

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2021

CORAM :

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN

Rev.Aplw.No.184 of 2015

in

W.P.No.26501 of 2013

and

M.P.No.1 of 2015

1.M.Lakshmi

2.Mr.C.M.Meenakshi Sundaram

3.Mrs.M.Revathy

4.Mrs.C.M.Uma Maheswari

...Applicants

Vs

1.The Principal Secretary to Government,
Home Department,
Government of Tamil Nadu,
Fort St.George, Chennai -600 009.

2.The Director General of Police,
Law & Order, Tamil Nadu,
Mylapore, Chennai – 600 004.

... Respondents

PRAYER : Review Application filed under Order 47 Rule 1 of Civil Procedure Code read with Article 226 of the Constitution of India to review the order dated 24.09.2013 in W.P.No.26501 of 2013.

For Applicants : Mr.M.Purushothaman.

For Respondents : Mrs.R.Anitha, Government Advocate.

ORDER

The matter has been heard through "Video Conference".

2.The cause of action for this Review Application is of the Judgment passed by the Division Bench of this Court in W.A.No.501 of 2014 dated 20.11.2014, wherein a liberty has been given to the Appellant to file a Review Application before the Single Judge of this Court and that is how this Review Application has been filed before this Court.

3.It is seen from the records that late Mr.R.C.Mahendran, husband of the First Applicant and father of the Second to Fourth Applicant (herein after referred to as 'Applicant' for the sake of convenience), was appointed as Sub Inspector of Police by direct recruitment in the year 1972 and promoted as Inspector of Police in the year 1989. The Applicant investigated a case based on the direction given by the Deputy Inspector of Police, Chennai which is of a private complaint filed by one Mr.T.V.A.Kumar against one Mr.Rajendra

Prasad. The said Mr.Rajendra Prasad gave a complaint on the Applicant alleging that he demanded 10% of the amount regarding which complaint was registered. Based on the complaint, charge memo was issued and enquiry was conducted and after enquiry, the Applicant was dismissed from service on 03.09.2002. Against the said order of dismissal, an Appeal was preferred and the same was also dismissed on 22.05.2003.

4.Further, the said order was challenged before the Tamil Nadu Administrative Tribunal in O.A.No.2489 of 2003, which was later transferred to this Court in W.P.No.36690 of 2005 and the said Writ Petition was allowed to be withdrawn as the Petitioner was advised to withdraw the case so that he would be granted relief by the authorities. Since, thereafter, nothing has happened, the Petitioner sent a representation to the first Respondent to consider his claim under G.O.Ms.No.240 of 2003 dated 23.03.2005. Thereafter, the Petitioner filed many representations. However, no fruitful result was achieved by the Petitioner. Subsequently, the First Respondent rejected the Petitioner's claim by order dated 23.12.2005. Therefore, the petitioner filed W.P.No.26501 of 2013 challenging the said order.

5.This Court after hearing the parties, by order dated 24.09.2013 dismissed the Writ Petition filed by the Applicant holding that matter has already attained finality as early as on 23.12.2005 and there was a delay of eight years in challenging the said order and the matter cannot be reopened. Against the dismissal order, the Applicant preferred an Appeal in W.A.No.501 of 2014 and the said Appeal was ordered giving liberty to the Appellant to file a review with detailed explanation for condonation of delay and laches and thus, this Review Application has been filed.

6.Heard Mr.M.Purushothaman, Learned Counsel for the Applicants who took various documents to show that there was no criminal case filed against the Applicant for the alleged offence committed by him. Moreover, the said Rajendra Prasad has not stated in the previous Writ Petition filed by him in W.P.No.7292 of 1998 seeking direction not to permit the Applicant from proceeding further with the investigation on the ground that the Applicant has misused his power by disturbing the business of the said Rajendra Prasad in the guise of investigation. Moreover, as far as the delay is concerned, it is submitted

by the Learned Counsel for the Applicants that the Applicant has been fighting right from beginning and he was compelled to withdraw the Writ Petition as he was given hope that his grievances would be addressed.

7.However, Mrs.R.Anitha, Learned Government Advocate appearing for the Respondents would oppose the said contentions stating that the Applicant wants to reopen the issue which has already attained finality and submitted that the scope of the review is limited and all the factual details cannot be gone into at the time of Review Application.

8.No doubt, there is a delay of eight years. However, what has to be seen is the plight of the Applicant. The Applicant was dismissed from service which is the major punishment. Though this Court cannot go into the factual aspects, as rightly pointed out by the Learned Counsel for the Applicants, even in the complaint given by the said Rajendra Prasad to the Chief Minister Cell, no allegation of corruption against the Applicant is found. Further, even in the Writ Petition filed by him, no such allegation has been made against the Applicant.

