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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.5498 OF 2022

Sakthivel

... Petitioner

.Vs.

1. The Registrar,
Registrar Cooperative Credit Society,
Office of the Registrar,
Kilpauk, Chennai - 600 010.
2. The Joint Registrar,
Registrar of Primary Agricultural
Cooperative Credit Society,
Dharmapuri - 636 705.
3. The Special Officer,
S-335, Pappireddipatti Primary
Agricultural Co-operative Bank Limited,
Pappireddipatti Post and Taluk,
Dharmapuri District - 636 705.
4. Primary Agricultural Cooperative
Credit Society Ltd.,
Rep. by its President,
Pappireddipatti Post,
Dharmapuri District - 636 705.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 2nd respondent to dispose the representation of the petitioner dated 27.10.2021.

For Petitioner : Mr.V.Raghavachari

For RR1, 2 & 4 : Mr.P.Ganesan
Additional Government Pleader



For R3

: Mr.U.Baranidharan
Additional Government Pleader

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O R D E R

This writ petition has been filed for issuance of a Writ of Mandamus, directing the 2nd Respondent to dispose the representation of the petitioner dated 27.10.2021.

2. The case of the writ petitioner is that while the petitioner was working as clerk in the 4th Respondent society, he was suspended from service on 01.10.2002, based on the allegation that he has committed misappropriation of funds along with two other persons namely, Asaithambi (Secretary) and Syed Ibrahim (writer). Finally, the order of suspension was confirmed on 25.08.2003. The said Asaithambi, the Secretary had approached this Court by way of writ petition in W.P No.10803 of 2004 challenging the order of removal and the same was allowed. Similarly, the said Syed Ibrahim has also challenged the removal order before the Labour Tribunal in I.D No.499 of 2004 and an award was passed in his favour on 26.09.2012. Aggrieved over the same, the respondent department had challenged the award before this Court in W.P.No.7571 of 2013 and the same was settled before the Lok Adalat, similarly placed persons, who were accused along with the petitioner had been reinstated in service. Hence the petitioner made a representation to the 2nd Respondent on 27.10.2021. The President of Primary Agricultural Credit Cooperative Society, namely, the 4th Respondent had recommended his reinstatement on 14.12.2021. As the petitioner's representation has not been considered till date, the present writ petition has been filed by the petitioner.

3. The learned Additional Government Pleader appearing for the respondents would submit that the petitioner has approached this Court after a lapse of 18 years seeking to reinstate him into service and therefore, the petition is liable to be dismissed on the ground of laches.

4. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and also perused the materials on record.

5. On a perusal of the records, it appears that the petitioner was removed from service by the respondent department on 25.08.2003 and after a lapse of 18 years, he made a representation to the 2nd respondent to reinstate him into service on the ground that the similarly placed persons got the relief from the Court. With regard to the aforesaid issue, the



Delhi High Court, in the case of Union of India Ors. v. Sandeep Kumar Swaroop and Ors. in W.P Nos.9413/2016 & 1473/2017, has elaborately considered the various decisions of the Hon'ble Supreme Court and the same is extracted hereunder:

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"45. Recently, the Supreme Court in State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava & Ors., (2015) 1 SCC 347 had examined this issue on the question of judgments in service law which lay down a principle and, therefore, are treated as judgments in rem in the second sense. Several decisions on both sides were referred to and the following legal principles were set out:

"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. 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. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. 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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22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see. K.C.Sharma v. Union of India [K.C. Sharma v. Union of India, (1997), 6 SCC 721 : 1998 SCC (L & S) 226]). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence".

A careful reading of the aforesaid principles reveals that the principle of in rem in the second sense is not absolute. It is preferable to follow the said principle so that there is no discrimination or violation of Article 14 in service matters for all similarly situated persons should be treated alike and not differently. However, delay and laches as well as acquiescence can be a ground to deny benefit to fence sitters. Those who do not approach the Court in a timely and prompt manner can be denied "equal treatment". Thus, it will be right to hold that doctrine of in rem in the second sense is not unconditional or unimpeachable. However, this exception would not apply where the earlier judgment pronounced by the Court is with the intent to give benefit to all similarly situated persons, whether they had approached the Court or not. Benefit should not be extended when the said intent is not there and the judgment expressly or impliedly states that the benefit of the judgment would be extended to those, who had sought to enforce their rights and their petitions were not stale on account of delay and laches or acquiescence".

In view of the aforesaid decisions cited supra, no such relief can be granted by this Court on the ground of delay and laches



and hence, the petitioner is not entitled for the aforesaid prayer and there is no merits in the writ petition and the same is liable to be dismissed.

6. In fine, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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1. The Registrar,
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Agricultural Co-operative Bank Limited,
Pappireddipatti Post and Taluk,
Dharmapuri District - 636 705.
4. The President,
Primary Agricultural Cooperative
Credit Society Ltd.,
Pappireddipatti Post,
Dharmapuri District - 636 705.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.16880
+1cc to the Government Pleader, S.R.No.17024

W.P.NO.5498 OF 2022

SR(CO)
PBS/12/04/2022