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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.1098 of 2020

S.Vinayagam

... Petitioner

Vs.

1.The Secretary to Government,
Revenue Department,
Fort St. George, Chennai-9.

2.The Director of Survey & Settlement,
Chepauk, Chennai-5.

3.The Assistant Director of Survey,
Kancheepuram District,
Kancheepuram.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Mandamus, directing respondents to pass orders on the representation made by the petitioner dated 19.08.2019 for revision of seniority in the cadre of Deputy Inspector of Survey notionally for the purpose of further promotion to the post of Inspector of Survey and grant him all consequential service and monetary benefits, including pensionary benefits within a reasonable time as fixed by this court.

For Petitioner : Mr.M.Alagu Goutham

For Respondents : Mr.T.Arunkumar, Addl.Govt.Pleader

ORDER

This Writ petition has been filed seeking to issue a Writ of Mandamus directing respondents to pass orders on the representation made by the petitioner dated 19.08.2019 for revision of seniority in the cadre of Deputy Inspector of Survey notionally for the purpose of further promotion to the post of Inspector of Survey and grant him all consequential service and monetary benefits, including pensionary benefits within a reasonable time as fixed by this court.



2. The case of the petitioner in brief.

The petitioner was entered into service as Section Writer in the Revenue Department in Chengalpattu Taluk in the year 1980 and thereafter, he was promoted as Surveyor/Draftsman on 24.12.1982. Again, he was promoted Sub Inspector of Survey on 01.10.1991 and he retired from service on 30.09.2014, holding the same post. As per the seniority list prepared for the combined Kancheepuram District, his name appeared in Sl.No.29 and when the Tiruvallur District was bifurcated from Kancheepuram District, his name appeared in Sl No.43. According to the petitioner, though he passed all the tests by December 1997, he was not promoted as Deputy Inspector of Survey, during his service and his juniors namely Mr.Murali, Gunasekaran and Murthi were promoted to the above post. Further, the petitioner made several representations right from the year 2005 onwards seeking promotion on par with his juniors. But no orders have been passed. Hence the writ petition.

3. The respondents filed counter affidavit, wherein, it is stated that, the petitioner was promoted temporarily as Sub Inspector of Survey and Land Records on 30.09.1991. The petitioner had passed the Department Examinations prescribed for the above said post on 27.05.1998. Therefore, his name was included in the panel for Sub Inspector of Survey and Land Records for the year 1999 and his services in the post of Sub Inspector of Survey was regularized with effect from 25.04.1999. The persons mentioned by the petitioner as Juniors to him have attained the pre-requisite qualifications long before the petitioner and became seniors to the petitioner in the category of Sub Inspector of Survey for the year 1999. Further, their names were found place in the panel for the post of Deputy Inspector of Survey only for the year 2012-2013 and not for the year 2009-2010, as stated by the petitioner. Since the petitioner had retired from service on 30.09.2011 (but in the writ petition, it has been wrongly mentioned as 30.09.2014), his name was not included in the panel for the post of Deputy Inspector of Survey for the year 2012-2013. The petitioner's request to include his name in the panel for the year 2009-2010 for the post of Deputy Inspector of Survey in backlog vacancies, by following rule of reservation was already rejected by the first respondent in G.O.(D) No.214 Revenue SS3(1) Department, dated 14.07.2011. Hence, the writ petition is liable to be dismissed.

4. The learned counsel appearing for the petitioner submitted that, though the petitioner's name was found place as Sl.No.43 in the seniority list for promotion to the post of Deputy Inspector of Survey for the year 2009-2010, the petitioner was not promoted, but his juniors namely Murali, Gunasekaran and Murthi were promoted as Deputy Inspector of Survey. Immediately, the petitioner had made a representation on 08.12.2010 and subsequently, several reminders to the



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respondents seeking promotion to the post of Deputy Inspector of Survey on par with his juniors. But all the steps taken by the petitioner went in vain and hence, the petitioner is entitled to get notional promotion, as prayed for in the writ petition.

5. The learned Additional Government Pleader, appearing for the respondents submitted that the petitioner had retired from service as early as on 30.09.2011. He further submitted that, though the petitioner contended that during the year 2009-2010 his juniors were promoted, he had not challenged the above promotion order and no substantial materials have been filed for the alleged promotion. Therefore, after a lapse of ten years, seeking notional promotion to the post of Deputy Inspector of Survey is liable to be rejected on the ground of delay and laches. He further submitted that the petitioner has not impleaded his juniors, who alleged to have been given promotion to the post of Deputy Inspector of Survey, as the parties to the writ petition and on this ground also this writ petition is liable to be dismissed for non joinder of necessary parties.

6. Heard the rival submissions made by both the counsels and I have perused the materials on record.

7. The petitioner has sought notional promotion to the post of Deputy Inspector of Survey by revising the seniority in the cadre of Deputy Inspector of Survey for the year 2009-2010, following the rule of reservation. But, it is stated by the learned Additional Govt. Pleader that the above request of the petitioner was already rejected by the first respondent vide G.O(1D) No.214, Revenue SS3(1) Department dated 14.07.2011.

