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W.A.Nos.1124 to W.A.No.1132 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.A.Nos.1124 to 1132 of 2016

R.Sivalingam	... Appellant in W.A.No.1124/2016
K.P.Vekatesan	... Appellant in W.A.No.1125/2016
R.Raja	 Appellant in W.A.No.1126/2016
L.Nagalingam	... Appellant in W.A.No.1127/2016
G.Chandrasekaran W.A.No.1128/2016	... Appellant in
S.Pappakili	... Appellant in W.A.No.1129/2016
S.Pelavadiyan	... Appellant in W.A.No.1130/2016
P.Vasanthakumar	... Appellant in W.A.No.1131/2016
A.Alagurajan	... Appellant in W.A.No.1132/2016

Vs.

1. The Secretary to Government,
Home (Police II) Department,



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Fort St. George, Chennai-9.
2. The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai-4.

3. The Chairman,
T.N.Uniformed Services Recruitment Board,
Anna Salai, Chennai-2.
Now at...
The Chairman,
T.N.Uniformed Services Recruitment Board,
Egmore, Chennai-8.

... Respondents in all
Writ Appeals

Prayer in W.A.No.1124/2016: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P(MD).No.16674/2014 dated 27.01.2016 on the file of this Court.

Prayer in W.A.No.1125/2016: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P(MD).No.16676/2014 dated 27.01.2016 on the file of this Court.

Prayer in W.A.No.1126/2016: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P(MD).No.16677/2014 dated 27.01.2016 on the file of this Court.

Prayer in W.A.No.1127/2016: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P(MD).No.16679/2014 dated



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Prayer in W.A.No.1128/2016: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P(MD).No.30193/2014 dated 27.01.2016 on the file of this Court.

Prayer in W.A.No.1129/2016: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.4735/2015 dated 27.01.2016 on the file of this Court.

Prayer in W.A.No.1130/2016: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.8305/2015 dated 27.01.2016 on the file of this Court.

Prayer in W.A.No.1131/2016: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.10996/2015 dated 27.01.2016 on the file of this Court.

Prayer in W.A.No.1132/2016: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.13635/2015 dated 27.01.2016 on the file of this Court.



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In all Writ Appeals

For Appellants : Mr.K.Venkataramani, Senior Counsel
for Mr.M.Muthappam

For Respondents : Mr.P.Kumaresan, Addl.Advocate General
Assisted by Mr.V.Manoharan, Addl.Govt.Pleader

COMMON JUDGMENT

(Judgment of the Court was delivered by D.KRISHNAKUMAR, J.)

Challenging the common order dated 27.01.2016 passed by this Court in W.P.(Md) Nos.16674, 16676, 16677, 16679, 30193/2014 & 4735, 8305, 10996 and 13635/2015, this Intra Court Appeals have been filed.

2. The brief facts, which leading to file the present appeals are as follows.

The Tamil Nadu Uniformed Services Recruitment Board issued notification dated 08.09.1997 thereby invited applications for selection to the post of Sub Inspector of Police by way of direct recruitment from open market as well as from Departmental candidates for the year 1997-1998. The writ petitioners applied for direct recruitment and they participated in the selection process in Coimbatore, Madurai, Trichy and Tirunelveli Range.



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The writ petitioners were not selected to the above said post on the ground that they secured below the cut off marks fixed at their respective Range.

2.1. Aggrieved over the zonal wise selection adopted by the department, a batch of applicants moved before the Tamilnadu Administrative Tribunal seeking direction to the Department and Board to consider them for the post of Sub Inspector of Police, with reference to the marks obtained by them, without reference to the range wise cut off marks. The Tribunal, vide common order dated 19.07.2001 in O.A.No.9825/1998 etc. batch, has held that zonal wise selection is bad and consequently directed the Board to appoint the candidates, those who have secured over and above the lowest cut off marks in one of the ranges in Tamil Nadu, with reference to the Community. Further, the Tribunal directed the Board to appoint the candidates, those who have approached the Tribunal alone.

