



W.P.No.23568 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.23568 of 2019

K.Brindavathi

...Petitioner

Vs.

The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 4.

..Respondent

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the Respondent to consider and pass orders on the Representation made by the Petitioner dated 15.6.2019 for Implementation of the Punishment as Women Inspector of Police instead of Women Sub-Inspector of Police based on the Modified order passed by the Additional Director General of Police (L & O) dated 23.7.2010 and grant her notional Promotion and as well as reduction in the Rank and also consider her claim for Promotion as Deputy Superintendent of Police, Cat- I in view of the fact that the punishment was over as early as 2013 and grant the petitioner all consequential service, monetary benefits along with Interest @ 12 percentage till the date of disbursement within a limited time.



W.P.No.23568 of 2019

For Petitioner : Mr.M.Vignesh Raj
For Mr.Muthappan.M

For Respondent : Mr.S.Rajesh
Government Advocate

ORDER

The relief sought for in the present writ petition is for a direction to direct the Respondent to consider and pass orders on the Representation made by the Petitioner on 15.6.2019 for Implementation of the Punishment as Women Inspector of Police instead of Women Sub-Inspector of Police based on the Modified order passed by the Additional Director General of Police (L & O) dated 23.7.2010 and grant her notional Promotion and as well as reduction in the Rank and also consider her claim for Promotion as Deputy Superintendent of Police, Cat- I in view of the fact that the punishment was over as early as 2013 and grant the petitioner all consequential service, monetary benefits along with Interest @ 12 percentage till the date of disbursement within a limited time.

2. The petitioner filed the present writ petition at the age of 63 years and after a lapse of 5 years from the date of her retirement. The petitioner entered in service as Grade-I Police Constable and promoted up to the level



W.P.No.23568 of 2019

of Sub-Inspector of Police. The petitioner reached the age of superannuation and retired from service on 28.02.2014. Earlier, the petitioner filed W.P.No.44400/2006 for a direction to direct the respondents to consider her claim for promotion as Inspector of Police for the year 2004 and promote her as Inspector of Police with all consequential service and monetary benefits on par with the petitioner's junior.

3. With reference to the said prayer, this Court passed final orders in W.P.No.44400 of 2006 on 27.04.2012 as follows:

“8.It is also relevant to refer the decision of the Hon'ble Apex Court in DELHI JAL BOARD VS. MAHINDER SINGH reported in 2000 [7] SCC 210, wherein the Hon'ble Apex Court held in paragraph 5 as follows:-

"5..... The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the disciplinary inquiry



WEB COPY



W.P.No.23568 of 2019

exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges are framed. If the disciplinary inquiry ended in his favour, it is as if the officer had not been subjected to any disciplinary inquiry. The sealed cover procedure was envisaged under the rules to give benefit of any assessment made by the Departmental Promotion Committee in favour of such an officer, if he had been found fit for promotion and if he was later exonerated in the disciplinary inquiry which was pending at the time when DPC met. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another Departmental enquiry was stated by the Department, would not, in our view, come in the way of giving him the benefit of the assessment by the first Departmental promotion Committee in his favour in the anterior selection....."

The principles laid down by the Hon'ble Apex court and the Division Bench of this court are squarely applicable to the



facts of the instant case as in this case also, the petitioner has been denied the benefit of inclusion of her name in the promotion panel for the year 2004 merely on the ground of contemplation of a charge memo to be issued against her. It is relevant to note that there is absolutely no specific charge was pending against the petitioner on the crucial date of the drawal of the promotion panel and on the basis of the charge memo issued subsequently, an enquiry was conducted during the pendency of this writ petition and the petitioner has been exonerated from the charge as per the order dated 09.04.2010 passed by the Deputy Inspector General of Police, Salem Range, Salem. Therefore, this court is of the considered view that there is absolutely no legal impediment for including the petitioner's name in the promotion panel drawn on 01.07.2004; considered and approved on 27.09.2004. It is also seen that the petitioner's junior one Chinnaponnu was promoted on 14.10.2004.

