



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2021

CORAM

THE HONOURABLE MR.JUSTICE T. S. SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD)No.319 of 2018

A.Kaliappan

... Appellant/Petitioner

Vs.

1.The District Educational Officer,
Karur Educational District,
Karur.

2.The Assistant Elementary Educational Officer,
Thanthoni Assistant Education Officer,
Karur District,
Karur.

... Respondents/Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent against the common order passed by this Court in W.P.(MD)No.13652 of 2017, dated 26.07.2017.

Prayer in WP(MD). 13652/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, directing the respondent setting aside the impugned order of the 1st Respondent in Na.Ka.No. 2926/A1/2016 dated 19.04.2017 and direct the respondent to grant benefits to the petitioner by promoting the petitioner as a Record Assistant from 09.08.1995 and grant promotion benefits and pension benefits basing upon the promotion.

For Appellant : Mr.S.Titus

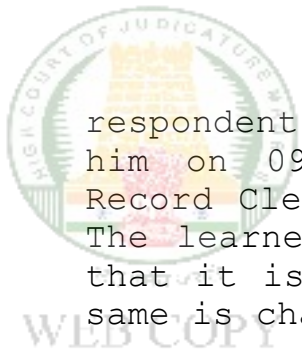
For Respondents : Mr.R.Baskaran
Standing Counsel for Government

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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 is directed against the order dated 26.07.2017, in W.P.(MD) No.13652 of 2017, in which the appellant challenged the order passed by the first



respondent dated 19.04.2017, rejecting the representation given by him on 09.05.2016, seeking notional promotion to the post of Record Clerk from 09.08.1995 and to grant all benefits therefrom. The learned Writ Court dismissed the Writ Petition on the ground that it is haplessly barred by limitation. The correctness of the same is challenged by way of filing this Writ Appeal.

2.It is pointed out by Mr.S.Titus, the learned counsel for the appellant that on account of the mistake committed by a person in not passing appropriate orders at the appropriate time, the appellant's right to get promotion has been grossly affected. In this regard, a reference has been made to the proceedings of the District Educational Officer dated 23.02.1996, proposal of the District Educational Officer dated 24.02.2003, the information secured by the appellant under the Right to Information Act, 2002 dated 30.10.2006 and the communication sent by the District Educational Officer, dated 14.02.2007.

3.The learned counsel for the appellant would further submit that these proceedings will clearly show that for no fault committed by the appellant, he was not included in the panel of candidates fit for promotion and he was unable to get promotion at the appropriate time. Therefore, the appellant submitted a representation dated 09.05.2016 to the respondents and since the representation was not considered, the appellant approached this Court and filed W.P.(MD) No.24816 of 2016, to direct the respondent to consider the representation, which was disposed of on 17.03.2017, after which, the order impugned in the Writ Petition was passed. It is submitted that in the said order a totally new stand was taken, which was never the case of the department at the earlier point of time. However, without considering the same, the learned Writ Court has dismissed the Writ Petition on the ground of delay and laches.

4.After elaborately hearing the learned counsels, we are of the considered view that the appellant's attempt was to reopen the matter, which has attained finality. The claim for securing promotion has to be done at the appropriate and the person who has not done the same cannot be permitted to say that even after 15 years of his retirement, he is entitled to pursue his claim. As rightly submitted by Mr.R.Baskaran, learned Standing Counsel for Government that for the communications, which were referred to by the learned counsel for the petitioner, copies have been marked and sent to the appellant, but at the earlier point of time, he has not stated that as a matter of right he is entitled for promotion.

5.The learned counsel for the petitioner would submit that the Writ Petition ought not to have rejected on the ground of



delay and laches since there was a direction issued by the Court to consider the representation on 19.04.2017, after which, the order stand passed. In our considered view, the order and direction issued in W.P.(MD) No.24816 of 2016 dated 17.03.2017 cannot set the clock back and it cannot cure the defect of inordinate delay and laches. In fact, by issuing such innocuous directions, some times stale claims are reopened. The present case is a classic example, where the appellant now seeks to contend that the cause of action arose only after the order dated 17.03.2017, in W.P.(MD) No.24816 of 2016. The contention advanced by the appellant cannot be accepted because a direction issued to consider the representation will not revive the claim, which has come to an end on and after the retirement of the appellant on attaining the age of superannuation on 31.05.2021. Thus, it is clear that during period the appellant was in service he has not approached the appropriate forum stating that he has been unjustifiably denied promotion. Even after retirement in 2001, the appellant did not make a claim. But 15 years after retirement, he made a representation to the respondents on 09.05.2016 and immediately filed a Writ Petition on 15.12.2016, wherein an order was passed to consider the representation. Thus, all the above reasons clearly show that the claim made by the appellant is haplessly barred by limitation.

6.It is submitted that for the first time, a different stand has been taken in the impugned order dated 19.04.2017. This submission is not tenable because at any earlier point of time no adverse order was passed against the appellant, but his name did not find place in the list of candidates eligible to the promotion. In the order impugned in the Writ Petition, the department has disclosed the reasons. We find that there is absolutely no reason to interfere with the same. In any event, the appellant cannot reopen a matter which was settled before three decades. The appellant has not made out a case to interfere with the order passed in the Writ Petition.

7.Accordingly, the Writ Appeal stands dismissed. No costs.

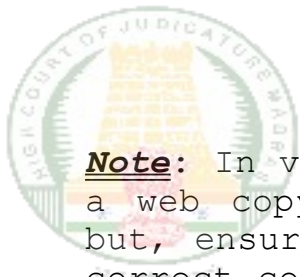
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Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)



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 District Educational Officer,
Karur Educational District,
Karur.

2.The Assistant Elementary Educational Officer,
Thanthoni Assistant Education Officer,
Karur District,
Karur.

W.A. (MD) No.319 of 2018

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