



Writ Appeal.Nos.1560 to 1562 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17.04.2023
Pronounced on	28.06.2023

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

**Writ Appeal.Nos.1560 to 1562 of 2015
and MP.Nos.1, 1 & 1 of 2015**

Writ Petition No.1560 of 2015

- 1.The Government of TamilNadu,
Rep by its Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St. George, Chennai-6006 009.
2. The Commissioner of Rural Development and
Panchayat Raj, Panagal Building,
Saidapet, Chennai- 600 009
- 3.The District Collector (PD Section)
Thanjavur District,



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Thanjavur.

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4.The District Collector (PD Section)
Nagapattinam District,
Nagapattinam

5. The District Collector(PD Section)
Thiruvannamalai District,
Thiruvannamalai.

...Appellants

VS.

- 1.K.Radhakrishnan
2. N.Balasubramanian
3. R.Ganesan
4. V.Elayaperumal
5. A.L.Abdul Razack
6. S.Gandhi
7. M.Varadharajan
- 8.M.Kulandaivelu
9. R.Raju
10. M.Shanmugasundaram
11. S.Ramakrishnan
- 12.K.Mohamed Kasim
- 13.S.Vedaiyan
- 14.G.Natarajan



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15.G.Govindasamy

16.K.Chokkalingam

17.P.Annasangu

18. K.Ayyalusamy

19.V.Thangarasu

20.V.Ramajayam

21.K.Govindarajan

22.P.Sheik Dawood

23.K.Muthukumaran

24.M.Ganesamoorthy

25.K.Ganapathi

26.S.Vairavamoorthy

27.K.Kaliyamurthi

28.A.Thangavelu

29.G.Kunjithapatham

30.R.Rajagopal

31.C.Kaliyamoorthi

32.E.M.Kaliyaperumal

33.R.Padma

34.N.Ekambaram

35.V.Natarajan

36.C.Murugaiyan

37.S.Durairaj Roche

38.M.Aiyyamperumal



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39.T.Sargunavathi

40.P.Ramasamy

41.A.Murgaiyan

42.K.Thangaraju

43.N.Vengusamy

44.A.Sambamurthy

45.C.Simmachandran

46.V.Mahalingam

47.V.Dekshinamoorthy

48.S.Ramamoorthy

49.M.G.Kannan

50.N.Pandurangan

51.A.Rajamanickam

52. P.M.Natarajan

53. M.Krishnan

...Respondents

Prayer: Writ Appeal has been filed under Clause 15 of Letters Patent against

the order dated 04.09.2014 made in W.P. No.10993/2013.

For Appellant : Mr.Haja Nazimudeen, AAG
Assisted by
Mrs.Geetha Thamaraiselvam,



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Special Government Pleader

For RR1 to R5 : Mr.K.S.Viswanathan (SC)
for Mrs.T.Hemalatha

W.A.No.1561 of 2015

- 1.The Government of TamilNadu,
Rep by its Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St. George, Chennai-600 009.
2. The Commissioner of Rural Development and
PanchayatRaj, Panagal Building,
Saidapet, Chennai- 600 009
- 3.The District Collector (PD Section)
Salem District,
Salem.
- 4.The District Collector (PD Section)
Namakkal District,
Namakkal.

....Appellants

Vs.

- 1.A.Krishnan
- 2.V.Ramanathan
- 3.R.Manickam
- 4.P.Dhrsis



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5. A.Raju

6. V.Vaiyapuri

7. K.Rajagopal

8. M.Saptarishi

9. C.Manickam

10.T.N.Gunasekaran

11.R.P.Natarajan

12.A.Dhanasekaran

13.P.Ramachandran

14. C.Palanisamy

15.M.S.Kalandaisamy

16.P.M.Kandasamy

17.S.Ramasamy

18.C.Arumugam

19.V.Dhandapani

20.S.Veerappan

21.R.Vaithilingam

22.N.Balaviswanatha Guptha



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23.V.P.Arumugam

24.L.Govindan

25.R.Rengannan

26.N.Palanisamy

27.P.R.Sengodan

28. P.Periya Thambi

29. A.Sub anaidu

30. S.C.Rajamanikam

...Respondents

Prayer: Writ Appeal has been filed under Clause 15 of Letters Patent against the order dated 26.02.2015 made in W.P. No.34299/2014 and allow the writ appeal

