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W.P.No.25256 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.25256 of 2019
and
W.M.P.No.24831 of 2019

G.Thangavel

... Petitioner

Vs.

1.The Government of Tamil Nadu
rep by the Secretary to Government,
Personnel and Administrative Reforms Department,
Fort St. George, Chennai – 600 009.

2.The Block Educational Officer (II),
Block Educational Office, Anaicut – 632101,
Vellore District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 1st respondent in G.O.Ms.No.148, P and AR Department (FR-II) Department dated 31.10.2018 and quash the same in so far as bringing into force the amendment made therein with effect from the date of issue of the impugned order namely, 31.10.2018 is concerned and direct the 1st respondent to extend the benefit of the said Government order to all similarly placed persons without any cut - off date and grant annual increment to the petitioner on 01.07.2006 with all



attendant benefits.

For Petitioner	: Mr.P.Mohanraj
For R1	: Mr.E.Sundaram Government Advocate
For R2	: Mrs.S.Mythreye Chandru Special Government Pleader

ORDER

The relief sought for in the present writ petition is to to call for the records relating to the impugned order of the 1st respondent in G.O.Ms.No.148, P and AR Department (FR-II) Department dated 31.10.2018 and quash the same in so far as bringing into force the amendment made therein with effect from the date of issue of the impugned order namely, 31.10.2018 is concerned and direct the 1st respondent to extend the benefit of the said Government order to all similarly placed persons without any cut - off date and grant annual increment to the petitioner on 01.07.2006 with all attendant benefits.

2. The petitioner was appointed as a Secondary Grade Teacher on 16.03.1978 and his services were regularised with effect form 04.06.1980.



The petitioner was promoted as Primary School Headmaster on 27.07.2000 and retired from service on 31.05.2006.

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3. The petitioner claims that the annual increment has not been paid to him despite the fact that he completed three quarters in one full year and therefore, he submitted a representation to consider the case. However, the case of the writ petitioner was not considered with reference to the G.O.Ms.No.140, Finance (Pay Cell) Department dated 25.04.2018.

4. No doubt, the Government issued the G.O.Ms.No.311, Finance (CMPC) Department dated 31.12.2014, this Court also considered the issues with reference to the employees, who have completed full year and retired one day prior to the due date for increment. For instance, if an employee has completed one year of service in a particular year, then he is entitled for one increment from next day onwards though he was allowed to retire from service. Based on the judgment of this Court, the Government also amended the rules and issued in the year 2018. However, in the present case, the petitioner retired from service in the year 2006 itself and he made a claim in the year 2018 after issuance of order in G.O.Ms.No.140 dated



25.04.2018 and therefore, such belated claims at this length of time cannot be entertained.

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5. Regarding delay and laches the Hon'ble Supreme Court of India has settled the principles as follows:

(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:

“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]***, 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.....”



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(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 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 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.”

6. (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



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laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

(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 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””

7. In view of the facts and circumstances, the petitioner has not established any acceptable ground for the purpose of considering the relief as such sought for in the present writ petition.

8. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

01.12.2022

Jeni
Index : Yes
Speaking order



To

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The Government of Tamil Nadu
Personnel and Administrative Reforms Department,
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2. The Block Educational Officer (II),
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S.M.SUBRAMANIAM, J.

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