2.2. Aggrieved by the above common order passed by the Tribunal, the Government has filed writ petitions before this Court. Likewise, some unsuccessful candidates, who participated in the selection of Sub Inspectors



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of Police in the year 1997-1998 filed writ petitions, seeking appointment, as granted by the Tribunal, which are covered by the Writ Petition Nos.17639/2001 etc. preferred by the State Government. That apart, the original applications, which were pending on the file of the Tribunal, in which, similar relief has been claimed by certain other unsuccessful candidates were transferred to the file of this Court. All the above matters were taken up together and a Division Bench of this Court, vide common order dated 25.02.2005 in W.P.No.17369/2001 etc. bach, has upheld the decision of the Tribunal, but restricted the benefits only to the candidates, who approached the Tribunal, within one year from the last order passed by the Tribunal, i.e. on 11.07.2002.

2.3. Some of the candidates, aggrieved over the above order of Division Bench, had approached the Hon'ble Supreme Court and the Hon'ble Supreme Court, vide order dated 07.08.2014 in Civil Appeal No.7667/2014 etc. observed that the delay cannot be a reason for denying appointment to an individual, who have secured over and above the said cut off mark in a particular range in respect of community.



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2.4. Following the above said common order passed by the Hon'ble Supreme Court dated 07.08.2014, the affected candidates, including the writ petitioners, submitted their representations to the Department, requesting to appoint them as Sub Inspector of Police, but the same were not considered. Hence, they filed writ petitions before the Principal Bench of this Court as well as before the Madurai Bench. The Writ Court has taken the instant writ petitions along with other writ petitions, which were connected to the similar matter and classified the same as Category-I, Category-II, and Category-III and passed common order dated 27.01.2016 in W.P.No.26325/2015 etc. batch, thereby, allowed the writ petitions in respect of those petitioners, who have earlier approached this Court and directed the respondents to appoint them. As far as the appellants/writ petitioners are concerned, the learned Single Judge has dismissed the writ petitions on the ground of delay and laches, in view of the fact that the appellants had approached the Court, after the judgment rendered by the Hon'ble Supreme Court in Civil Appeal No.7667/2014 dated 07.08.2014. Challenging the above order, the appellants herein filed the present writ appeals.



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3. Mr.K.Venkataramani, learned Senior Counsel appearing for the appellants submitted that the appellants/ writ petitioners belonged to Backward Community and they secured necessary cut off marks, which is over and above the lowest cut off marks for BC category in one of the ranges in Tamil Nadu. However, the appellants were denied for appointment, on the ground of zonal wise selection, whereas, the candidates, who had secured lower marks than the writ petitioners and also belonged to BC category, have been selected and appointed as Sub Inspector of Police. He further submitted that, the Hon'ble Supreme Court, vide order dated 07.08.2014 in C.A.No.7667/2014 etc., has observed that a person's claim for appointment to the post of Sub Inspector of Police cannot be rejected on the ground of delay in approaching the Tribunal and the High Court and when the Tribunal and the high Court have held the zonal wise selection is bad, the Government should have appointed all those eligible persons as Sub Inspectors of Police, instead of seeking them to approach the High Court, since the less meritorious candidates have been appointed than the meritorious candidates.



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WEB COPY 3.1. The learned Senior Counsel further submitted that, the Writ Court, while rejecting the claim of the appellants, has held that the appellants are fence sitters and waited on the side lines as to the result of the litigation and after becoming aware of the judgment the Hon'ble Supreme Court in K.K.Senthilkumar's case, has jumped into the fray by filing writ petitions during the years 2014 and 2015. The Writ Court further held that, since the appellants/writ petitioners did not agitate their grievance for quite longtime, they are not entitled to get the relief of parity with the others and their claims are hit by delay and laches.

3.2. The learned Senior Counsel further submitted that, after passing orders by the Tribunal, the Division Bench of this Court, vide order dated 25.02.2005 in W.P.No.17369/2001 etc. batch, has fixed the time limit of one year from the date of passing of last common order passed by the Tribunal dated 12.07.2022, for approaching the Court/Tribunal and dismissed the writ petitions, which had been filed after 11.07.2002, either before the Tribunal or before the High Court on the ground of delay of



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latches. Therefore, as early as 25.02.2005, the right to agitate before the Court of law was totally blocked to the appellants. However, only after passing of orders by the Hon'ble Supreme Court dated 07.08.2014 in K.K.Senthilkumar's case, the writ petitioners/appellants approached the Court and hence, their claim cannot be rejected on the ground of delay and latches.

