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W.P.No.24970 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.24970 of 2019

R.Radhakrishnan

... Petitioner

Vs.

1.The Chairman

Tamil Nadu Generation and Distribution Corporation Limited
No.144, Anna Salai, Chennai – 600 002.

2.The Chief Engineer (Personnel)

Tamil Nadu Generation and Distribution Corporation Limited
No.144, Anna Salai, Chennai – 600 002.

3.The Superintending Engineer

Tamil Nadu Generation and Distribution Corporation Limited
East Pondy cherry Road
Villupuram 605 602.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records connected with the impugned letter of the 3rd respondent, vide Lr.No.055352/243/Nir.P.III/Uthavil/Ko.U.Mu/2016 dated 21.10.2016 and quash the same and consequently direct the 3rd respondents to rectify the pay anomaly on par with his junior Mr.Syed Mohideen, and promote the petitioner notionally as Foreman Grade-II and Foreman Grade-I, w.e.f.



23.09.1978 and 16.12.1985, respectively with all monetary benefits.

For Petitioner : Mr.R.D.Ashok Kumar

For Respondents : Mr.P.Subramanian
[For TANGEDCO]

ORDER

The order impugned rejecting the claim of the writ petitioner to step up his pay on par with his junior one Mr.Syed Mohideen is under challenge in the present writ petition.

2. The petitioner joined in the services of the Electricity Board as NMR in the year 1955 and thereafter, his services were regularised in the sanctioned post of Assistant Wireman. The petitioner was promoted as Lineman Grade-I and thereafter, retired from service on 31.05.1999.

3. The petitioner states that his junior Mr.Syed Mohideen was promoted as Lineman Grade-I in O.S.S cadre under class III Service Division IX (a) Serial No.35(i) of Madras State Electricity Board Service Regulation by an order dated 03.04.1969. In the said order the name of the



writ petitioner was shown in S.No.17 and the name of Mr.Syed Mohideen was mention in S.No.34. However, the said Mr.Syed Mohideen was promoted to the post of Foreman Grade-II with effect from 23.09.1978 by relaxing his educational qualification. The petitioner was promoted as Foreman Grade-II with effect from 05.02.1981.

4. *Prima facie*, the petitioner admitted that in the cadre of Foreman Grade-II, the petitioner was promoted subsequently after promotion of his junior Mr.Syed Mohideen. Thus, in the cadre of Foreman Grade-II, the petitioner became junior to the said Mr.Syed Mohideen. May that as it be, even in case a promotion of the junior was wrongfully granted or the junior was getting more pay during the relevant point of time, the petitioner ought to have addressed the authorities within a reasonable period of time.

5. The learned counsel for the petitioner states that the petitioner submitted a representation in the year 1985, which was not considered. However, the fact remains that the said Mr.Syed Mohideen was promoted as Foreman Grade-II with effect from 23.09.1978, but the petitioner was promoted as Foreman Grade-II with effect from 05.02.1981. Therefore, the



said Mr.Syed Mohideen cannot be said to be junior in the cadre of Foreman Grade-II, since the said order was not modified or set aside by the competent authorities.

6. Though, the learned counsel for the petitioner states that the petitioner submitted an application in the year 1985, the said application was not pursued by the petitioner for several years. He was allowed to retire from service on 31.05.1999 and he filed the present writ petition in the year 2019 after a lapse of about 20 years from the date of his retirement.

7. Question arises, whether a writ petition can be entertained after a lapse of 20 years from the date of retirement, for stepping up of the pay of the writ petitioner on par with his junior, while he was in service. The Hon'ble Supreme Court of India considered the principles of delay and latches in the following judgments.

8. (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.....”

(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.”



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(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.”



9. (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.”

(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””



10. In the present case, the comparison made by the writ petitioner with Mr.Syed Mohideen is also not seems to be acceptable, since the said Mr.Syed Mohideen was promoted as Foreman Grade-II with effect from 23.09.1978, but the petitioner was promoted as Foreman Grade-II 05.02.1981. That apart, the writ petition is filed after a lapse of 20 years and therefore, the petitioner has not made out any acceptable ground for the purpose of considering the relief.

11. Accordingly, the Writ Petition stands dismissed both on the merits and on the ground of laches. No costs.

02.12.2022

Jeni
Index : Yes
Speaking order



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S.M.SUBRAMANIAM, J.

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