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W.P.No.14315 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14315 of 2016

and

W.M.P.No.7262 of 2022

J.Murugesan B.E.,

...Petitioner

Vs.

1.The Secretary to Government,
Municipal Administration &
Water Supply Department,
& The Chairman, TWAD Board,
FSG, Chennai – 600 009.

2.The Managing Director,
TWAD Board,
Chennai – 600 005.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for all connected records in the impugned orders in Letter No.F5034/Esst (DP)/ A2/2007 dated 08.12.2015 of the MD/TWAD, Chennai-600 005, (in which he miserably failed to consider petitioner's representations dated 25.07.2015, 25.08.2015 and 01.09.2015) and quash the same consequently; to direct the second



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respondent to treat the suspension period from 20.01.1997 to 25.06.1998 as on "Duty Period" for purposes of pay and allowances promotion SE/CE from the date on which is immediate Junior was earlier promoted as SE/CE in the panel for the year 1999 with all other attendant benefits.

For Petitioner : Mr.A.L.Namasivayam

For R1 : Mrs.R.L.Karthika
Government Advocate

For R2 & R3 : Mr.S.Ravindran
Senior Counsel
For Mrs.S.Mekhala
(For TWAD Board)

ORDER

The order of rejection, rejecting the claim of the writ petitioner to cancel the charge memo and regulate the period of suspension is under challenge in the present writ petition.

2. The petitioner joined as a Junior Engineer in TWAD Board and promoted up to the level of Executive Engineer and retired from service on 31.01.2005 .

3. The departmental disciplinary proceedings were initiated and the proceedings ended with an order of punishment. The petitioner attained the



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age of superannuation on 31.01.2005 and in respect of the proceedings issued in the year 1997 by the Managing Director, directing the Managing Director to initiate criminal action, the petitioner filed a writ petition in W.P.No.31439 of 2015, to direct the authorities to dispose of the representation. Pursuant to the directions issued by this Court on 06.10.2015, the respondents considered the representation and passed an order on 08.12.2015, which is impugned in the present writ petition.

4. The cause of action aroused in the year 1997, when the Board issued a direction for initiation of criminal action and departmental disciplinary proceedings. The petitioner was imposed with the punishment in the departmental disciplinary proceedings. While so, he filed a writ petition in the year 2015 after a lapse of 10 years from the date of his retirement and pursuant to the order of direction to dispose of the representation, he secured the impugned order and thereafter, filed the present writ petition as if the cause of action aroused based on the order dated 08.12.2015.

5. There is a growing practice in High Court of Madras that the



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lapsed cause of actions are restored after several years by sending a representation to the authorities and thereafter, filing a writ petition for a direction to consider the representation. High Court also in a routine manner issuing such direction to consider the representation. Taking undue advantage of such directions, some of the litigants are working out their remedy in a malicious manner and through corrupt practices. Wherever the claims are rejected, then they are filing fresh writ petition as if the cause of action aroused currently. Apart from the fact that these kind of frivolous litigations are contributing for huge pendency. The very practice is to be construed as unethical and to be deprecated.

6. Any employee, who is aggrieved, is expected to approach the Appellate Authority, Statutory Authority and the Court of Law as the case may be within a reasonable period of time. Once, the actions of the Executives remained unchallenged, then it cannot be challenged after several years by adopting a novel procedure by sending a representation and filing a writ petition to consider the representation and thereafter, challenged the order pursuant to the order passed by the High Court.



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7. The date of cause of action initially aroused is to be taken into consideration for deciding the issues. Lapsed cause of actions cannot be restored after several years. Departmental disciplinary proceedings were initiated against the writ petitioner pursuant to the Board's Resolution of the year 1997. The punishment was imposed in the year 2005 and the petitioner reached the age of superannuation on 31.01.2005. Thereafter, the petitioner sent a representation in the year 2015, after a lapse of about 10 years from the date of his retirement and filed a writ petition in W.P.No.31439 2015 and this Court passed an order on 06.10.2015, directing the respondents to consider the representation and based on that, the impugned order dated 08.12.2015 was issued. Thereafter, the impugned order cannot be construed as a cause aroused for the purpose of filing the present writ petition and it is an order, which was passed pursuant to the directions issued by this Court in respect of the lapsed claim and thus, the writ petition is liable to be rejected on the ground of laches.

8. The principles regarding the delay and laches are settled by the Hon'ble Supreme Court of India in the following judgments:

(a) In the case of ***Chairman / Managing Director, Uttar Pradesh***



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Power Corporation Limited and Others Vs. Ramgopal reported in ***[(2020)***

SCC Online SC 101], the Three Judges Bench of the Hon'ble Supreme

Court of India held as follows:

“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 laches 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.”

(b) In the case of ***P.S. Sadasivaswamy Vs. State of Tamil Nadu***, reported in ***[(1975) 1 SCC 152]***, the Apex Court held as follows:



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“2. ... One cannot sleep over the matter and come to the Court questioning that relaxation. In effect he wants to unscramble a scrambled egg. 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. But it would be a 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....”

(c) In the case of **SS Balu Vs. State of Kerala**, reported in [(2009) 2

SCC 479], the Hon'ble Supreme Court of India observed thus:

“17. It is also well-settled principle of law that “delay defeats equity”. ...It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly



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situated to the other candidates who obtain the benefit of the judgment.”

(d) The Hon'ble Supreme Court of India in the case of ***Vijay Kumar***

Kaul Vs. Union of India, reported in ***[(2012) 7 SCC 610]***, held as follows:

“27. ...It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time.”

It is also pertinent to mention that neither has it been pleaded nor is it apparent from the material on record that the Respondent was unable to approach the court-of-law in time on account of any social or financial disability. Had such been the case, he ought to have availed free legal aid and should have ventilated his grievances in a timely manner.”

(e) In the case of ***State of Uttar Pradesh and Others Vs. Arvind***



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Kumar Srivastava and Others reported in **[(2015) 1 SCC 347]**, the Hon'ble

Supreme Court of India held as follows:

“(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. 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. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

(f) In the case of **Rushibhai Jagdishbhai Pathak Vs. Bhavnagar Municipal Corporation** reported in **[2022 SCC Online SC 641]**, the Apex Court of India held as follows:

“The courts have expressed the view that the law of limitation rests on the foundations of greater public interest for three reasons



- (a) that long dormant claims have more of cruelty than justice in them*
- (b) that a Defendant might have lost the evidence to disapprove a stale claim*
- (c) that persons with good causes of action should pursue them with reasonable diligence*

The normal Rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence.

“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. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim”



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9. In view of the principles considered above, the writ petition fails and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes

Speaking order: Yes

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To

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