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W.A(MD)No.1507 of 2022

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 21.12.2022**

**CORAM:**

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR  
and  
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.A(MD)No.1507 of 2022  
and  
C.M.P(MD)No.12613 of 2022**

M.Veerakumar

... Appellant/Petitioner

VS.

- 1.The Teachers Recruitment Board,  
Represented by its Chairman,  
DPI Campus, College Road,  
Chennai – 600 006.
- 2.The Expert Committee,  
Represented by its Chairman,  
DPI Campus, College Road,  
Chennai – 600 006.
- 3.The Director of School Education,  
Office of Director of School Education,  
Chennai.

... Respondents/Respondents

**PRAYER :** Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 18.11.2022 passed in W.P(MD)No.26071 of 2022, on the file of this Court.



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For Appellant

: Mr.K.Appadurai

For RR 1 & 2

: Mr.VR.Shanmuganathan  
Standing Counsel

For R – 3

: Mr.D.Sadiq Raja  
Additional Government Pleader

### **JUDGMENT**

**[Judgment of the Court was made by D.KRISHNAKUMAR, J.)**

Challenging the dismissal order passed by the learned Single Judge in W.P(MD)No.26071 of 2022, dated 18.11.2022, the appellant/writ petitioner has filed the instant Writ Appeal.

2.The brief facts of the case in W.P(MD)No.26071 of 2022 are as follows:-

The appellant/writ petitioner is M.A (English) Degree holder and he submitted an online application for the post of PG Assistant (English) on 19.10.2021 and attended the written examination on 18.02.2022. Thereafter, the provisional result was published and the petitioner had secured 96.746082 out of 150 questions. Further, the respondents



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published the key answers for all the 150 questions, wherein, the key answer published by the respondents for question No.136 is wrong, whereas, he has furnished the correct answer to question No.136. There was objection raised to the said key answer published by the respondents. In response to the said objections, the Experts have taken a stand that the setters' key answer is correct and that it does not warrant any change. According to the appellant, challenging the same, one K.Vinopratha, has filed a Writ Petition before this Court in W.P(MD)No.22129 of 2022 and this Court, by order, dated 02.11.2022, allowed the Writ Petition by awarding one mark to the said K.Vinopratha. Placing reliance on the said order, the appellant has filed W.P(MD)No.26071 of 2022, directing the respondents to grant one mark to the appellant for giving right answer to question No.136 and consequently, directing the respondents to include the name of the appellant in the final selection list following the procedures and appoint him as a Post Graduate Assistant (English) for the year 2021.

3.The learned Single Judge, by order, dated 18.11.2022, relying upon the earlier order in W.P(MD)No.22129 of 2022, has passed the following order:-



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"2. The petitioner is an aspirant for the post of PG Assistant (English). Even though he had given correct answer to the petition mentioned question, he was unlawfully denied one mark because the key answer itself was wrong.

3. In an identical case, I had given relief. The petitioner places reliance on the aforesaid order. Unfortunately, I am not in a position to give relief to the present petitioner for the reason set out in the final paragraph of the order dated 2.11.2022 in W.P. (MD)No.22129 of 2022. Paragraph No.17 of the said order is as follows:-

"17. I grant relief to the petitioner because she had filed the writ petition on 16.09.2022 itself. On 20.09.2022, I passed an interim order in the presence of the standing counsel that any appointment made pursuant to the selection list will abide by the outcome of the writ petition. Now that the process is over. I will not entertain any further writ petitions even if the petitioners are placed on the same footing. I do not want to open the flood gates. Grant of relief shall remain confined to the petitioner alone."

4. Even though the petitioner is justified in his claim, I have to reluctantly dismiss the writ petition. The Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed."

Challenging the said order, the appellant has filed the instant Writ Appeal.



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4.The learned counsel appearing for the appellant submitted that the Writ Court cannot reject the claim of the appellant on the ground that the appellant has not approached this Court within time and he has approached this Court, after the appointment order and the final order passed in W.P(MD)No.22129 of 2022. There will be a discrimination and disparity on the part of the similarly placed persons and therefore, he is entitled for the said relief.

5.Per contra, Mr.VR.Shanmuganathan, learned Standing Counsel appearing for the respondents 1 and 2 objected the submission made by the learned counsel appearing for the appellant and submitted that the respondents called for the Notification on 09.09.2021 and the appellant had applied through online on 19.10.2021. The key answer was published on 09.04.2022 and called for the objections to be filed on or before 13.04.2022 and based on that, final key answer was published on 04.07.2022. The appellant has not submitted any material to show that he has made objection for the aforesaid key answer. Subsequent to the final key answers, provisional list has been published on 17.09.2022 and thereafter, appointment order has been issued on 14.10.2022. The appellant cited the



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Writ Petition in W.P(MD)No.22129 of 2022 filed by one K.Vinopratha and this Court, by order, dated 02.11.2022, has granted the relief to the said K.Vinopratha by awarding one mark for the aforesaid question No.136. Challenging the same, the respondent Board has also preferred an Appeal. In the case on hand, the Writ Court has rightly rejected the claim of the appellant on the ground of delay and laches and there is no merit in the Writ Appeal.

6.Heard the learned counsel appearing on either side and perused the materials available on record.

7.On considering the facts of the case and the submission of the learned counsel on either side and also a perusal of the materials available on record, the point for consideration in the instant Writ Appeal is whether the Writ Petition filed by the appellant attracts delay and laches and acquiescence in approaching the Court.