For Appellant : Mr.Haja Nazimudeen, AAG
Assisted by
Mrs.Geetha Thamaraiselvam,
Special Government Pleader

For RR1to R30 : Mr.K.S.Viswanathan
Senior Counsel



Writ Appeal.Nos.1560 to 1562 of 2015

for Mrs.T.Hemalatha

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W.A.No.1562 of 2015

- 1.The Government of TamilNadu,
Rep by its Secretary to Government,
Rural Development and Panchayat Raj
Department, Fort St. George,
Chennai-9.
2. The Commissioner of Rural Development and
Panchayat Raj, Panagal Building, Saidapet,
Chennai- 15.
- 3.The District Collector,
Thiruvallur District,
Thiruvallur
- 4.The District Collector,
Kancheepuram District,
Kancheepuram.

....Appellants

Vs.

- 1.A.Muthukutty
- 2.P.Radhakrishnan
- 3.M.Sundaram
- 4.G.Sriram



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5.K.Alagappan

6.P.Bhakthavatsalu

7.S.Jayaraman

8.B.Sivalingam

9.K.Vajiram

10.S.Abdul Munab

---Respondents

Prayer: Writ Appeal has been filed under Clause 15 of Letters Patent against the order dated 31.03.2015 made in W.P. No.8940 of 2015 and to allow the writ appeal.

For appellant

: Mr.Haja Nazimudeen, AAG

Assisted by
Mrs.Geetha Thamaraiselvam,
Special Government Pleader

For RR1to R10

: Mr.K.S.Viswanathan
Senior Counsel
for Mrs.T.Hemalatha



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COMMON J U D G M E N T

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(Judgment of the Court was delivered by K.GOVINDARAJAN

THILAKAVADI J.)

All these writ appeals are directed against the orders passed in various writ petitions.

2.In Writ petition No.10993 of 2013:

The petitioner prayed in writ petition to call for the records pertaining to the Letter bearing No.21528/E6(1)/ 2012-1 dated 12.10.2012 passed by the first respondent and quash the same and further direct the respondents to extend the benefits contained in G.O.(Pa).No.123, Rural Development and Panchayat Raj (E6) Department dated 07.03.2012 by counting the services rendered by the petitioners in the post of Special Temporary Post Rural Welfare officer Grade-I for the purpose of further promotion and grant notional benefits and consequently pay arrears of salary and other pensionary benefits.



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In Writ petition No.34299 of 2014:

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The petitioner prayed in this writ petition to direct the respondent to extend the benefits contained in G.O.(Pa).No.123, Rural Development and Panchayat Raj (E6) Department dated 7.3.2012 by counting the services rendered by the petitioners in the post of special Temporary Post Rural Welfare officer Grade-I for the purpose of further promotion and grant notional benefits and consequently pay arrears of salary and other pensionary benefits.

In Writ petition No.8940 of 2015:

The petitioner prayed in this writ petition directing the respondents to extend the benefits contained in G.O.(Pa).No.123 Rural Development and Panchayat Raj (E6) Department dated 07.03.2012 by counting the services rendered by the petitioners in the post of special Temporary Post Rural Welfare officer Grade-I for the purpose of further promotion and grant notional benefits and consequently pay arrears of salary and other pensionary benefits.



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3. The common issues involved in these cases is whether the benefits contained in G.O.(Pa).No.123 Rural Development and Panchayat (E6) Department dated 07.03.2012 can be extended to the above writ petitioners and whether the respondents can be directed to count the services rendered by the petitioners in the post of Special Temporary Post Rural Welfare Officer Grade-I for the purpose of further promotion and consequential implemental and pensionary benefits.

