



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.04.2022
CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.7811 of 2022
and WMP.No.7832 of 2022

N.Parthasarathi

.. Petitioner

vs.

- 1.The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
The School Education Deputy Director,
Chennai.
 - 2.The Director of School Education,
D.P.I. Complex, College Road,
Chennai-6.
 - 3.The Joint Director of School Education (Personnel),
D.P.I. Complex, College Road,
Chennai-6.
 - 4.The Chief Educational Officer,
O/o Chief Education Office, Erode District,
Erode.
- .. 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 in pursuant to the impugned order passed by the third respondent in Proceeding Na.Ka.No.64959/A3/E1/2018 dated 04.04.2019 and quash the same and consequently direct the third respondent to reconsider the case of the petitioner based on the communication issued by the third respondent office in proceeding O.Mu.No.89048/A3/E1/2007 dated 04.10.2007 and consequently promote the petitioner to the post of Upgrade Superintendent and Personal Assistant to Chief Educational Officer on par with his junior with all attendant and monetary benefits within the stipulated time.

For Petitioner : Mr.K.Raja
For Respondents : Mr.M.Bindran,
Additional Government Pleader

O R D E R

The petitioner, challenging the impugned order of the third respondent 04.04.2019, in and by which his appeal came to be rejected, has filed the present writ petition.



2. The case of the petitioner is that he was initially appointed as Junior Assistant in the Education Department on 19.10.1984, on compassionate ground and subsequently, his service was regularized with effect from the initial date of appointment and thereafter, the respondents declared probation with effect from 19.10.1986 and he has completed Bhavanisagar Training on 24.09.1987 and completed the Departmental Test in the year 1988 and completed the Accountant Test in the year 1990 and School Deputy Inspector Test in the year 1993 respectively. Thereafter, the petitioner was promoted to the post of Assistant on 08.04.1994 as per the seniority assigned by the respondents and he worked in many places and the State Government merged the office of the Inspector Matriculation Schools, District Educational Officer and District Elementary Educational Officer as one Unit in the month of May, 2018 and thereafter, he came to understand that some of his juniors were promoted to higher post in the Department. To the shock and surprise of the petitioner, the respondents promoted his junior to the post of Superintendent and the same benefits were denied to the petitioner and therefore, the petitioner made an appeal to the third respondent.

3. The third respondent, on enquiry, orally informed the petitioner that in the cadre of Assistant, the petitioner's service was not regularized and thereafter, the third respondent directed the fourth respondent to get an order from the competent authority to regularize his services in the cadre of Assistant and after repeated efforts, the petitioner got regularized in the cadre of Assistant with effect from 08.04.1994, vide proceedings dated 05.10.2010. It is the grievance of the petitioner that he was denied promotion for more than 13 years and the third respondent has passed the impugned order dated 04.04.2019 rejecting the petitioner's appeal and challenging the same, the petitioner has filed the present writ petition.

4. The learned counsel for the petitioner would submit that the third respondent, without invoking Section 45(e) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, had rejected the claim of the petitioner by relying upon Section 46 of the said Act, which is totally illegal and the petitioner was promoted to the post of Assistant in the year 1994 and regularization order was passed by the competent authorities after a lapse of 16 years and therefore, it is evident that the respondents have committed mistake and contrarily, they have passed the impugned order on the ground that the petitioner has approached them belatedly.

5. Per contra, learned Additional Government Pleader would submit that the petitioner's service has been regularized in the post of Assistant with effect from 08.04.1994, vide proceeding dated 05.10.2010 and thereafter, the petitioner has not sought for any revision of seniority and after lapse of nearly 12 years, he is seeking promotion on



par with his Junior Mr.Vasudevan as Superintendent and therefore, on the ground of delay, the petitioner is not entitled to any relief.

6. This Court has considered the submissions made and also perused the entire materials on record.

7. The contention of the petitioner is that he is entitled for promotion on par with his junior one Vasudevan, who got promoted as Superintendent in the year 2013. The service of the petitioner has been regularized in the post of Assistant with effect from 08.04.1994, vide order dated 05.10.2020, but he has not approached the authorities immediately for refixation of seniority and after a lapse of nearly 12 years, he has come forward with the present claim. As per Section 46 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, only the Government has power to annul, modify a list of approved candidates for appointment or promotion to any category, class or service prepared by the head of a Department or any other lower authority. It is to be noted that the petitioner has not made any request to the authorities within the stipulated period to revise the petitioner's seniority and include him in the panel for promotion to the post of Personal Assistant to Chief Educational Officer.

8. 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."



9. 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. "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....."

10. 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 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



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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.

11. 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."

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.

12. In view of the reasons assigned above and the decisions cited supra, the impugned order does not warrant



interference and this Court finds no merit in the writ petition. The Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Jvm

To

1.The Principal Secretary to Government,
The State of Tamil Nadu,
The School Education Deputy Director, Chennai.

2.The Director of School Education,
D.P.I. Complex, College Road, Chennai-6.

3.The Joint Director of School Education (Personnel),
D.P.I. Complex, College Road,
Chennai-6.

4.The Chief Educational Officer,
O/o Chief Education Office, Erode District,
Erode.

+2 ccs to Mr.K.Raja, Advocate Sr.NO. 23195,22645

+1 cc to Government Pleader Sr.NO. 23044

W.P.No.7811 of 2022

MT(CO)

A.SK(13/04/2022)