3.3. The learned Senior Counsel vehemently argued that, the Writ Court, while passing orders, had granted benefits to the similarly placed persons (Category II), without taking into consideration the delay and latches and hence, the same ratio is applicable to the appellants also, who approached the Court, after the decision of the Hon'ble Supreme Court (Category III). He also submitted that, when the duty is cast upon the State to appoint, who have secured cut off marks over and above the less meritorious candidates, it is not a bar in approaching the authorities concerned for appointment as Sub Inspector of Police, in pursuance of the marks secured by the appellants, after making their respective representations. Therefore, the order passed by the learned Single Judge



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warrants interference by this Court.

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4. Mr.P.Kumaresan, learned Additional Advocate General appearing for the respondents strongly objected to the submission made by the learned Senior Counsel appearing for the appellants and contended that the selection result was published in the year 1998 and challenge was made before the Tribunal against the zonal wise selection by some of the candidates in the year 1998 itself; thereafter, several writ petitions filed by the unsuccessful candidates before this Court during the year 2001. All these years, the writ petitioners have not approached the Court and only after passing orders by the Hon'ble Supreme Court in C.A.No.7667/2014 dated 07.08.2014, the appellants made their representations seeking appointment to the post of the Sub Inspector of Police, as granted to the similarly placed persons. Therefore, considering the maiden approach by the writ petitioners to the Court of Law, after an inordinate delay of 16 years, the learned Single Judge has rightly dismissed the writ petitions, as their claim were hit by delay and laches and hence, the same does not warrant any interference by this Court.



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5. Heard the learned counsel appearing on either parties and perused the materials on record.

6. The facts remains that the Tamil Nadu Uniformed Services Recruitment Board invited applications for selection to the post of Sub Inspector of Police from open market as well as from departmental candidates and the appellants/ writ petitioners had applied for direct recruitment of the above said post from various Ranges. According to the appellants, they belonged to Backward Community and they secured over and above the lowest cut off marks in one of the ranges in Tamil Nadu, with reference to the B.C. category, however, they have not been appointed to the above said post, whereas, the candidates, who have secured lower marks than the appellants belonged to Backward Community, were appointed as Sub Inspector of Police, by following zonal wise selection.

7. It is an admitted fact that, the zonal wise selection was challenged by some of the candidates before the Tribunal and the Tribunal vide order dated 19.07.2001 in O.A.No.9825/21998 etc. batch, has held that the zonal



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wise selection is bad and the candidates, who approached the Tribunal alone were directed to be appointed by the Board. It is also an admitted fact that, subsequent to the order passed by the Tribunal, the Department has filed the writ petitions challenging the order passed by the Tribunal and also many unsuccessful candidates, who participated in the selection of Sub Inspectors of Police in the year 1997-1998 have filed writ petitions seeking appointment to the above said post, as granted by the Tribunal. All the above writ petitions were taken up together and a Division Bench of this Court, vide common order dated 25.02.2005 in W.P.No.17639/2001 etc. batch, has upheld the decision of the Tribunal in respect of zonal wise selection is bad; and further fixed the time limit of one year for approaching the Court/Tribunal from the date of passing of last common order passed by the Tribunal dated 12.07.2002 and granted relief to the writ petitioners, who approached the Court before 12.07.2002; and rejected the claim of the writ petitioners, who approached the Court after 12.07.2002.

8. It is also an admitted fact that, challenging the order of Division Bench dated 25.02.2005, prescribing the time limit for approaching the Court, some of the candidates have filed appeals before the Hon'ble Supreme



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Court, and the Apex Court, vide order dated 07.08.2014 in C.A.No.7668/2015 etc. batch, observed that delay alone could not be a valid justification to deprive the meritorious candidates and directed the State Government to appoint the appellants therein as Sub Inspectors of police.

