



WEB COPY



W.P.No.34454 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.34454 of 2019

Dr.Edithi Thompson

...Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep.by its Principal Secretary,
Health and Family Welfare Department,
Fort St.George, Chennai – 600 009.
- 2.The Principal Secretary to the Government
of Tamil Nadu,
Finance Department,
Fort St.George, Chennai – 600 009.
- 3.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai – 600 010.
- 4.The Dean,
Madras Medical College,
Chennai – 600 003.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the Letter Ref.No.14736/E1/3/2018 dated 07.2.2019 issued by the 4th respondent and quash the same as illegal and contrary to Law and direct the



W.P.No.34454 of 2019

4th respondent to revise and re-fix the pension for the petitioner with all other monetary benefits in the post of Chief Civil Surgeon as per G.O.Ms.No.236/Finance (Pay Cell) Department dated 12.07.2018.

For Petitioner : Mr.A.Thiyagarajan
For Mr.M.Nalla Thambi

For R1 to R4 : Mr.U.M.Ravichandran
Special Government Pleader

ORDER

The order of rejection, rejecting the claim of the writ petitioner for revision of pension based on G.O.Ms.No.236, Finance (Pay Cell) Department dated 12.07.2018 is under challenge in the present writ petition.

2. The writ petitioner retired as a Civil Surgeon. The petitioner was allowed to retire from service on 30.06.1998.

3. It is not in dispute that the petitioner was holding the post of Civil Surgeon on the date of her retirement.



W.P.No.34454 of 2019

4. The grievance of the writ petitioner is that the Government issued G.O.Ms.No.236, Finance Department dated 12.07.2018, granting revision of pay to the Civil Surgeons and the said benefit was not extended to the writ petitioner and in this regard, the petitioner submitted a representation, which was rejected.

5. The learned Senior counsel appearing on behalf of the writ petitioner mainly contended that the Government order issued in G.O.Ms.No.236 dated 12.07.2018 clarifies that the Assistant Surgeons / Medical officers working in the Tamil Nadu Medical Service of all the Directorates are eligible for time bound promotion on completion of 8 / 15 / 17 / 20 years of service as Chief Civil Surgeon (Rs.37400-6700 + Grade Pay Rs.8700) and the benefits shall be from the date of completion of the above stipulated period.

6. Therefore, the petitioner had already completed 20 years of service and therefore, she is eligible for the time bound promotion to the post of Chief Civil Surgeon and consequently, her pay and pension are to be revised based on the Government order issued in G.O.Ms.No.236, Finance (Pay



W.P.No.34454 of 2019

Cell) Department dated 12.07.2018. The similarly placed Doctors were conferred with the benefit and therefore, the same cannot be denied to the petitioner.

7. The learned Special Government Pleader appearing on behalf of the respondents mainly contended that there was an enormous delay in pursuing the matter by the petitioner. There is a delay of more than 20 years, since the petitioner retired from service in the year 1998. The application itself was submitted to the competent authorities in the year 2018, after a lapse of about 20 years from the date of her retirement. That apart, the Government order is not applicable to the case of the writ petitioner, since she was holding the post of Civil Surgeon on the date of her retirement.

8. The Government order relied on by the petitioner, which was issued in G.O.Ms.No.236, Finance (Pay Cell) Department dated 12.07.2018 stipulates that “Pension / Family Pension of the Professors / Medical Officers (Rs.12000-16500) retired prior to 23.10.2009 shall be revised with reference to the higher pay scales granted to the Professors who were elevated to Chief Civil Surgeons due to time bound upgradation in the



W.P.No.34454 of 2019

Government Order issued in G.O.Ms.No.354, Health and Family Welfare Department dated 23.10.2009. Under Clause (2) of Paragraph 5 of the Government order further issued in G.O.Ms.No.313, Finance (Pay Cell) Department dated 25.10.2017". Accordingly, the revised scale of pay was granted.

9. No doubt, the petitioner retired in the year 1998 and falling within the cut-off date on 23.10.2009. However, she was not holding the post of Professor / Medical officer. She was holding the post of Civil Surgeon. That apart, the petitioner was not receiving the pay i.e., Rs.12000-16500 and therefore, she is not falling within the ambit of the Government order issued in G.O.Ms.No.236, Finance (Pay Cell) Department dated 12.07.2018.

10. The benefit of revision of pay / pension was granted to rectify the anomaly in respect of the Doctors, who retired prior to 23.10.2009 and was holding the post of Professor / Medical officer. Thus, the scope of the Government Order cannot be expanded by the High Court, while exercising the power of judicial review under Article 226 of the Constitution of India. Interference in the fixation of pay by the High Court is undoubtedly limited.



W.P.No.34454 of 2019

Revision of pay is to be granted strictly in accordance with the terms and conditions of the scheme of pay and the High Court cannot expand the scope of revision granted to a particular group of people in order to rectify the anomaly aroused. In the present case, it is found that the petitioner is not falling within the category stipulated in the Government order.

11. As rightly contended by the learned Special Government Pleader appearing on behalf of the respondents, there was an enormous delay in pursuing the Government order by the petitioner. Even the application itself was submitted by the petitioner after a lapse of 20 years from the date of her retirement and thus, the petitioner slept over her issues. Therefore, she is not entitled to claim any further benefit at this stage.

12. The principles regarding delay and laches are laid down by the Hon'ble Supreme Court in the following cases:

(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:



W.P.No.34454 of 2019

“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:

“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



W.P.No.34454 of 2019

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.”



W.P.No.34454 of 2019

WEB COPY (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.”



W.P.No.34454 of 2019

(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



W.P.No.34454 of 2019

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



WEB COPY



W.P.No.34454 of 2019

their claim”



W.P.No.34454 of 2019

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

14. Consequently, the writ petition stands dismissed. No costs.

28.11.2022

Index : Yes
Speaking order : Yes
kak

To

1. The Principal Secretary,
State of Tamil Nadu,
Health and Family Welfare Department,
Fort St.George, Chennai – 600 009.
2. The Principal Secretary to the Government
of Tamil Nadu,
Finance Department,
Fort St.George, Chennai – 600 009.
3. The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai – 600 010.
4. The Dean,
Madras Medical College,
Chennai – 600 003.