4.The contention raised by the writ petitioners in the above writ petitions is that the respondents ought to have extended the benefits given in G.O.(Pa).No.123 Rural Development and Panchayat (E6) Department dated 07.03.2012 to the petitioners herein. The writ petitioners would submit that one Mr.Senthivel, who is similarly situated like the petitioner herein, filed a writ petition in W.P.No.15194 of 2006 seeking direction to the respondent therein to count the services rendered by him as Special Temporary Post Rural Welfare Officer Grade-I with effect from 01.10.1978. The said writ petition was allowed and subsequently the aforesaid order was implemented by the Government in G.O.(Pa).No.123 Rural Development and Panchayat



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Raj Department dated 07.03.2012.

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5. When the petitioners made a request to extend the benefit based on G.O.Ms.No.487 and also as per G.O.(Pa).No.123 Rural Development and Panchayat Raj Department, their request was rejected by the 1st appellant vide order dated 12.10.2012. Hence, the writ petitioners were constrained to file the above writ petitions.

6. On the other hand, the appellants herein in their counter affidavit submitted that the services rendered by the petitioners cannot be reckoned as regular service rendered in the cadre of Rural Welfare Officer Grade-I for the purpose of promotion. Such a stand is contrary to G.O.Ms.No.487 which makes it clear that the period shall be counted from the date of advancement to the Special Temporary Post. The appellants as respondents in writ petition further submitted that the Government has issued orders in G.O.Ms.No.1050 Finance (Pay Commission) dated 05.10.1978 advancement to the next higher post in respect of persons stagnated in a particular post for 10 years. Some of the petitioners have been granted with Special Temporary Post of Rural



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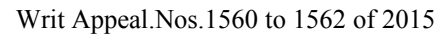
Welfare Officer Grade-I in respect of those who have completed 10 years of service in the cadre of Welfare Officer Grade-II. Consequent to the bifurcation, the petitioners who were belonging to the composite North Arcot District were absorbed in Tiruvannamalai district Rural Development Unit at their option. It is further submitted that the Government orders in G.O.Ms.No.487 Personnel and Administrative Reforms Department dated 18.04.1979 (Copy enclosed) also provides advancement to the higher post in respect of those who have completed 10 years of service in any particular cadre. Therefore, such advancement to the higher post will not amount to a promotion. The Government has framed Special Rules vide G.O.Ms.No.585 Rural Development and Local Administration Department dated 12.04.1984, fixing the eligibility criteria for promotion as Assistant, Extension Officer, Deputy Block Development Officer. Therefore, the petitioners cannot be elevated to the promotional posts without reference to the qualifications prescribed for such promotion under the Special Rules. Therefore, the seniority of the petitioner has been reckoned from the actual date of assuming charge in the respective post concerned for the purpose of promotion. It is further submitted that the advancement to the Selection



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Grade i.e., Special Temporary Post of Rural Welfare Officer Grade I is not at all a promotion within the scope of the Service Rules and therefore the service rendered in the Special Temporary post cannot be considered as qualifying service for the purpose of promotion, since each of the post are carrying independent responsibility and separate nature of work. It is further submitted that the said Senthilvel has been promoted to the cadre of Block Development Officer in the normal course according to his merit and ability with reference to the Special Rules. The petitioners cannot claim the benefit of counting their services as Special Temporary post of Rural Welfare Officer Grade-I, in view of the fact they are having the eligibility as on the crucial dates for promotion as Rural Officer Grade-I, Extension Officer, Deputy Block Officer or Block Development Officer as prescribed under the Service Rules. Hence, the contentions of the petitioners are unsustainable under law and the writ petitions are liable to be dismissed.

