receipt of such an appeal / representation from the aggrieved person, the competent authority is bound to consider the same and pass orders within a period of six months from the date of receipt of the representation / appeal.

(vii) In the event of not passing any orders within a period of six months, then alone, a writ of mandamus should be entertained for the purpose of issuing a direction to the authority concerned to consider the representation / appeal and pass orders.

(viii) Even such procedures are contemplated in certain Special Acts, namely, Administrative



time limit for the purpose of preferring appeal and even the Service Rules of various Departments of the State or Union also prescribe time limit for preferring appeal / representation. All such appeals / representations are to be filed within a time limit prescribed and in the event of filing any such appeal / representation beyond the period of limitation, then, such an appeal / representation shall be entertained by the competent authority only on filing a petition by the aggrieved person to condone the delay and the delay condonation petition is to be decided by the competent authority by considering the reasons adduced and by taking a decision on merits and in accordance with law.

14. The remedy of a writ is an extraordinary one, wherein the affected person is expected to approach the High Court soon after the cause of action. Thus, the High Court should not entertain the petitions filed beyond the reasonable period of time and based on the created cause of actions. Creating a cause of action is the recent trend being developed nowadays amongst few persons, who all are attempting to achieve their goal in an indirect manner. Once again, it is the legal brain, which provides such advise to achieve their goals in an indirect manner knowing the fact that they cannot achieve the same directly. All such writ proceedings filed with an intention to achieve the goal in an indirect manner by illegal or irregular means can never be encouraged nor be entertained. All such litigations are to be rejected with heavy costs.

15. The precious judicial hours are to be utilized so as to provide justice to the needy people. High Court being the temple of justice must ensure that speedy justice is provided to all the needy and the persons, who are all approaching the Court with clean hands by establishing their legal rights. Therefore, by curtailing all these unnecessary litigations and by stopping these kind of litigations filed by creating cause of action in respect of lapsed claims, the High Court can utilize the judicial hours for the purpose of rendering complete justice to the poor needy and the litigants, who all are approaching the Court of law with genuine grievances.



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16. Large number of litigants, more specifically, the employees of the State and Union are approaching the Court even for subsistence allowance, monthly pension, pensionary benefits and other genuine grievances. The High Court is unable to dispose of those genuine cases on account of the fact that large number of unnecessary litigations are coming in and kept pending for years together. Even the National Litigation Policy as well as the State Litigation Policy implemented by the Union of India and the State are not effectively working out. Large number of litigations are filed vexatiously. Government appeals are filed for the sake of filing. Government appeals are filed based on some untenable opinions offered by the Government Pleaders. It is a financial loss to the State Exchequer. Even for filing an appeal, the State must ensure that adequate legal grounds are available for filing an appeal. Mechanical filing of appeal at the cost of the taxpayers' money can never be tolerated by the Courts. The State being the custodian and trustee of the taxpayers' money, is bound to spend the money diligently and based on the necessity. Mechanically appeals are filed by the Departments by spending huge money. All these expenditures are to be properly evaluated and stopped. Even though the State Litigation Policy as well as the National Litigation Policy are in force, the State Government and its officials as well as the Government Pleaders are not conscious about the letter and spirit of such Litigation Policies.

17. The High Courts are overburdened on account of such litigations, wherein the cause of actions are created. This being the factum realized and experienced by many legal luminaires and jurists, this Court is of the considered opinion that effective measures are to be taken to control such litigations, which all are consuming the valuable judicial hours and preventing the genuine litigants, who all are longing to get justice. Therefore, in all such cases, wherein the writ petitions are filed to consider the representations, these principles are to be followed even at the time of admission itself so as to allow the High Court to render a complete justice to the needy poor and so as to uphold the noble concept of justice as adopted in the preamble of our Constitution of India.



18. Identification of vexatious litigations are also to be done by the High Courts. All such litigations are to be rejected with heavy costs so as to prevent such vexatious litigants from approaching the Court again and again. Therefore, these measures are also to be taken while entertaining the writ petitions under Article 226 of the Constitution of India and all such basic principles are to be looked into even at the stage of admission itself to avoid overburdening and preventing the High Court from rendering justice to the needy and deserving citizen of this great Nation.

19. Even recently, the Honourable Supreme Court of India, in the case of Government of India Vs. P.Venkatesh (Civil Appeal No.2425 of 2019), has held as follows:-

"...This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute...."

This Court is of the considered opinion that the petitioner cannot approach the Court after a lapse of 15 years for redressal of the grievances, as the cause became dead and he made an attempt to restore the cause through back door, which cannot be encouraged by the Court. Thus, the Writ Petition stands dismissed on the ground of laches. No costs.

Sd/-

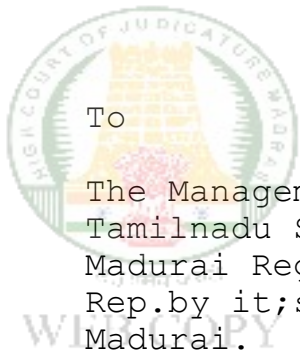
Assistant Registrar (crl side)

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Sub Assistant Registrar(CS)

MPK



To

The Management of
Tamilnadu State Transport Corporation (Madurai) Ltd.,
Madurai Region,
Rep.by its General Manager (Corporate),
Madurai.

W.P. (MD) No.1879 of 2015
02.12.2020

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