



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

Writ Appeal (MD).No.330 of 2021

S.Devarajan

... Appellant/Petitioner

Vs.

1. Union of India represented by
The Commissioner of Central Excise
and Customs,
Tiruchirappalli.
2. Assistant Commissioner of Central Excise,
Madurai.
3. The Pay and Account Officer,
Central Excise and Customs,
Tiruchirappalli.
4. The Pay and Account Officer,
Central Excise and Customs,
Madurai.

... Respondents/Respondents

Prayer: Writ Appeal is filed under Clause 15 of Letters Patent against the order passed by this Court in W.P.(MD).No.4696 of 2014, dated 03.11.2020.

Prayer in WP(MD) . 4696/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, in the nature of writ , calling for the records relating with the order of the 3rd respondent made in his proceeding in No. PAO II /CCE/TRY/CAT/2010-11 /1408 dated 06.03.2014 and quash the same as it is arbitrary and illegal and in consequence to direct the respondents 3 and 4 to refix the petitioner s pay as per order dated 02.02.1996 made in C.No. II/24/14/93 AC II and to refund the amount of Rs. 29,850/- which was already recovered from him and also direct them to pay the arrears of increment from 01.02.1999 to 31.10.2001 to the tune of Rs. 15,000/- and to pay revised pension accordingly from 01.11.2001 , all with interest, by extending the benefit of order dated 03.05.2006 passed by Central Administrative Tribunal in O.A.No.415 of 2005 and upheld by the order dated 16.07.2009, by Division Bench of this Court in W.P.No.25216 of 2007.



For Appellants : Mr.R.Suriyanarayanan
For Respondents : Mr.S.Ragaventhre for R1 to R4

J U D G M E N T

(Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**)

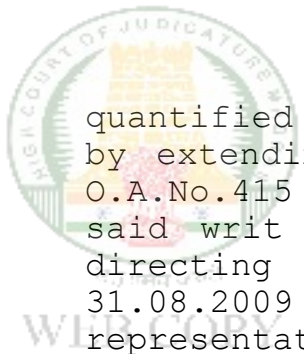
This writ appeal filed by the writ petitioner in W.P(MD). No.4696 of 2014 is aggrieved by the order dated 03.11.2020, by which, the writ petition was dismissed on the ground of delay and laches, without going into the merits of the claim made by the appellant.

2. We have elaborately heard Mr.R.Suriyanarayanan, learned counsel appearing for the appellant and Ms.S.Ragaventhre, learned Central Government Standing Counsel appearing for the respondents 1 to 4.

3. Since the learned Writ Court did not go into the merits of the matter, we only examine as to whether the writ petition could have been dismissed on the ground of delay and laches and going through the material papers placed before us and after hearing elaborate submissions on either side, we are fully convinced that the writ petition could not have been dismissed on the ground of delay and laches.

4. We substantiate the conclusion with the following reasons:

One Mr.P.Manickam, who was working as Superintendent of Central Excise, Thiruvarur Range, filed O.A.No.415 of 2005, before the Central Administrative Tribunal (in short "the Tribunal"), to set aside the proceedings dated 04.05.2005 passed by the fourth respondent herein and to direct the respondents to pay the salary fixed by the second respondent in his order dated 06.02.2005 along with the arrears thereon. The original application was allowed by order dated 03.05.2006 holding that the case of the said applicant has to be considered under para 2(b)(i) of the office memorandum dated 14.05.1987. The respondent-Department challenged the said order by filing W.P(MD).No.25216 of 2007, before the Principal Bench of this Court. The said writ petition was dismissed by order dated 16.07.2009. Thus, insofar as the case of Mr.P.Manickam is concerned, the matter attained finality and we are informed by the learned counsel appearing for the appellant that benefits have been granted to him. Thereafter, the appellant submitted a representation on 31.08.2009 to the respondents seeking similar benefit. The representation was not considered. Therefore, the appellant filed W.P(MD).No.9688 of 2014 praying for a direction to re-fix his pay as per the order dated 02.02.1996 and to refund the amount of Rs.29,850/-, which was recovered from the appellant and also to pay arrears of increment from 01.02.1999 to 31.10.2001, which was



quantified at Rs.15,000/- and to pay revised pension from 01.11.2001 by extending the benefit of the order dated 03.05.2006 passed in O.A.No.415 of 2005, which was upheld in W.P.No.25216 of 2007. The said writ petition was disposed of by order dated 24.01.2014 by directing that the representation given by the appellant dated 31.08.2009 to be considered. Pursuant to such direction, the representation was disposed of by order dated 06.03.2014. This order was impugned in W.P(MD).No.4696 of 2014. The writ petition was heard by the learned Writ Court during November, 2020 and the Court held that the claim made by the appellant is hopelessly barred by the delay and laches.

5. The dates and events mentioned above clearly shows that there is no delay in approaching the learned Writ Court. However, the larger question would be whether the appellant can seek for the relief granted to Mr.P.Manickam by filing a representation in the year 2009 and whether he could have filed a writ petition to consider his representation and whether the order dated 06.03.2014 could have been challenged in a writ petition without approaching the Central Administrative Tribunal.

6. These issues have to be considered in the writ petition and since the writ petition was dismissed only on the ground of delay and laches, we are of the view that the writ petition should be heard afresh and a decision should be arrived at on merits.

7. For the above reasons alone, this Writ Appeal is allowed and the order passed in the writ petition is set aside and the writ petition is restored to the file of the learned Single Bench of this Court, with liberty to the respondents to file additional counter-affidavit, if they so desired. Since the writ petition is of the year 2014, the Registry is directed to list the writ petition before the concerned Court, during second week of August 2021. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pkn

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To:

1. The Commissioner of Central Excise
and Customs,
Union of India
Tiruchirappalli.
2. Assistant Commissioner of Central Excise,
Madurai.
3. The Pay and Account Officer,
Central Excise and Customs,
Tiruchirappalli.
4. The Pay and Account Officer,
Central Excise and Customs,
Madurai.

Copy to

The Section Officer,
Writ Section,
Madurai Bench of Madras High Court,
Madurai.

(To list the WP before the concerned Court, during Second week of
August 2021)

Writ Appeal (MD).No.330 of 2021
27.07.2021

NS (CO)

LR (04.08.2021) 4P 6C