7.The learned Single Judge, after considering the contentions made on both sides, allowed the writ petition in W.P.No.10993 of 2013 with the following directions:



The writ petitions in W.P.No.34299 of 2014 and W.P.No.8940 of 2015 was allowed with the following directions:

" In the result, writ in nature of a writ of mandamus is issued directing the 1st respondent to dispose of the petitioners' representation for counting past services rendered in the post of Special temporary Rural Welfare Officer Grade-I in the light of the earlier Government Order in G.O.(P)No.123 Rural Development and Panchayat Raj (E6) Department dated 07.03.2012. Such exercise shall be completed within a period of three months from the date of receipt of this order"



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8. Aggrieved by this, the Government has preferred the present writ appeals.

9. The learned counsel appearing for the appellant/State would contend that the Special Temporary Posts are not regular promotion post and intended only to relieve the hardship of persons stagnating in the same post for more than 10 years. G.O.(Pa).No.123, Rural Development and Panchayat Raj (E6) Department, dated 07.03.2012 has been issued only to comply the judgment delivered on 04.02.2008. The Government letter No.21528/E6/(1)/2012-1, Rural Development and Panchayat Raj (E6) Department, dated 12.10.2012 has been issued in accordance with the G.O.(Pa).No.123, Rural Development and Panchayat Raj (E6) Department, dated 07.03.2012. He would submit that the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioners on the plea of discrimination. His further contention is that the principle of equality enshrined under Article 14 of the Constitution, does not apply in the present case. The order issued to the employee in writ petition No.15194 of 2006 is covered by the order of the



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above writ petition, which could not form foundation to plead discrimination violating Article 14 of the Constitution. His further contention is that Article 14 cannot be invoked in cases where wrong orders are issued in favour of others and that the concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in negative manner. In view of the above, when the writ petitioners failed to establish a right or is not entitled to relief, the fact that a similarly situated person has been illegally granted relief, is not a ground to direct similar relief to him. It would be enforcing a negative equality by perpetuation of an illegality which is impermissible in law. Moreover, one cannot seek precedent for claiming relief without asserting his legal right. [Ref: ***Civil Appeal No.1741 of 2009 ; Civil Appeal No.2090 of 2007; 2007 (4) SCC 737***]. It is further submitted that non-filing of appeal against the order passed in W.P.No.15194 of 2006 cannot be a ground to allow the present writ petitions/[Ref: ***(2014) SCC Online Mad 8058***].

10.The learned counsel further submitted that the writ petitions are filed belatedly by the petitioners and ought to have been dismissed on the



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preliminary ground of delay and laches. [Ref: **(1982) 1 SCC 379; (1984) 3 SCC 36; (1988) 2 SCC 524**].

11.It is further submitted that in the absence of challenge to the statutory Rules, mandate of the Rules could not be ignored. Hence, the Court could not grant relief ignoring mandate of the Rules even if the Rules were apparently discriminatory, unless vires of the Rules are challenged.[REF: **(2007) 14 SCC 556; (2007) 10 SCC 548**]

12.Hence, the orders passed in the above writ petitions are against the well settled Rules of Tamil Nadu State and Subordinate Service Rules and therefore, liable to be set aside. If the orders passed in the above writ petitions are implemented it would open flood gates of other employees in the same category which could become financially unbearable by the Government. And that, when Government has taken a decision based on recommendations of expert committee, and several other factors including financial implication, Court should not substitute its views and could interfere only when it is satisfied that Government's decision was arbitrary.[Ref:(2020) 5 SCC 521].



