



WP No.23865 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01-12-2022

CORAM

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM**

**WP No.23865 of 2019**

**And**

**WMP Nos.23708, 23710 and 35170 of 2019**

1.K.Chandrasekaran  
2.C.Devanbu  
3.S.John Enoch Sundar  
4.N.Lakshmanan

..

Petitioners

VS.

1.The State of Tamil Nadu,  
Represented by its Chief Secretary to Government,  
Secretariat,  
Fort St. George,  
Chennai-600 009.

2.The State of Tamil Nadu,  
Represented by its Principal Secretary to Government,  
Personnel and Administrative Reforms Department,  
Secretariat,  
Fort St. George,  
Chennai-600 009.



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3. The Commissioner,  
Hindu Religious and Charitable Endowment,  
Uthamar Gandhi Salai,  
Nungambakkam,  
Chennai-600 034.

4. The Director of School Education,  
DPI Campus,  
College Road,  
Chennai-600 006.

5. The District Collector,  
Chennai District,  
Kamarajar Salai,  
Thiruvallur.

6. The District Collector,  
Thiruvallur District,  
Thiruvallur.

7. The District Collector,  
Kancheepuram District,  
Kancheepuram.

8. The District Collector,  
Madurai District,  
Madurai.

..

Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned letter issued by the second respondent in



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Letter No.4457/P/2019-1 dated 29.04.2019 and to quash the same and consequently directing the respondents to pass orders for granting appointment in the post of Junior Assistant (Group IV Service) or B.T. Assistant from the date of appointment on par with other similarly placed persons given benefit as per G.O.Ms.No.246, Personnel and Administrative Reforms Department, dated 29.08.2003 on notional basis with consequential benefits as per the direction issued in WP No.24771 of 2006 etc., cases dated 20.08.2009.

|                               |                                                              |
|-------------------------------|--------------------------------------------------------------|
| For Petitioners               | : Mr.G.Sankaran                                              |
| For Respondents-1, and 5 to 8 | : Mr.R.P.Murugan Raja,<br>Government Advocate.               |
| For Respondent-2              | : Mr.K.Suresh,<br>Government Advocate.                       |
| For Respondent-3              | : Mr.M.Bindran,<br>Additional Government Pleader<br>(HR&CE). |
| For Respondent-4              | : Ms.S.Mythreye Chandru,<br>Special Government Pleader.      |

## **ORDER**

The order of rejection rejecting the claim of the writ petitioners to appoint them in the post of Junior Assistant or B.T. Assistant from their



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initial date of temporary appointment on par with other similarly placed persons given as per G.O.Ms.No.246, Personnel and Administrative Reforms Department, dated 29.08.2003 on notional basis was rejected.

2. The petitioners were initially appointed in the Census Department on temporary basis. Since it was a project related engagement by the Government on temporary basis, the petitioners were ousted from service.

3. Pursuant to the orders of the Hon'ble Supreme Court of India, the Government absorbed these temporary employees in a phased manner and the retrenched employees were reconsidered for fresh appointment in the available vacancies in the cadre of Record Clerk in various Departments without reference to their qualifications.

4. The absorption of the petitioners pursuant to the orders of the Hon'ble Supreme Court of India was made. However, they were not recruited through the Rules in force. The initial engagement of the petitioners were temporary and for conducting Census and subsequently after the completion



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of the project, they were ousted from service. Thus the very appointment of the writ petitioners in the sanctioned post of Record Clerk itself was a concession extended and the writ petitioners were appointed on regular basis in the year 2006 and thereafter, they are continuing as regular employees in the various Departments.

5. The learned counsel for the petitioners mainly contended that the similarly placed persons conferred with the benefit of retrospective appointment in the post of Junior Assistant from the date of their initial appointment in the Census Department.

6. The Government also issued orders in G.O.Ms.No.246, Personnel and Administrative Reforms Department, dated 29.08.2003. In this regard, the petitioners submitted their representation and the said representation of the writ petitioners was not considered and thereafter, the petitioners filed WP No.32239 of 2018. In that writ petition, this Court directed the Authorities to consider the representation of the petitioners and the said representation was not considered in the right perspective and the



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impugned order of rejection was issued.

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7. The learned counsel for the petitioners reiterated that the petitioners cannot be discriminated, since similar benefit was extended to other similarly placed persons. Thus the respondents have violated under Articles 14 and 16 of the Constitution of India. Hence, the cases of these writ petitioners are to be considered on par with the other similarly placed incumbents.

8. The learned Special Government Pleader, appearing on behalf of the fourth respondent, objected the said contentions raised on behalf of the petitioners by stating that the petitioners were initially engaged as temporary employees in the Census Department, which is a project related work. On completion of the project work, they were ousted from service and they went up to the Supreme Court and based on sympathetic grounds, the Authorities have considered their cases for absorption. Accordingly, all the petitioners were absorbed in the sanctioned post in the year 2006 and therefore, they are regularly serving in the Census Department as regular employees. While-so,



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after lapse of several years, these petitioners have approached the Department for retrospective promotion from the date of their initial appointments in the Census Department. The earlier cases relied on by the petitioners were also considered by the Government in G.O.Ms.No.246, Personnel and Administrative Reforms Department, dated 29.08.2003 and the order passed in WP No.24771 of 2006 dated 20.08.2009 were considered by the Government. Accordingly, the claim of the writ petitioners was rejected.

