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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.3.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.7409 of 2022

1 R.Saroja ...Petitioner

Vs.

1 The Chairman,
Tamil Nadu Housing Board,
Koyambedu Chennai-107.

2 The Managing Director,
Tamil Nadu Housing Board,
Koyambedu Chennai-107.

...Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondent to refix the seniority of the petitioner in the cadre of Asst executive Engineer by taking into consideration the completion of the punishment imposed and place him at appropriate place at par with her juniors for the year 2012 and further direct the respondents to consider the claim of the petitioner for promotion as Executive Engineer based on the seniority acquired within a reasonable time.

For Petitioner : Mr.Sivakumar
For Respondents : Mr.R.Bharath Kumar

O R D E R

The writ petitioner while working as Assistant Executive Engineer in the respondent Board, respondent has drawn a seniority list fit for promotion to the post of Executive Engineer. The petitioner's name was not considered for inclusion in the promotion panel for the reason that the petitioner was inflicted with punishment of stoppage of increment for a period of 2 years without cumulative effect. Aggrieved by the said punishment, the petitioner has preferred an appeal before the Appellate Authority and the Appellate



Authority modified the punishment of Stoppage of increment for a period of one year without cumulative effect. The Appellate Authority passed the order in the year 2013. According to the petitioner, his juniors were already promoted as Executive Engineer, whereas the petitioner's name was not considered due to the punishment imposed by the respondent. The petitioner has made representation to the authorities, however, the respondent has not consider his name for inclusion in the seniority list for the year 2012-13 and no order was passed on the said representation. Hence, the petitioner has preferred the present writ petition before this Court.

2. The learned Standing counsel appearing for the respondents strongly objected by stating that the petitioner's name was not included in the panel prepared for the year 2012-13 for the reason that punishment of Stoppage of increment for the period of 2 years without cumulative effect awarded against the petitioner. Subsequently, the petitioner's name was included in the panel fit for promotion to the post of Executive Engineer in the year 2015-16. The petitioner accepted the said promotion and has not challenged the seniority list fit for promotion to the post of Executive Engineer drawn for the year 2015-16. However, the petitioner agitated that his juniors were already promoted as Executive Engineer. Now, after the lapse of 8 years, the petitioner has filed the writ petition for inclusion of his name in the panel fit for promotion to the post of Executive Engineer for the year 2012-13 on par with his juniors. Therefore, the writ petition is liable to be dismissed on the ground of delay.

3. Heard the rival submissions of the parties and perused the materials available on record.

4. According to the petitioner, the petitioner's name was not included in the panel fit for promotion to the post of Executive Engineer for the year 2012-13 on the ground that the petitioner was awarded a punishment of Stoppage of increment for a period of two years without cumulative effect and the said punishment was subsequently, modified by the Appellate Authority in the year 2013, by reducing the punishment of Stoppage of increment for a period of one year without cumulative effect. Pursuant to the reduction of punishment, the petitioner's name was included in the panel for promotion to the post of Executive Engineer in the year 2014-15. The writ petitioner has not challenged the seniority list prepared for the year 2012-13 and 2013-14 or challenged the promotion orders issued to his juniors. The petitioner has made representation to the



authorities concerned to include her name in the panel of the year 2012-13 or 2013-14 for the reason that her juniors were already promoted to the higher post. The petitioner has approached this court after the lapse of 7 years.

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5. 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."

6. 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:



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"Laches or reasonable time are not defined under any statute or Rules. "Latches" 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 latches in one case might not constitute in another. The latches 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....."

7. 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 latches 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'.....



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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.'

8. 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



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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."

9. 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.

10. Accordingly, the writ petition stands dismissed. No costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1 The Chairman, Tamil Nadu Housing Board,
Koyambedu Chennai-107.

2 The Managing Director, Tamil Nadu Housing Board,
Koyambedu, Chennai-07.

+1 CC to Mr.S.Sivakumar, Advocate sr 21940

W.P.No.7409 of 2022

AK(CO)
SP(08/04/2022)