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W.P.No.26672 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.26672 of 2019

O.Muniyappa

... Petitioner

Vs.

1.The Secretary to Government
Education Department,
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 009.

2.The Director of Elementary Education,
College Road, Chennai 600 006.

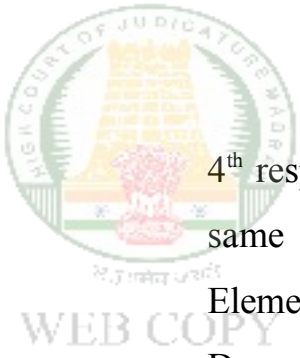
3.The Chief Educational Officer,
Shoolagiri,
Krishnagiri District,
Krishnagiri.
Pincode 635117.

4.The Block Educational Officer,
Shoolagiri,
Krishnagiri District,
Krishnagiri.
Pincode 635117.

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 of the



4th respondent in Na.Ka.No.405/A1/2018, dated 05.04.2019 and quash the same and to direct the respondents to grant pay protection as that of Elementary Headmaster as granted in G.O.Ms.No.202, (Educational Department) dated 24.09.2008.

For Petitioner : Mr.R.Kamaraj

For Respondents : Mrs.S.Mythreye Chandru
Special Government Pleader

ORDER

The order of rejection, rejecting the claim of the writ petitioner to grant pay protection as Elementary School Headmaster as granted in G.O.Ms.No.202, Educational Department dated 24.09.2008 is under challenge in the present writ petition.

2. The petitioner was appointed as Apprentice Teacher in the Panchayat Union Primary School, Kanalatti, Shoolagiri Union on 14.12.1971. He was promoted as Elementary School Headmaster on 02.10.1976 and thereafter, reverted to the post of Secondary Grade Assistant Teacher on 05.09.1978. Again the petitioner was promoted to the Elementary School Headmaster on 02.08.1995 and retired from service on 31.08.2001.



3. The grievance of the writ petitioner is that the pay protection granted to the other similarly placed Elementary School Headmaster in in G.O.Ms.No.202, Educational Department dated 24.09.2008 has not been extended to him. In this regard, the petitioner made a representation and the said representation was considered by the competent authorities and they found that the Government order paves ways to fix the pay of those, who got transfer to other Union as Secondary Grade Teacher after serving as Primary School Headmaster in a Union and therefore, the petitioner was not falling under the category on par with the persons to whom the benefits were conferred under G.O.Ms.No.202, Educational Department dated 24.09.2008. In this regard, the respondents have stated as follows:

“18. It is submitted that in order to implement the above Hon'ble High Court's order the Block Educational Officer, Shoolagiri issued orders in Rc.No.405/A1/2016 dated 05.04.2019 stating that

“as per G.O.Ms.No.202 School Education (G2) Department dated 24.09.2008, those teachers who served as primary school headmaster prior to 01.06.1988 in a Union and transferred to other Union as Secondary Grade Teachers, their services in the transferred Union



should be treated as Primary School Headmaster from the date of joining as Secondary Grade Teacher. In respect of the writ petitioner's case he joined as Secondary Grade Teacher as on 14.12.1971 in Panchayat Union Primary School, Kanalatti, Shoolagiri Union. He was given promotion as Primary School Headmaster w.e.f. From 02.08.1995 in Panchayat Union Primary School, Kodagaralapalli, in Shoolagiri Union itself, and he did not get transfer as Secondary Grade Teacher to other Unions from Shoolagiri after serving as Primary School Headmaster in Shoolagiri Union. As the writ petitioner got appointment as Secondary Grade Teacher w.e.f. 14.12.1971 in Shoolagiri Union and posted as Primary Headmaster on promotion in the same Union, there is no provision to fix his pay with reference to G.O.Ms.No.202/School Education (G2) Department dated 24.09.2008, since the above G.O. paves way to fix the pay of those who got transfer to other Union as Secondary Grade Teacher after serving as Primary School Headmaster in a Union and hence his representation is rejected”.



4. That apart, the writ petitioner was allowed to retire from service on 31.08.2001. The Government order in in G.O.Ms.No.202, Educational Department dated 24.09.2008 was issued after 7 years from the date of retirement of the writ petitioner and the writ petition was filed after a lapse of 18 years from the date of retirement. Thus, even on the ground of laches, the writ petition is liable to be rejected.

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.....”

(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 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””

6. In view of the fact that the respondents considered the case of the writ petitioner and found that the petitioner is not eligible to claim benefit as per the G.O.Ms.No.202, Educational Department dated 24.09.2008 and further on the fact that the petitioner has approached this Court after a lapse of several years from the date of retirement. Therefore, this Court is not inclined to consider the relief as such sought for in the present writ petition.



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7. Accordingly, the Writ Petition stands dismissed. No costs.

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Index : Yes
Speaking order

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S.M.SUBRAMANIAM, J.

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