9. In view of the aforesaid reasons, this court is of the view that the petitioner is deemed to have been promoted with effect from 14.10.2004 the date on which the petitioner's junior, viz., one Chinnaponnu, was promoted and the petitioner shall be given the seniority above her junior and she is also entitled to all consequential monetary and service



WEB COPY



W.P.No.23568 of 2019

benefits. Accordingly, the respondents are directed to place the petitioner in the seniority above her junior, viz., Chinnaponnu, with effect from 14.10.2004 and grant her all the consequential monetary and service benefits. It is made clear that the said exercise shall be completed by the respondents within a period of twelve weeks from the date of receipt of a copy of this order.”

4. Pursuant to the orders passed by this Court on 27.04.2012, the authorities passed an order on 24.02.2014, granting temporary promotion to the writ petitioner as Inspector of Police. The petitioner was temporarily promoted as Inspector of Police on 24.02.2014 and allowed to retire from service on 28.02.2014. While so, she had submitted a representation after a lapse of 5 years from the date of her retirement on 15.06.2019 for implementation of punishment as Women Inspector of Police instead of Women Sub-Inspector of Police based on the modified order passed by the Additional Director General of Police (L & O) dated 23.07.2010 and grant her notional promotion and further promoter her to the post of Deputy Superintendent of Police, Grade-I.



W.P.No.23568 of 2019

5. The petitioner faced the departmental disciplinary proceedings. The punishment imposed was modified by the Additional Director General of Police in proceedings dated 23.07.2010. The punishment became final. In the year 2006, the petitioner filed a writ petition, seeking for promotion to the post of Inspector of Police, which was considered by this Court and an order was passed on 27.04.2012, which was implemented in proceedings dated 24.02.2014 and the petitioner was temporarily promoted as Inspector of Police and allowed to retire from service on 28.02.2014.

6. This being the factum established, now the petitioner cannot claim any further promotion, more so, after a lapse of several years from the date of her retirement. Thus, the writ petition is liable to be rejected on the ground of laches. The representation itself was submitted after a lapse of 5 years from the date of retirement and thereafter, the writ petition was filed.

7. The principles regarding delay and laches are laid down by the Hon'ble Supreme Court in the following cases:

(a) In the case of ***Chairman / Managing Director, Uttar Pradesh Power Corporation Limited and Others Vs. Ramgopal*** reported in ***[2020]***



W.P.No.23568 of 2019

SCC Online SC 101J, the Three Judges Bench of the Hon'ble Supreme Court of India held as follows:

“Whilst 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.”

(b) In the case of ***P.S. Sadasivaswamy Vs. State of Tamil Nadu***, reported in ***[(1975) 1 SCC 152]***, the Apex Court held as follows:

“2. ... One cannot sleep over the matter



W.P.No.23568 of 2019

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 Hon'ble Supreme Court of India observed thus:

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



W.P.No.23568 of 2019

obtain the benefit of the judgment.”

WEB COPY

(d) The Hon'ble Supreme Court of India 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 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.”

(e) In the case of ***State of Uttar Pradesh and Others Vs. Arvind***



W.P.No.23568 of 2019

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.”

(f) In the case of ***Rushibhai Jagdishbhai Pathak Vs. Bhavnagar Municipal Corporation*** reported in ***[2022 SCC Online SC 641]***, the Apex Court of India 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



WEB COPY



W.P.No.23568 of 2019

- (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 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



WEB COPY



W.P.No.23568 of 2019

their claim.”



W.P.No.23568 of 2019

8. In view of the principles considered above, the writ petitioner is not entitled for the relief as such sought for in the present writ petition and accordingly, the writ petition stands dismissed. No costs.

02.12.2022

Index : Yes
Speaking order: Yes
kak

To

The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 4.



WEB COPY



W.P.No.23568 of 2019

S.M.SUBRAMANIAM, J.

kak

W.P.No.23568 of 2019

02.12.2022