



W.P.No.21971 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.21971 of 2019

R.Prasad Rao

... Petitioner

-Vs-

1. The Secretary to Govt. of
Tamil Nadu Finance (Pension) Department,
Fort St. George, Chennai 600 009.

2. The Commissioner
Greater Chennai Corporation,
Rippon Buildings,
Chennai 600 003.

3. Zonal Officer,
Zone-4, Corporation of Chennai,
No. 226, Tondiarpet High Road,
Washermenpet, Chennai- 600 021.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Mandamus, directing the Second and Third Respondent to consider the Representation of the Petitioner dated 28.04.2016 followed by a reminder dated 12.06.2019 requesting to count 50 percent of his temporary service from 01.02.1971 to 06.04.1985 along with his regular service from 07.04.1985 to 01.07.2013 and revise his pension amount and pass order thereof within a reasonable time.



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For Petitioner : Mrs.P.Chandrasekaran

For Respondents : Mr.P.Gurunathan, AGP, [for R1]
: Mr.G.T.Subramaniam [for R2 & R3]

ORDER

The writ of mandamus has been filed to direct the respondents two and three to consider the representation submitted by the writ petitioner on 28.04.2016 and the subsequent reminder dated 12.06.2019 for counting of the temporary services rendered by him from 01.02.1971 to 06.04.1985, for the purpose of the pensionary benefits.

2. The facts in nutshell with reference to the service particulars of the petitioner are that he was engaged as a daily wage employee in the respondent Corporation on 01.02.1971. The petitioner continued as a daily wage employee and his services were regularised in the sanctioned post in the time scale of pay with effect from 07.04.1985. The petitioner retired from service on 30.06.2013 on attaining the age of superannuation.



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3. The petitioner slept over his right for several years and suddenly woke up one fine morning and knocked the doors of the authorities at the first instance and thereafter, he filed the present writ petition.

4. The writ petition itself had been filed after a lapse of about six and a half years from the date of retirement. More so, the petitioner has not challenged the order of regularisation in the year 1985, when it was issued to him. The employees are expected to redress their grievances within a reasonable period of time. Once the employee accepted the regularisation and continued in service and was allowed to retire from service, then thereafter, he cannot question the regularisation granted long back and such claims cannot be entertained beyond a reasonable period of time.

5. The Courts have repeatedly held that belated claims cannot be entertained and such writ petitions have to be rejected on the ground of laches. The principles are elaborately considered by the Supreme Court of India in the cases mentioned hereunder.



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

Pradesh 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:

“ 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.”



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(b) In the case of ***P.S. Sadasivaswamy Vs. State of Tamil Nadu***,

reported in ***[(1975) 1 SCC 152]***, held as follows:

“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 Court observed thus:

“17. It is also well-settled principle of law that “delay defeats equity”. ...It is now a trite law



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

(d) 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



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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.”

7. (a) In the case of ***State of Uttar Pradesh and Others Vs. Arvind 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.”



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(b) In the case of ***Rushibhai Jagdishbhai Pathak Vs. Bhavnagar***

Municipal Corporation reported in [2022 SCC Online SC 641], 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



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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””

8. In view of the fact that the petitioner was not vigilant in pursuing the remedy, now at this length of time, this Court cannot consider the claim and hence this writ petition stands **dismissed** on the ground of laches. However, there shall be no order as to costs.

01.12.2022

Index : Yes
Speaking order
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To

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2. The Commissioner
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S.M.SUBRAMANIAM.J.,

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