9.Further, in the cross-examination made in the departmental proceedings, he admitted that he did not mention anything about the corrupt practice of the Applicant. These are all the material facts which are required to be gone into. Therefore, the matter has to be heard on merits. It is seen that this Court has dismissed the Writ Petition only on the ground of delay. The facts of the case would undoubtedly prove that, *prima facie*, there is no allegation of corruption even in the complaint filed by the said Rajendra Prasad.

10.Further, the Judgment of the Hon'ble Supreme Court of India in the case of ***Tukaram Kana Joshi & others the Power of Attorney Holder Vs. M.I.D.C. & Others*** reported in **2013 (2) CTC 222** relied by the Learned Counsel for the Applicants support the case of the Applicants and the relevant paragraphs are usefully extracted as follows:

“10.The State, especially a welfare State which is governed by the Rule of Law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial

discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third party interest is involved. Thus analysed, the Petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.

11.The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to

promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. Vide:P.S.Sadasivaswamy v.State of T.N., AIR 1974 SC 227; State of M.P. & others v.Nandlal Jaiswal & others, AIR 1987 SC 251; and Tridip Kumar Dingal & others v.State of West Bengal & others, 2009 (1) SCC 768.

12.No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the Applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The Court should not harm innocent parties if their rights have infact emerged, by delay on the part of the Petitioners. Vide: Durga Prasad v.Chief Controller of Imports and Exports & others, AIR 1970 SC 769; Collector, Land Acquisition, Anantnag & another v.Mst.Katiji & others, AIR 1987 SC 1353; Dehri Rohtas

Light Railway Company Ltd. v. District Board, Bhojpur & others, AIR 1993 SC 802; Dayal Singh & others v. Union of India & others, AIR 2003 SC 1140; and Shankara Co-op Housing Society Ltd. v. M.Prabhakar & others, AIR 2011 SC 2161.”

11.The facts of the case would definitely prove that there are arguable points involved and since this Court has dismissed only based on laches, case has not been considered factually and on merits. Therefore the order passed by this Court is liable to be reviewed. Accordingly, the order dated 24.09.2013 in W.P.No.26501 of 2013 is set aside and the matter is directed to be posted before regular Court.

12.In the result, this Review Application is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No

Internet:Yes/No

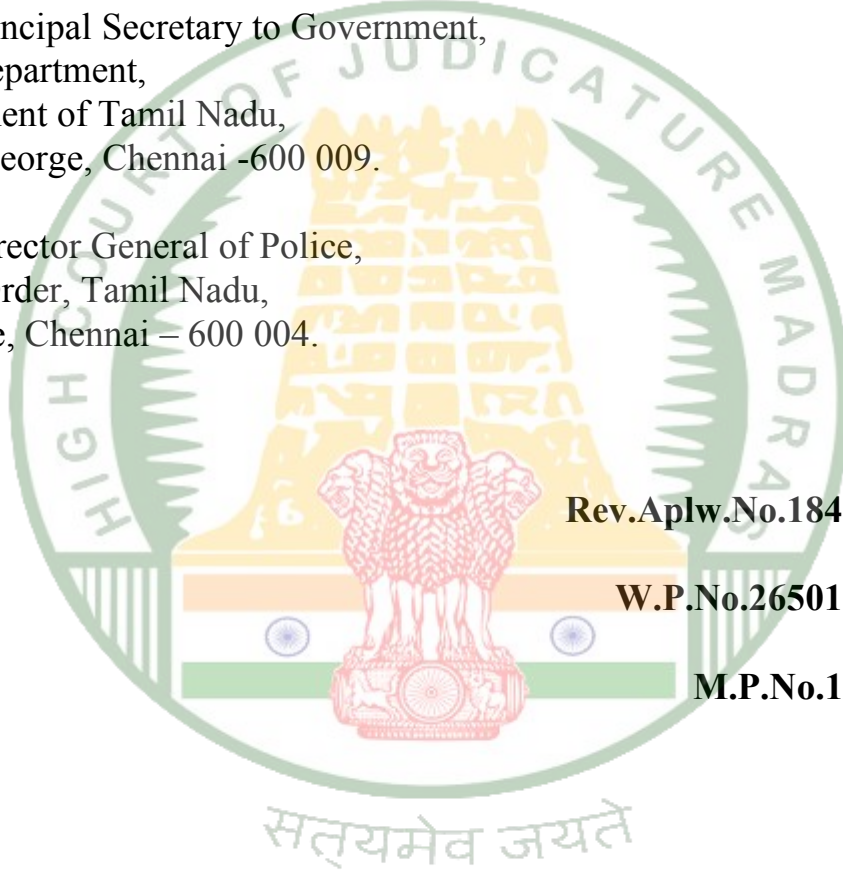
N.KIRUBAKARAN, J.

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To

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Fort St.George, Chennai -600 009.

2.The Director General of Police,
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