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13.On the other hand, the learned counsel appearing for the respondent/writ petitioners would submit that, the period of service rendered by the writ petitioners in the post of Special Temporary Post shall be counted only for the purpose of further notional promotion to get a revised pension and they are not claiming any monetary benefits of actual promotion. His further contention is that, held on facts, once a judgment had attained finality it could not be termed as wrong, and its benefit ought to have been extended to other similarly situated persons. His further contention is that where judgment pronounced by Court was judgment in rem with intention to benefit all similarly situated persons irrespective of whether they had approached Court or not. In such situation, obligation is cast upon authorities themselves to extent benefit to all similarly situated persons. But only where judgment was in-personam, those who intend to get benefit of said judgment must satisfy Court that their petition does not suffer from either laches, delays or acquiescence'. In the instant case, the judgement passed in W.P.No.15194 of 2006 is judgment in-rem with intention to benefit all similarly situated persons. Therefore, the relief sought by the writ petitioners cannot be rejected on the grounds of laches, delays and acquiescence.



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14. In this context, the learned counsel for the respondents/writ petitioners has relied upon decision rendered by the Hon'ble Supreme Court in **(2008) 8 Supreme Court Cases 648** in which it is held that:

31. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."

He also relied upon the decided case in **(2008)9 Supreme Court Case** where the same principle was laid down
" A wrong decision in one case could not be extended to others"



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15.He further relied upon the observation made by the Hon'ble Supreme Court in **(2015) 1 SCC 347** in which the Hon'ble Supreme Court has held that,

"normal rule is that when a particular set of employees is given relief by court, all other identically situated persons should be treated alike by extending same benefit since not doing so would amount to discrimination and be violative of Art. 14 of the Constitution- However, this normal rule is subject to well-recognised exceptions in form of laches, delays and acquiescence which would be valid grounds to dismiss their claim But, said exception would not apply to those cases where judgment pronounced by court was judgment in rem with intention to benefit all similarly situated persons irrespective of whether they had approached court or not In such situation, obligation is cast upon authorities themselves to extend benefit to all similarly situated persons But where judgment was in personam, those who intend to get benefit of said judgment must satisfy court that their petition does not suffer from either laches, delays or acquiescence"



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16.Heard on both sides, records perused.

17.Admittedly, the Government has framed Special Rules vide G.O.Ms.No.585 Rural Development and Local Administration department dated 12.04.1984. As per the Special Rules, the eligibility criteria for promotion as Assistant, Extension Officer, Deputy Block Development Officer are as follows:

Qualifications required for promotion as Extension Officer.

- (1) Must possess Minimum General Education qualification
- (2) Must have passed Department Tests for the Officers of Panchayat Development Department and Panchayat Development Account Test conducted by the TNPSC
- (3) Must have served as Rural Welfare Officer Grade 1./Assistant/Accountant for a period of not less than one year in each post.

Qualifications required for promotion as Deputy Block Development Officer



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(1) Must possess Minimum General Education qualification

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(2) Must have passed Department Tests for the Officers of Panchayat Development Department and Panchayat Development Account Test conducted by the TNPSC

(3) Must have served as Extension Officer (Panchayats) Extension Officer (Social Education and Public Relation) and Extension Officer(Admn.) for a period of not less than one year each.

18.It is also not in dispute the Government orders in G.O.Ms.No.487 Personnel and Administrative Reforms Department dated 18.04.1979 provides for advancement to the higher post in respect of those who have completed 10 years of service in any particular cadre. In the said order it is not mentioned that the service in the Special Temporary post will be counted as qualifying service for higher post. There cannot be any dispute that, the Special Temporary post are not regular promotion post and intended only to relieve the hardship of persons stagnating in the same post for more than 10 years. Moreover, the writ petitioners/respondents are relying upon the judgement rendered in W.P.No.15194/2006 passed by this Court in favour of one Senthilvel, Former, Block Develepment Officer whose service as Town



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Welfare Officer under Special temporary post from 01.10.78 was Accountant with the post of Town Welfare Officer Grade-I and fixed the seniority, in continuation of it, he was added in the panel list of the Extension Officer, till he had attained the appropriate promotion, and it was ordered to disburse the monetary benefits pertaining to it. Furthermore, G.O.(Pa).No.123, Rural Development and Panchayat Rat (E6) Department, dated 07.03.2012 have been issued only to comply the judgment delivered on 04.02.2008 by this Hon'ble Court in W.P.No.15194 of 2006. Moreover, the said Senthilvel, petitioner in W.P.No.15194 of 2006 according to the appellants was already been promoted to the cadre of Block Development Officer in the normal course according to merit and ability with reference to the Special Rules. Since the petitioners did not possess the required qualification prescribed under the Special Rules, their claim was not considered by the appellants/State.