9. Admittedly, for all these years, i.e. from the date of publishing the selection result during the year 1998 till the date of passing of the order by the Hon'ble Supreme Court dated 07.08.2014, the appellants have not approached the court. Only after 07.08.2014, the appellants have given representations to the Department to appoint them as Sub Inspector of Police, citing the above said order of the Hon'ble Supreme Court and since the Department had not considered the same, they filed writ petitions before the Principal Bench of this Court as well as before the Madurai Bench, seeking appointment to the post of the Sub Inspector of Police, as they secured over and above the cut off marks in one of the Ranges in Tamil Nadu, with reference to Backward Community. The Writ Court had taken the writ petitions filed by the appellants herein along with other writ petitions and classified the same as Category-I, Category-II and Category-III.



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As far as the writ petitions filed by the present appellants are concerned, they were categorized as Category-III and the learned Single Judge has dismissed the writ petitions as the claims were hit by delay and latches. Challenging the same, the present appeals have been filed.

10. The main contention of the appellants is that the Hon'ble Supreme Court, in the decision dated 07.08.2014 in K.K.Senthilkumar's case has held that the delay cannot be a reason for denying appointment to the meritorious candidates and therefore, in the light of the above decision of the Apex Court, the appellants have to be appointed as Sub Inspector of Police. Such contention of the appellants cannot be accepted. Because, from the year 1998, during which selection result being published, the writ petitioners have not bothered about their selection to the post of Sub Inspector of Police and they have been silent all these years. Only after the order of Hon'ble Supreme Court dated 07.08.2014, they filed writ petitions.

11. At this juncture, it is relevant to extract the relevant portion of the order passed by the Hon'ble Supreme Court dated 07.08.2014 in C.A.No.7668/2014, which is extracted as under.



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It is not as if there were valid grounds for not making these appointments. Illustratively, if all the advertised posts had been filled up, perhaps, the State Government could have a legitimate reason for denying the claim of these appellants for appointment, on account of delay. From the sequence of facts brought to our notice, it emerges, that a large number of vacancies had remained unfilled, after appointments were originally made. Even after the State Government implemented the orders of the Administrative Tribunal by appointing only those who had availed of judicial redress, a number of vacancies still remained unfilled. Therefore, not a single person appointed by the State Government would have to be dislodged, to extend the benefit of the judgement to these 11 appellants. All of them could have been accommodated, against unfilled vacancies, of the same recruitment process. In our considered view, delay alone could not be a valid justification to deprive these meritorious candidates, the right to be appointed. We therefore, hereby, direct the State Government to appoint all the aforesaid 11 appellants as Sub Inspectors.

12. In the above order, the Hon'ble Supreme Court has made observation in respect of vacancies that even after the State Government



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implemented the orders of the Administrative Tribunal, by appointing only those who had availed of judicial redress, a number of vacancies still remained unfilled. Further, after recording the statement of the learned counsel of appellants therein, directed the State Government to appoint the 11 candidates/ appellants therein as Sub Inspectors and extended the benefit of seniority at the bottom of the regularly appointed Sub Inspectors, as on that date.

13. It is to be noted that the Hon'ble Supreme Court has passed the above order only in respect of 11 candidates/ appellants therein, arising out of SLP in the year 2006. But, by citing the above order of Hon'ble Supreme Court, the writ petitioners/appellants cannot seek appointment in the year 2014, as a matter of right, as per their whims and fancies. Moreover, if any such appointment is allowed to be made further, after such an inordinate delay, it will open the flood gates of litigations, which will affect the entire selection process already reached finality.

14. Further, the writ petitioners not only filed the writ petitions with an inordinate delay, but also watched the court proceedings of the similarly



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placed persons and woke up after long delay, only because of the similarly placed persons succeeded in their efforts. In such circumstances, it is to be mentioned that a Division Bench of this Court, in its common judgment dated 23.12.2010 in W.No.1719/2010 batch cases, has discussed the matter elaborately and allowed the writ appeals on the ground of delay and laches and also, since the writ petitioners therein are treated as fence sitters, they are not entitled to the relief. The relevant paragraphs are reiterated as follows:

