



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.4421 of 2022

Francis Silvester

..

Petitioner

vs.

1.The Director,

Directorate of Local Fund Audit,
Integrated Office Complex for
Finance Department, Nandanam,
Chennai-600 035.

2.The Commissioner of Municipal Administration,

MRC Building, Pattinampakkam,
Chennai.

3.The District Collector,

Tiruvarur District, Thiruvarur.

4.The Commissioner,

Municipal Office,
Thiruthuraipoondi,
Thiruvarur Distrit.

5.The Commissioner,

Nagapattinam Municipality,
Nagapattinam.

..

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned recovery order passed by the 5th respondent in Na.Ka.No.1301/2018/C1 dated 30.05.2018 and to quash the same and consequently direct the first respondent to refund the sum of Rs.56,135/- recovered from the petitioner with interest @ 18% per annum.

For Petitioner

: Mr.S.T.P.Kuilmozhi

For Respondents

: Mr.P.Balathandayutham

Special Government Pleader for R1 to R4



O R D E R

By consent, this writ petition is taken up for final disposal. Challenge in the writ petition is to the impugned order of recovery dated 30.05.2018 passed by the fifth respondent and for a consequential direction to the first respondent to refund the sum of Rs.56,135/- recovered from the petitioner with interest @ 18% per annum.

2. The case of the petitioner is that he was initially appointed as Computer cum Assistant in the office of Tirunelveli Corporation and thereafter, transferred to various places such as Kumbakonam, Cuddalore, Nagapattinam, Jeyankondam and lastly to Thiruthuraipoondi. While he was working in the office of the fourth respondent, the petitioner had submitted request for voluntary retirement from service (VRS) with effect from 30.06.2018 due to his health and family reason. On the petitioner's request for VRS, the fourth respondent called for no-objection from all the departments including the fifth respondent and also requested details about the amount due from him if any, for which the fifth respondent, vide proceedings dated 30.05.2018, has imposed recovery of Rs.56,135/- towards share of 30% of time barred property tax for Revenue Inspector.

3. The petitioner has remitted the said amount, pursuant to which the fifth respondent, vide proceedings dated 30.05.2018, has issued no objection certificate for the purpose of accepting the request for VRS. After receipt of no objection certificate from all the work place, the fourth respondent, vide proceedings dated 31.10.2018, permitted the petitioner to retire from service with effect from 31.10.2018, without prejudice to future audit objections, if any and relieved him from duty.

4. It is the grievance of the petitioner that the petitioner is no way responsible for the time barred tax during his tenure as Revenue Inspector and his predecessors are liable for the said amount and the time barred recovery of the property tax amount is without any proper reason and justification. The petitioner, in this regard, has also submitted a representation dated 04.09.2020 to the first respondent to repay the amount of Rs.56,135/- recovered from the petitioner towards time barred property tax and since it was not considered, he has filed the present writ petition.



5. Heard the submissions of the learned counsel for the petitioner and the learned Special Government Pleader for the respondents 1 to 4.

6. A perusal of the materials placed before this Court would disclose that the impugned order has been passed in the year 2018 and on payment of the disputed amount, the petitioner was also allowed to retire from service with effect from 31.10.2018 without prejudice to the future audit objections, if any. The petitioner has challenged the impugned order after a delay of four years and no satisfactory explanation has been given by the petitioner for the delay in approaching this Court.

7. 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."

8. The Hon'ble Division Bench of this Court, in the case of [S.Vaidhyanathan 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....."

9. 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



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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.

10. In Chennai Metropolitan Water Supply and Sewerage Board v. T.T.Murali Babu reported in (2014) 4 SCC 108, at Paragraphs 16 and 17, the Hon'ble Supreme Court held as follows:

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant - a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

11. In the case on hand, the petitioner has not given satisfactory explanation / reasons in the affidavit for the delay in approaching this Court. 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.

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12. The Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Jvm

To

- 1.The Director,
Directorate of Local Fund Audit,
Integrated Office Complex for Finance Department, Nandanam,
Chennai-600 035.
- 2.The Commissioner of Municipal Administration,
MRC Building, Pattinampakkam, Chennai.
- 3.The District Collector,
Tiruvarur District, Thiruvarur.
- 4.The Commissioner,
Municipal Office, Thiruthuraipoondi,
Thiruvarur Distrit.
- 5.The Commissioner,
Nagapattinam Municipality,
Nagapattinam.

+lcc to Mr.S.T.P.Kuilmozhi, Advocate SR.No.13412
+lcc to the Government Pleader SR.No.13751

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MT(CO)
GN(21/03/2022)