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W.P.Nos.2181 of 2019, etc and batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

**W.P.Nos.2181, 2183 to 2187, 2189, 19576, 19584,
19585, 19587 to 19591, 19593 & 19595 of 2019**

W.P.No.2181 of 2019:

Mr.M.V.Balasubramanian

... Petitioner

Vs.

The Chief Internal Audit Officer,
Board Office, Audit Branch,
TNEB, KKR Maligai
800 Anna Salai,
Chennai 600 002.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to settle petitioner's lawful dues, for which I am entitled as per the orders passed by this Court in Contempt Petition 967 of 2012 pursuant to the order passed by the First Bench of this Court on 26th July 2012.

For Petitioners

: M/s.Ananda Gomathy

(in all 17 W.Ps)

For Respondent

: Mr.Anand Gopalan

For M/s.T.S.Gopalan & Co.

(in all 17 W.Ps)

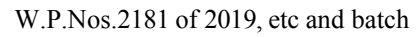


COMMON ORDER

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The writ of Mandamus has been instituted by the petitioners to direct the respondents to settle petitioner's lawful dues for which they are entitled as per the orders passed by this Court in Contempt Petition No.967 of 2012, pursuant to the orders passed by the Hon'ble Division Bench of this Court on 26.07.2012.

2. The learned counsel for the petitioner articulated the case of the petitioners by stating that all the petitioners in this batch of writ petitions were initially appointed as Junior Assistants. After several years of service in the cadre of Junior Assistants, the petitioners were transferred and posted as Junior Auditors in the Audit Branch for the Boards Services. In respect of transferred Junior Assistants as Junior Auditors, the Board proceedings Ms.No.813 dated 21.04.1972 stipulates certain benefits. As per the Boards proceedings, "The seniority of Assistants transferred from System / Office Circle offices to the Accounts wing shall be reckoned with reference to their total services as Assistants in the Accounts Wing plus half of their past services as Assistants in the system / circle offices."



4. In the context of the above benefits, the learned counsel for the petitioners drew the attention of this Court that the writ petition filed in the year 1991 to 1993 were decided by the High Court in the year 1999 against the employees, which were taken by way an Appeal before the Division Bench in writ appeal in W.A.No.1178 to 1180 of 1999. The Division Bench of this Court passed an order on 28.01.2002 as follows.

“We make it clear that the relief, which can be granted, is only monetary one, not affecting the seniority, and such the question of settling the seniority will not arise at all. The relief which is granted in these writ appeals is computation of the cash benefits basing upon the notional seniority to be given reckoning the dates of the



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first entry of the appellants in the service. For reckoning and payment of differential amount, time of six months is granted from the date of receipt of a copy of this order. All the writ appeals are thus allowed, as indicated above. No costs.”

5. Since the order of the Division Bench not implemented, the appellants therein filed Contempt Petition No.967 and 1108 of 2012 and pursuant to the Contempt Petition, the respondents implemented the order and extended the benefits in respect of two petitioners in the Contempt Petitions.

6. Another person namely R,Natarajan filed W.P.No.7161 of 2005 and the said writ petition was also disposed of on 09.11.2009 granting the benefit. In view of the fact that the said petitioners were conferred with the benefit of notional seniority and the monetary benefits, the similar benefits are to be extended to all these petitioners by fixing notional seniority and granting consequential monetary benefits.



7. The learned counsel for the petitioners contended that the delay cannot be a ground to reject all these writ petitions. Once the issue has been settled by the Division Bench of this Court in respect of 5 appellants therein and similar benefits ought to have been extended to all the similarly placed persons and therefore, the respondents Board failed to act as a moral employer and therefore, the present writ petitions are to be considered.

8. Regarding the latches, the learned counsel for the petitioners states that the petitioners were making several representations, even after their retirement and none of those representations were looked into by the competent authorities and finally, they have forced to file the present writ petitions.

9. The learned counsel appearing on behalf of the respondent / Board objected the said contentions by stating that in entirety the respondents have stated that the petitioners are not similarly placed persons to that of the persons to whom the benefits were granted, pursuant to the orders of the Division Bench and the Contempt Petition. On formation of the Board, the



persons working in the Electrical Department of the then Madras Government were transferred to the Board. Board passed BP MS.813 dated 21.04.1972, which provided that in respect of such Assistants, 50% of the Government services would alone be reckoned for the purposes of seniority. It was challenging this Board proceedings, writ petitions were filed before this Court and ultimately the Division Bench of this Court held that their entire service should be reckoned. Accordingly, the service period of 4 persons employed by the Government of Tamil Nadu, prior to the formation of the Electricity Board was reckoned for fixing their seniority as Assistants in the Accounts wing. Therefore, the Board proceedings issued in BP.Ms.No.813 dated 21.04.1972 is absolutely inapplicable with reference to facts and circumstances of the writ petitions on hand. The writ petitioners are not eligible to avail the Board proceedings issued in BP.Ms.No.813 dated 21.04.1972. Consequently, the Court orders passed in respect of 4 persons would not apply to the petitioners for the simple fact that the petitioners in those cases were all in the services of the Government of Tamil Nadu before absorption into the services of the Tamil Nadu Electricity Board and litigation was whether their services with the Government should be reckoned. The Board proceedings, which was the subject matter in those



cases pertained only to Assistants and not Junior Auditors or Junior Assistants.