29. As found in the impugned order that letter dated 30.1.2009 itself would show that the second respondent did not verify the answers even after the examination. This court found that there was bonafide mistake committed in setting key answers, and the verification was not done only to prevent leakage of question papers. If any direction is to be issued, it would certainly un-settle the selection process which was already completed, and it would give room for many claims from various parties making the issue very complicated. At this point of time, if the directions of the learned single judge are given effect, more candidates would possibly be eligible for appointment, and it would compel the government to make appointments more than advertised and it would be against settled position of law. In Union of India vs. Easwarsingh Khatri reported in 1992 Suppl. 3 SCC 84. Gujarat Deputy Executive Engineer Association vs. State of Gujarat reported in 1994 Supp. SCC 591, Kamaleshkumar Sharma vs. Yogeshkumar Gupta reported in AIR 1998 SCC 1021 and State of U.P. And others vs. Rajkumar Sharma and others



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reported in 2006 (3) SCC 330 it has been held that filling up vacancies over and above the number of vacancies advertised could be violative of fundamental rights guaranteed under Article 14 and 16 of Constitution of India. Therefore the directions (i) to (v) given para 24 of the impugned order are set aside.

"FENCE SITTERS"

30) No doubt the petitioners had legitimate expectation about the selection and they are also not responsible for the problem. However, the petitioner approached the Court only in 2009 for the first time. The Hon'ble Supreme Court in Shiba Shankar Mohapatra and Ors vs. State of Orissa and Ors. Reported in AIR 2010 SC 706 held as follows:

"28 It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the Court is guilty of delay and the laches. The Court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum.(vide Aflatoon and Ors. v. Lt.Governor, Delhi and Ors. MANU/SC/0437/1974: AIR 1974 SC 2077; State of Mysore v. V.K.Kangan and Ors. MANU/SC/0429/1975: AIR 197 SC 2190; Municipal Council, Ahmednagar and Anr. v. Shah Hyder Beig and Ors. MANU/SC/0022/2000; AIR 2000 SC 671; Inder Jit Gupta v. Union of India and Ors. MANU/SC/0447/2001; (2001) 6 SCC 637; Shiv Dass v. Union of India and Ors. MANU/SC/7032/2007; AIR 2007 SC 1330; Regional Manager, A.P.SRTC v.



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N.Satyanarayana and Ors. MANU/SC/8097/2007; (2008) 1 SCC 210 and City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla and Ors. MANU/SC/81250/2008; (2009) 1 SCC 168)". (emphasis supplied).

Hence the petitioners who approached the court for the first time are definitely "fence sitters". In view of that the writ petitions filed by those petitioners who approached the court for the first time in 2009 are dismissed on the ground of delay.

15. Further, the Delhi High Court, in a decision in ***Union Of India And Ors. vs Sandeep Kumar Swaroop And Ors.*** dated 01.09.2017, has observed as follows.

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.

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.



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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.

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



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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 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.

Therefore, in the light of ratio laid down in the decision as stated supra, this Court is of the view that the writ petitioners have not approached the Court



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in time and also they are fence sitters.

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16. Even though the learned Senior Counsel has made an attempt to satisfy this Court that the appellants are entitled for appointment to the post of Sub Inspector of Police, in view of the fact that similarly placed persons have got the same benefit, challenging the zonal wise selection, he fairly admitted that the appellants have approached the Court belatedly. According to the appellants, the said delay is only due to inadvertence. But, in our view, the appellants have not approached the Court, immediately after publishing the result during the year 1998 or even after getting information under RTI Act during the year 2008 and they watched the entire proceedings before the Tribunal, High Court and also before the Supreme Court as fence sitters and after coming to know about the results of the litigations in their favour, they approached the Court after lapse of several years. Therefore, we are of the view that the Writ Court has rightly observed that the writ petitioners/ appellants herein are fence sitters and their claims are hit by delay and laches and has rightly dismissed the writ petitions. Hence, this Court is unable to accept the contentions of the appellants and consequently,



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we confirm the order passed by the learned Single Judge.

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17. Accordingly, the Writ Appeal Nos.1124 to 1132 of 2016 are dismissed. No costs.

(D.K.K.J.)

(K.G.T.J.)

19.04.2023

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Internet: Yes/No

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To

1. The Secretary to Government, Home (Police II) Department,
Fort St. George, Chennai-9.
2. The Director General of Police, Dr. Radhakrishnan Salai,
Mylapore, Chennai-4.
3. The Chairman, T.N.Uniformed Services Recruitment Board,
Anna Salai, Chennai-2.
Now at... The Chairman,
T.N.Uniformed Services Recruitment Board,
Egmore, Chennai-8.



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