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W.P.No.30491 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.30491 of 2019

Er.J.Murugesun, B.E.,

...Petitioner

Vs.

1.The Secretary to Government,
Municipal Administration &
Water Supply Department,
Chennai – 600 009.

2.The Chairman and Managing Director,
And the Board of Directors of the TWAD Board,
Chennai – 600 005.

3.The Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
Chennai – 600 005.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for all the connected records in the impugned orders passed by third respondent in 1) orders in BP MS 347 dated 22.8.1997 of the MD TWAD Board, Chennai -5, 2) Ir.No. 5034/Estt.(DP)/A2/97-95 dated 04.1.2005 and 3) BP Ms No.52, dated 02.05.05 of the MD, TWAD Board, Chennai -5 and to quash them; consequently to direct to the Respondents herein more particularly, the 3rd



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respondent to correct the wrong entry in the SR from EE, Cheyyar Division to that of EE, Thiruvannamalai to enable the petitioner to get the promotions deferred as SE, CE etc., in the panel of 1999, to place him over and above his known junior for fixation of his pay (without any arrears) – to have revision in the pension of the petitioner together with arrears thereon.

For Petitioner : Mr.A.L.Namasivayam

For R1 : Mrs.R.L.Karthika
Government Advocate

For R2 & R3 : Mr.S.Ravindran
Senior Counsel
For Mrs.S.Mekhala
(For TWAD Board)

ORDER

The writ petition has been filed by the writ petitioner to quash the proceedings dated 22.08.1997 and to direct the Managing Director to take criminal action against the officials. Another order dated 02.05.2005, which is the punishment imposed on the writ petitioner is also under challenge in the present writ petition.

2. Before considering the facts and circumstances, the learned Senior counsel appearing on behalf of the respondents raised a preliminary objection regarding the entertainability of the writ petition on the ground of



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latches. It is contended that the impugned proceedings of the year 1997 is a direction to the Managing Director to initiate criminal action, which was done long back and the interim order dated 02.05.2005 is a punishment imposed on the writ petitioner after conducting departmental disciplinary proceedings.

3. The petitioner has not initiated appropriate action to challenge the said order during the relevant point of time, the present writ petition has been filed after a lapse of about 14 years from the date of his retirement.

4. Even at the time of filing of the writ petition, the petitioner was aged about 71 years and now he would be around 74 years. The petitioner reached the age of superannuation on 31.01.2005 and the writ petition has been instituted on 22nd October 2019, after a lapse of about 14 years from the date of passing of the order of punishment.

5. Under these circumstances, this Court is of an opinion that the writ petition is not entertainable and liable to be rejected on the ground of latches. The principles regarding the delay and latches are settled by the Hon'ble Supreme Court of India in the following judgments:



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(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], the Apex Court held as follows:



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“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 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 obtain the benefit of the judgment.”

(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.”



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(e) 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.”

(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

(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”



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6. In view of the principles considered above, the writ petition is not entertainable and accordingly, stands dismissed. No costs.

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Index : Yes
Speaking order: Yes
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S.M.SUBRAMANIAM, J.

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