8.The first respondent has issued a Notification for Direct Recruitment vide Advertisement No.01/2021 on 09.09.2021 for the vacancies to the posts of "Post Graduate Assistants/Physical Education



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Directors Grade-I and Computer Instructor Grade-I” under the Tamil Nadu Higher Secondary Educational Service. The appellant submitted his online application on 19.10.2021. The key answer published on 09.04.2022 and called for objections to be filed on or before 13.04.2022 and the final key answer was published on 04.07.2022. Subsequent to the final key answers, provisional list has been published on 17.09.2022 and thereafter, appointment order has been issued on 14.10.2022. In the meantime, one K.Vinopratha filed a Writ Petition in W.P(MD)No.22129 of 2022 and this Court, by order dated 02.11.2022 allowed the Writ Petition. The relevant portion of the order reads as follows:-

“17. I grant relief to the petitioner because she had filed the writ petition on 16.09.2022 itself. On 20.09.2022, I passed an interim order in the presence of the standing counsel that any appointment made pursuant to the selection list will abide by the outcome of the writ petition. Now that the process is over. I will not entertain any further writ petitions even if the petitioners are placed on the same footing. I do not want to open the flood gates. Grant of relief shall remain confined to the petitioner alone.

18.The writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.”



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Based on the said order, the appellant has filed the Writ Petition in W.P(MD)No.26071 of 2022, claiming the same benefit to the appellant. The said relief sought for by the appellant has been negated by the Writ Court stating that though the appellant is entitled for selection to the posts similar to the persons who got the benefit in the order passed in W.P(MD)No.22129 of 2022, dismissed the Writ Petition. With regard to the aforesaid issue, the Delhi High Court, in the case of ***Union of India and others Vs. Sandeep Kumar Swaroop and others in W.P(C)Nos.9413/2016 & 1473/2017, dated 01.09.2017***, has elaborately considered various decisions of the Hon'ble Supreme Court and the same is extracted hereunder:-

*"45. Recently, the Supreme Court in State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava & Ors., (2015) 1 SCC 347 had examined this issue on the question of judgments in service law which lay down a principle and, therefore, are treated as judgments in rem in the second sense. Several decisions on both sides were referred to and the following legal principles were set out:*

*"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.*



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22.1. *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. Not doing so would amount to discrimination and would be violative of [Article 14](#) of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.*

22.2. *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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22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment *in rem* with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see. [K.C.Sharma v. Union of India \[K.C. Sharma v. Union of India, \(1997\), 6 SCC 721 : 1998 SCC \(L & S\) 226\]](#)). On the other hand, if the judgment of the court was *in personam* holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence".

A careful reading of the aforesaid principles reveals that the principle of *in rem* in the second sense is not absolute. It is preferable to follow the said principle so that there is no discrimination or violation of [Article 14](#) in service matters for all similarly situated persons should be treated alike and not differently. However, delay and laches as well as acquiescence can



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*be a ground to deny benefit to fence sitters. Those who do not approach the Court in a timely and prompt manner can be denied "equal treatment". Thus, it will be right to hold that doctrine of in rem in the second sense is not unconditional or unimpeachable. However, this exception would not apply where the earlier judgment pronounced by the Court is with the intent to give benefit to all similarly situated persons, whether they had approached the Court or not. Benefit should not be extended when the said intent is not there and the judgment expressly or impliedly states that the benefit of the judgment would be extended to those, who had sought to enforce their rights and their petitions were not stale on account of delay and laches or acquiescence".*

9.In the case on hand, the respondent has published the final key answer on 04.07.2022 and published the provisional list on 17.09.2022 and appointment order has been issued on 14.10.2022. The said K.Vinopratha has filed the Writ Petition in W.P(MD)No.22129 of 2022 before the appointment order issued by the respondent. Therefore, this Court allowed the Writ Petition in W.P(MD)No.22129 of 2022 and categorically observed that in future, the Writ Petition of similar nature cannot be entertained for the aforesaid relief.



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10. Therefore, in the light of the aforesaid facts of the case, the appellant had filed the Writ Petition on 15.11.2022 after the completion of the entire selection process and the appellant has waited for the proceedings in the earlier Writ Petition in W.P(MD)No.22129 of 2022 and filed the present Writ Petition, after the disposal of the said Writ Petition, seeking for the same relief, whereas in the decision cited supra, it has been categorically held that in respect of questioning the recruitment process, the appellant has to approach the Court within a reasonable time. Therefore, we are of the view that the appellant cannot seek for interference of the order of the Writ Court on the ground of violation under Article 14 of the Constitution of India and on the ground of delay and laches.

11. In view of the aforesaid decision cited supra, there is no merit in the Writ Appeal and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

**[D.K.K.,J.] & [R.V.,J.]**  
**21.12.2022**

Index : Yes / No  
Internet : Yes  
ps

**12/14**



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To

- 1.The Teachers Recruitment Board,  
Represented by its Chairman,  
DPI Campus, College Road,  
Chennai – 600 006.
- 2.The Expert Committee,  
Represented by its Chairman,  
DPI Campus, College Road,  
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- 3.The Director of School Education,  
Office of Director of School Education,  
Chennai.



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**D.KRISHNAKUMAR,J.**

**and**

**R.VIJAYAKUMAR,J.**

ps

**ORDER MADE IN  
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**21.12.2022**