8. At this juncture, it is useful to rely upon the judgment of this court in W.P.No.14092 of 2022 dated 01.07.2020 (between V.Vijayakumarasamy Vs. The Government of Tamil Nadu represented by The Principal Secretary to Government Home (Transport II) Department, Secretariat, Chennai -600009 and another), wherein, considering the various decisions of the Hon'ble Supreme Court and High Courts, has held thus.

" 28.Considering the facts and circumstances of the case and the decision of the Hon'ble Supreme Court and High Courts cited supra and also considering the fact that there are no materials to establish that the respondents have wantonly delayed the petitioner's promotion and there is no taint of malice for the delay, this Court is of the firm view that the petitioner has not satisfied the criteria for considering the notional promotion and therefore, the claim of the petitioner seeking notional promotion and other benefits



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cannot be considered on the ground of delay due to administrative reasons at the hands of the respondent Department, as contended by the learned counsel for the petitioner and the same is liable to be rejected on the following grounds;

(i). No juniors to the petitioner were given promotion during service period of the petitioner, therefore there would not be any monetary loss to the petitioner during his service period.

(ii). Promotion is not a fundamental right of a person and it is a condition of service, which has been very much observed by the Hon'ble Supreme Court in the case of S.B. Bhattacharjee Vs. S.D. Majumdar, cited supra.

(iii). Even though, the promotions were made by the 1st respondent after the date of superannuation of the petitioner due to administrative reasons, no materials have been placed before this Court to prove the malafide or illegality on the part of the respondents for the delay in finalising the promotion panel.

29. In view of above, there is no merits in the contention of the learned counsel for the petitioner and consequently, the writ petition stands dismissed. No costs.

9. Here in this case, the respondents contended that the petitioner's name was included in the panel for Sub Inspector of Survey and Land Records for the year 1999 and his services in the post of Sub Inspector of Survey was regularized with effect from 25.04.1999. Further, it is the contention of the respondents that, juniors to the petitioner names were found place in the panel for the post of Deputy Inspector of Survey only for the year 2012-2013 and not for the year 2009-2010, as stated by the petitioner and since the petitioner had retired from service on 30.09.2011 (but in the writ petition, it has been wrongly mentioned as 30.09.2014), his name was not included in the panel for the post of Deputy Inspector of Survey for the year 2012-2013. To rebut the above said facts, the petitioner has not placed any materials before this court. Therefore, the above decision of this court in W.P.14092 of 2022 is squarely applicable to the case and hence, the petitioner is not entitled to get notional promotion, after his retirement, by revising the seniority.

10. Further, the petitioner has sought notional promotion to the post of Deputy Inspector of Survey, by revising the seniority for the year 2009-2010, but, he has not



approached the court within the reasonable time. At this juncture, it is useful to refer to the judgments of the Hon'ble Apex Court and the Hon'ble Division Bench of this Court. The Hon'ble Apex Court, in a case, reported in 1994 SCC, Supl.(2) 195 [Ex-Capt. Harish Uppal vs. Union of India), has held as follows;

'8. The petitioner sought to contend that because of laches on his part, no third party rights have intervened and that by granting relief to the petitioner no other person's rights are going to be affected. He also cited certain decisions to that effect. This plea ignores the fact that the said consideration is only one of the considerations which the court will take into account while determining whether a writ petition suffers from laches. It is not the only consideration.

It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of Constitution of India and that is what precisely the Delhi-High Court has done. We cannot say that the High Court was not entitled to say so in its discretion."

11. The Hon'ble Division Bench of this Court, in the case of S.Vaidhyathan Vs. Government of Tamil Nadu reported in 2018 SCC OnLine, in para 14, it is held as under ;

"14. There is an inordinate delay and laches on the part of the appellant. What is laches is as follows:

"Laches or reasonable time are not defined under any statute or Rules. "Laches" or "Lashes" is an old french word for slackness or negligence or not doing. In general sense, it means neglect to do what in the law should have been done for an unreasonable or unexplained length of time. What could be the laches in one case might not constitute in another. The laches to non-suit, an aggrieved person from challenging the acquisition proceedings should be inferred from the conduct of the land owner or an interested person and that there should be a passive inaction for a reasonable length of time. What is reasonable time has not been explained in any of the enactment. Reasonable time depends upon the facts and circumstances of each case."



In para 16 of the judgment cited supra, it is held as under;

16. Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting into depriving of the remedy, is a principle based on public policy and utility and not equity alone....."

12. In Karnataka Power Corpn. Ltd. v. K.Thangappan reported in (2006) 4 SCC 322, the Hon'ble Supreme Court, at Paragraph 6, held as follows:

"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party'.....

16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time Delay and laches are relevant factors for exercise of equitable jurisdiction.

13. Therefore, keeping in mind the ratio laid down in the above cited decisions, this Court is of the view that the present writ petition is liable to be dismissed on the ground of delay and laches also.



14. Accordingly, the writ petition dismissed. No costs.
No costs.

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Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Revenue Department,
Fort St. George, Chennai-9.

2.The Director of Survey & Settlement,
Chepauk, Chennai-5.

3.The Assistant Director of Survey,
Kancheepuram District,
Kancheepuram.

+1cc to Mr.M.Muthappan, Advocate SR. No. 35721

+1cc to Government Pleader SR. Nos. 36194, 35923

W.P.No.1098 of 2020

SJ (CO)

PR (05/07/2022)