9. In the context of the above submission, it is relevant to extract paragraphs 17 and 20 of the counter-affidavit filed by the second respondent-Government, which read as under:-

*“17. With regard to averments made in paragraph-15 of the affidavit, it is submitted in pursuance to the order's of this Hon'ble Court, dated 06.12.2018 in WP No.32239 of 2018, the representation of the petitioner, dated 10.09.2018 have been examined in detail in accordance with law. The request o the petitioners to absorb them as Junior Assistant/B.T. Assistant from the date of their initial appointment on par with other*



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*similarly placed persons, who were given the benefit as per G.O.Ms.No.246, Personnel and Administrative Reforms (P) Department, dated 29.08.2003 and as per the orders of this Hon'ble Court passed in WP No.24771 of 2006, dated 20.08.2009, was rejected in Government Letter No.4457/P/2019-1, dated 29.04.2019, since an employment opportunity has already been given to them, as Records Clerk/Office Assistant and that posts are coming under Group IV post, which are not coming under purview of Tamil Nadu Public Service Commission, as per the scheme formulated in the G.O.Ms.No.209, Personnel and Administrative Reforms (P) Department, dated 20.11.2001 and hence their request could not be complied with.”*

*20. With regard to the averments made in ground (b) of paragraph-16 of the affidavit, it is submitted that this Hon'ble Court in its order dated 20.08.2009 in the WP No.24771 of 2006 etc., among other things had observed as follows:-*

*“20. xxxxx xxx xxx xxx xxx xxx*

*These petitioners were ousted after their short tenure in the Census Department. They were*



*ousted from service in the year 1991 and for a period of nearly 19 years, they have not taken any steps to apply to those posts when applications had been called for by the expert bodies, viz., Tamil Nadu Public Service Commission etc., and when number of individuals with better qualification are in the queue, without undergoing the process of selection, basing on their short tenure in the Census Department, the petitioners cannot be absorbed in the posts which are coming under the purview of the Tamil Nadu Public Service Commission. Besides, as far as the posts coming under the Tamil Nadu Public Service Commission are concerned, even after selection, candidates are accommodated under these lists viz., main list, reserve list and waiting list and only the main list candidates are given appointment orders and as far as the incumbents of the other two lists are concerned, depending upon so many factors, they may or may not get appointment orders. When such is the position, basing on the concession given and sympathy shown to the petitioners who are Retrenched Employees of the Census Department, they cannot take a stand that they*



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*should be accommodated in these posts without undergoing the process of selection. As such, I do not find any infirmity in the impugned circular and also sub-paragraph No.3 of main paragraph No.4 of G.O.Ms.No.209, Personnel and Administrative Reforms (P) Department, dated 23.11.2001.”*

10. This Court is of the considered opinion that the petitioners were engaged in the Census Department to carry out the census work for a particular period. On completion of the work, the petitioners were ousted from service. Subsequently they were appointed in the Regular post in the year 2006. Thus now after this length of time, they cannot claim retrospective appointment or regularisation from the date of their initial appointment in the Census Department.

11. Apart from the dis-entitlement of the writ petitioners to claim regularisation or appointment with retrospective effect, there is enormous delay in approaching the Authorities by the writ petitioners. They secured regular employment in the year 2006 and they have approached the Authorities after 10 years and filed the present writ petition after 13 years and

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more-so, they were ousted from service in the year 1992 and 1994.

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12. Considering the facts and circumstances, the claim of the writ petitioners are to be rejected even on the ground of laches. In respect of the delay and laches, the Hon'ble Supreme Court of India considered the issues and held that there are implicit limitations of time within which the remedies can be enforced.

13. It is relevant to consider the following judgments of the Apex Court:-

In the case of **Chairman / Managing Director, Uttar Pradesh Power Corporation Limited and Others vs. Ramgopal [(2020) SCC Online SC 101]**, wherein 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*



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*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.”*

14. In the case of **P.S. Sadasivaswamy vs. State of Tamil Nadu [(1975) 1 SCC 152]**, wherein the Supreme Court 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*



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*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.....”*

15. In the case of **SS Balu vs. State of Kerala [(2009) 2 SCC 479]**, wherein the Supreme Court observed as under:

*“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.”*

16. In the case of **Vijay Kumar Kaul vs. Union of India [(2012) 7 SCC 610]**, wherein the Supreme Court 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.”*

17. In the case of **State of Uttar Pradesh and Others vs. Arvind Kumar Srivastava and Others [(2015) 1 SCC 347]**, wherein 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.”*

18. In the case of **Rushibhai Jagdishbhai Pathak vs. Bhavnagar Municipal Corporation [2022 SCC Online SC 641]**, wherein the Supreme Court 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*



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*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””*

19. The petitioners are almost on the verge of their retirement.

Now at this length of time, they are claiming retrospective appointment/



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regularisation for which they are not entitled. More-so, the petitioners were not served in the Census Department after their retrenchment and till their regular appointment in the year 2006.

20. This being the factum established, the petitioners are not entitled for the relief as such sought for in the present writ petition.

21. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.

**01-12-2022**

Index : Yes/No.  
Internet : Yes/No.  
Speaking Order/Non-Speaking Order.  
Svn

To

1.The Chief Secretary to Government,

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State of Tamil Nadu,  
Secretariat,  
Fort St. George,  
Chennai-600 009.

2.The Principal Secretary to Government,  
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**S.M.SUBRAMANIAM, J.**

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