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W.P.(MD)No.3371 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2020

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.3371 of 2015

and

M.P.(MD).No.1 of 2015

N.Ramasamy

... Petitioner

Vs.

1.The State Rep. by the
Principal Secretary to Government,
Higher Education Department,
Chennai - 600 009.

2.The Commissioner of Collegiate Education,
E.V.K.Sampath Building,
College Road, Chennai - 6.

3. The Dean,
Madurai Medical College,
Madurai - 625 020.

4. The Principal Accountants General (A&E),
Tamil Nadu,
361, Anna Salai,
Chennai - 600 018.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order by the first respondent in letter No.22684/AF.1/2014-I dated 09.02.2015 quash the same as illegal and consequently direct the first respondent to reckon the past services of the petitioner from 24.04.1961 to 08.09.1966 for the purpose of fixing pension and other retirement benefits and consequently the fourth respondent may be directed to revise the petitioner's pension within a specific time as fixed by this Court.

For Petitioner	: Mr.P.Balasubramanian
For R1,R2 & R3	: Mr.D.Muruganandham Additional Government Pleader
For R4	: Mr.P.Gunasekaran

O R D E R

The impugned order dated 09.02.2015 rejecting the claim of the writ petitioner for outing of his services rendered by him prior to 1996 is under challenge in the present writ petition.

2. The writ petitioner has filed the writ petition at the age

<https://hcservices.ecourts.gov.in/hcservices/>



of 78 years. The claim of the writ petitioner is that he was working as School Assistant from 24.04.1961 to 08.09.1966 and thereafter, he resigned the said post on 09.09.1966 and joined in some other services and retired from service on 31.05.1994.

3. The writ petitioner states that the services rendered by him as School Assistant from 1961 to 1966 is to be considered for the purpose of grant of pensionary benefits by treating the said period as qualifying services.

4. The claim itself is stale in nature. The writ petitioner retired from service on 31.05.1994 and even at the time of resignation of the post of School Assistant in the year 1996, the old Madras Pension Code, Article 4(18) provides resignation amounts to forfeiture of the past services. The said provision is incorporated in the new Tamil Nadu Pension Rules 1978 also, more specifically, Rule 23. Thus, even on merits, the writ petitioner is not entitled to claim the period of service as he resigned the post on 09.09.1966 itself.

5. Further, the claim itself is a lapsed one. The writ petitioner resigned the post in the year 1966, joined in some other services and retired from service on 31.05.1994. He sent a representation to the authority on 01.03.2013, after a lapse of about 19 years from the date of retirement and 47 years from the date of resignation.

6. In order to restore the lapsed claim, he filed a writ petition in W.P.(MD).No.6166 of 2014 and this Court passed an order directing the authorities to consider the representation. Based on the said directions, the impugned order has been passed rejecting the claim of the writ petitioner and the present writ petition is filed.

7. Regarding the restoration of such lapsed claim after several years and the principles to be followed has been considered by this Court in W.P(MD).No. 12782 of 2015 and the judgment was delivered on 08.07.2019 and the relevant paragraphs are extracted hereunder:

"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 under 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 Tribunal Act etc., and several other Acts prescribe 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.

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.

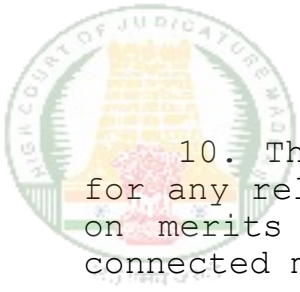
18. Identification of vexatious litigations are also to be done by the High Courts. All such litigations are to be rejected with heavy costs so as to prevent such vexatious litigants from approaching the Court again and again. Therefore, these measures are also to be taken while entertaining the writ 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...."

8. In view of the facts and circumstances, such lapsed claims cannot be restored after several years in order to get the relief one way or other.

9. The employees left over their rights cannot wake up in one fine morning and knock the doors of the Court for grant of relief. Such a practice cannot be accepted by the Constitutional Courts. All such claims are not only unsustainable but not entertainable.



10. This being the factum, the writ petitioner is not entitled for any relief. Accordingly, the writ petition stands dismissed both on merits and on the ground of laches. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(Writs)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Higher Education Department,
Chennai - 600 009.
- 2.The Commissioner of Collegiate Education,
E.V.K.Sampath Building,
College Road, Chennai - 6.
3. The Dean,
Madurai Medical College,
Madurai - 625 020.
4. The Principal Accountants General (A&E),
Tamil Nadu,
361, Anna Salai,
Chennai - 600 018.

+1 CC to M/s.GP (SR-23013[F] dated 26/11/2020)

W.P. (MD)No.3371 of 2015

24.11.2020

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TR(08.12.2020) 8P 6C