10. Considering the arguments as advanced between the respective learned counsels appearing on behalf of the parties to the *lis* on hand. The preliminary objections raised in this regard on merits are also relevant. It is an admitted fact between the parties that all the writ petitioners were initially appointed as Junior Assistants in Tamil Nadu Electricity Board services and thereafter, transferred as Junior Auditors in Auditors wing of the respondents / Board.

11. Plain reading of Board proceedings in BP.Ms.No.813 dated 21.04.1972 is concerned, the said proceedings reveal that the seniority of the Assistants transferred from the System / Office Circle Offices, Accounts Wing shall be reckoned. Therefore, the board proceedings can be applied to the employees, who all working in the cadre of Assistants and transferred from the System / Office Circle Officers to the Accounts wing. Thus, the said Board proceedings may not be applicable to the Junior Assistants and transferred to Junior Auditors in Accounts Wing. Further all these



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petitioners appointed as Junior Assistants and transferred as Junior Auditors of Audit Wing. The Audit Wing and the Accounts Wing both are two different branches and as far as BP.Ms.No.813 is concerned, it is not applicable to the Junior Assistants and it would be applicable only to the Assistants. Therefore, the petitioners, who were transferred from the post of Junior Assistants to Junior Auditors are not eligible to avail the benefit of BP.Ms.No.813 dated 21.04.1972.

12. The learned counsel for the respondent further contended that the writ petitions are liable to be rejected on the ground of laches, since the petitioners were retired in between the year 1994 and 1999 and they have made representations only during the year 2018 after a lapse of about 12 years from their respective date of retirement and pertinently after a lapse of about 39 years from the date of their initial appointment as Junior Auditors. Therefore, the writ petitions are liable to be rejected on the ground of laches. That apart, as per the Boards Services Regulation 97(d) “Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the Appointing Authority within a period of three years from the date of appointment to such services, class,



category or grade or within a period of 3 years from the date of order fixing the seniority, as the case may be". Any application received after the said period of 3 years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders resulting from mistake of facts.

13. The case on hand is not a mistake of facts. The petitioners are claiming revision of seniority and consequential monetary benefits. Therefore, the representation submitted by the petitioners after a lapse of several years cannot be entertained in accordance with the Service Regulations and thus, the writ petitions are not entitled for the relief.

14. That apart, the learned counsel for the respondent brought to the notice of this Court that the representations submitted by the writ petitioners were disposed of by the competent authorities in the year 2019 itself. The said orders were not under challenge and therefore, the writ petitions are not entertainable.

15. In the case of ***Chairman / Managing Director Uttar Pradesh Power Corporation Limited and Others Vs. Ramgopal*** reported in ***/2020***



SCC ONLINE SC 101J, the Hon'ble Supreme Court of India held that

“Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate latches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced.”

16. One cannot sleep over the matter and come to the Court questioning the actions or inactions or otherwise of the public authorities. It would be sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons, who do not approach it expeditiously for relief and who stand by and allow



things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.

17. In the case of *State of Uttar Pradesh and Others Vs. Arvind Kumar Srivatsava and Others* reported in *[(2015) 1 SCC 347]*, the Hon'ble Supreme Court of India held that "Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them."

18. Therefore, in the present case, the petitioners have submitted representations to the respondents after a lapse of several years, which was rejected by the respondents in the year 2019 and thus, the rejection orders remain unchallenged. Even on merits, the respondents could able to establish that the Board proceedings issued in BP.Ms.No.813 dated 21.04.1972 is inapplicable to the case of the writ petitioners, since they were not transferred to the Audit Wing as Assistants. The Board proceedings are



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applicable only to the Assistants transferred from System / Office Circle Officers of the Board. Thus, very proceedings are not applicable to the petitioners and thus, the relief sought for in the present writ petitions deserves no merit consideration both on merits and further liable to be rejected on the ground of latches.

19. Accordingly, all these Writ Petitions are dismissed. No costs.

04.11.2022

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Index : Yes
Speaking order

To

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