19.According to the appellant, the similar incident is not applicable to others for the reason that it would be against the well settled Rules of Tamil Nadu State and Subordinate Service Rules. Placing reliance to the various



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decision cases referred by the learned counsel for the appellant, a decision which is contrary to law and Rules does not form a precedent. A decision becomes a precedent when it decides the law in accordance with the Act and the Rules **[Ref: (2007) 14 Supreme Court Cases 556]**. The writ petitioners/respondents had never contended that their case was not governed by the Tamil Nadu State and Subordinate Service Rules. While so in the absence of Challenge to the statutory Rules, mandate of the Rules could not be ignored. Hence, the Courts cannot grant relief ignoring mandate of the Rules even if the Rules were apparently discriminatory, unless vires of the Rules are challenged.

20. When a grievance of discrimination is made, this Court cannot just examine whether someone similarly situated has been granted relief or benefit and then automatically direct grant of such relief or benefit to the person aggrieved. It has to be first examined whether the petitioners who has approached the Court has established a right, entitling them to the relief sought on the facts and circumstances of the case. In the context of such examination, the fact that some others, who are similarly situated, have been



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granted relief which the petitioner is seeking, may be of some relevance. But in the present case, in law, the writ petitioners failed to establish a right accrued on them. When they are not entitled to such relief, the fact that a similarly situated person has been illegally granted relief, is not a ground to direct similar relief to them.

21.As observed by the Hon'ble Apex Court in ***Directorate of Film Festivals and Another vs. Gaurav Aswin Jain Others*** reported in **2007 (4) SCC 737**, granting such relief would be enforcing negative equality by perpetuation of an illegality which is impermissible in law. It is a settled legal position that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confirm any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a



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citizen or Court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or Superior Court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitled any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make administration impossible ***[Ref: 2014 SCC Online Mad 8058]***. Moreover, when the Government has taken decision based on recommendation of expert committee, and several other factors including financial implication, Court should not substitute its views and interfere only when it is satisfied that Government's decisions was arbitrary ***[Ref:(2020) 5 Supreme Court Cases 421]***.

22.Apart from that, the writ petitioners have approached the Court after inordinate delay. They have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the Court for the relief



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claimed by them in the writ petition. In absence of satisfactory explanation for the inordinate delay the claim of the petitioners cannot be entertained

[Ref:(1982) 1 SCC 379; 1984 3 SCC 36; 1998 2 SCC 523].

23.In the light of the above discussions the writ appeals stands allowed. The impugned order passed in Writ Petitions Nos.10993 of 2013, 34299 of 2014 & 8940 of 2015 are set aside. No costs. Consequently, connected miscellaneous petitions are closed.

(D.K.K.,J.) (K.G.T.,J.)

28.06.2023

vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order



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To

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- 1.The Government of TamilNadu,
Rep by its Secretary to Government,
Rural Development and Panchayat Raj Department,
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2. The Commissioner of Rural Development and
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Saidapet, Chennai- 600 009
- 3.The District Collector (PD Section)
Thanjavur District,
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- 4.The District Collector (PD Section)
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- 6.The Government of TamilNadu,
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9.The District Collector (PD Section)
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11. The Commissioner of Rural Development and
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D.KRISHNAKUMAR, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

VSN

PRE- DELIVERY COMMON JUDGEMENT MADE IN

Writ Appeal.Nos.1560 to 1562 of 2015
and MP.Nos.1, 1 & 1 of 2015

28.06.2023