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W.P.Nos..5754 to 5757 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21..02..2023

Coram

The Honourable **MR.JUSTICE M.S.RAMESH**

Writ Petition Nos.5754 to 5757 of 2016

and

W.M.P.No.5085 of 2016 in W.P.No.5756 of 2016

and

W.M.P.No.5086 of 2016 in W.P.No.5757 of 2016

Er.K.Gandhi

..... Petitioner in W.P.No.5754 of 2016

A.Ravichandran

..... Petitioner in W.P.No.5755 of 2016

Er.R.Sekar

..... Petitioner in W.P.No.5756 of 2016

Er.U.S.Rajendran

..... Petitioner in W.P.No.5757 of 2016

-Versus-

1.The Chairman,

Tamil Nadu Water Supply and Drainage Board,

31, Kamarajar Salai,

Chepauk, Chennai 600 005.

2.The Managing Director,

Tamil Nadu Water Supply and

Drainage Board,

31, Kamarajar Salai,

Chennai 600 005

.... Respondents in all Writ Petitions



W.P.Nos..5754 to 5757 of 2016

Prayer in W.P.No.5754 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records connected with the impugned orders dated 08.07.2015 passed by the 2nd respondent vide his Letter No.15441/A2/RS/2015 and to quash the same and further direct the 2nd respondent to pass orders regularizing the services of the petitioner from 29.07.1993 on completion of 5 years of service with B.E. Degree according to the rank obtained in the backlog vacancies for the candidates of Schedule Castes / Scheduled Tribes existed thereto as per the amended General Rules dated 12.07.1989 in the post of Assistant Engineer duly following the Rule of Reservation and refix his seniority on 29.07.1993 in the revised seniority list for the year 1993 duly permitting to draw his pay in the appropriate Scale of Pay from 29.07.1993 onwards retrospectively on par with his junior as per the amended Service Regulations dated 06.12.2007 and promote him to the next higher posts accordingly duly permitting to draw arrears of pay and allowances retrospectively.

Prayer in W.P.No.5755 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records connected with the impugned orders dated 08.07.2015 passed by the 2nd respondent vide his Letter No.15441/A2/RS/2015 and to quash the same and further direct the 2nd respondent to pass orders regularizing the services of the petitioner from 12.06.1991 on completion of 5 years of service with B.E. Degree according to the rank obtained in the backlog vacancies for the candidates of Schedule Castes / Scheduled Tribes existed thereto as per the amended General Rules dated



W.P.Nos..5754 to 5757 of 2016

12.07.1989 in the post of Assistant Engineer duly following the Rule of Reservation and refix his seniority on 12.06.1991 in the revised seniority list for the year 1991 duly permitting to draw his pay in the appropriate Scale of Pay from 12.06.1991 onwards retrospectively on par with his junior as per the amended Service Regulations dated 06.12.2007 and promote him to the next higher posts accordingly duly permitting to draw arrears of pay and allowances retrospectively.

Prayer in W.P.No.5756 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records connected with the impugned orders dated 08.07.2015 passed by the 2nd respondent vide his Letter No.15441/A2/RS/2015 and to quash the same and further direct the 2nd respondent to pass orders regularizing the services of the petitioner from 19.07.1993 on completion of 5 years of service with B.E. Degree according to the rank obtained in post of the Assistant Engineer duly following the Rule of Reservation and refix his seniority on 19.07.1993 in the revised seniority list for the year 1993 duly permitting to draw his pay in the appropriate Scale of Pay from 19.07.1993 onwards retrospectively on par with his junior as per the amended Service Regulations dated 06.12.2007 and promote him to the next higher posts accordingly duly permitting to draw arrears of pay and allowances retrospectively.

Prayer in W.P.No.5757 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records connected with the impugned orders dated 08.07.2015



W.P.Nos..5754 to 5757 of 2016

passed by the 2nd respondent vide his Letter No.15441/A2/RS/2015 and to quash the same and further direct the 2nd respondent to pass orders regularizing the services of the petitioner from 12.06.1991 on completion of 5 years of service with B.E. Degree according to the rank obtained in the backlog vacancies for the candidates of Schedule Castes / Scheduled Tribes existed thereto as per the amended General Rules dated 12.07.1989 in the post of Assistant Engineer duly following the Rule of Reservation and refix his seniority on 12.06.1991 in the revised seniority list for the year 1991 duly permitting to draw his pay in the appropriate Scale of Pay from 12.06.1991 onwards retrospectively on par with his junior as per the amended Service Regulations dated 06.12.2007 and promote him to the next higher posts accordingly duly permitting to draw arrears of pay and allowances retrospectively.

*For Petitioner(s) : M/s.G.P.Arivuchudar for
petitioner in all Writ Petitions*

*For Respondent(s) : M/s.S.Shahila Banu for RR1
and 2 in all Writ Petitions*

COMMON ORDER

Based on the amended Tamil Nadu Water Supply and Drainage Board Service Regulations through BP Ms.No.140, TWAD Estt (Per) Wing, dated 06.12.2007, in which, retrospective effect from 28.04.1986 was given, the petitioners claim that their services in the post of Assistant Engineer should have been regularised from the date they had acquired



W.P.Nos..5754 to 5757 of 2016

B.E. Qualifications with 5 years of service, in the backlog vacancies for Scheduled Castes / Scheduled Tribes and therefore, the rejection of their representations through impugned orders dated 08.07.2015 cannot be sustained.

2. Effectively the petitioners claim benefit of the regularization with retrospective effect from 1986 onwards. Though the Service Regulation was amended in 2007, apart from making certain representations, the petitioners had not sought for revision of their seniority and for the consequential retrospective notional regularization. When a seniority list that has been in vogue, for quite a number of years, has not been interfered with, this court exercising its power under Article 226 of the Constitution of India will not interfere with such a settled seniority list. This ratio has been upheld by the Hon'ble Supreme Court in the case of *Shiba Shankar Mohapatra v. State of Orissa*, (2010) 12 SCC 471 in the following manner:-

“30. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In *K.R. Mudgal*, this



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W.P.Nos..5754 to 5757 of 2016

Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.”

3. The aforesaid extract is self-explanatory. When the Hon'ble Supreme Court has laid down that a seniority list that has been in existence for 3 – 4 years should not be disturbed, the petitioners' claim for revision of such a seniority and the consequential regularization after 2007, which is about 9 years, cannot be interfered with.

4. The learned counsel for the petitioners attempted to justify the delay by stating that the representations were given to consider their claim for re-fixation of their seniority.

5. Such representations also are not sufficient explanation for delay or laches on the part of the employees to seek for such revision of seniority list. In the case of ***Shankara Coop. Housing Society Ltd. v. M.***



W.P.Nos..5754 to 5757 of 2016

Prabhakar, (2011) 5 SCC 607, the Hon'ble Supreme Court had dealt with various factors that should be considered while addressing the ground of delay or laches in the following manner:-

“54. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are:

(1) There is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.

(2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.

(3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy.

(4) No hard-and-fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

(5) That representations would not be adequate explanation to take care of the delay.”



W.P.Nos..5754 to 5757 of 2016

6. Thus, in line with the aforesaid ratio, the representations given by the petitioners after their entitlement, will not be an adequate explanation to take care of the delay. Thus, the claim of the petitioners, does not deserve consideration since it is hit by the ground of delay and laches. Accordingly, these writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions stand closed.

21..02..2023

Index : yes / no
Neutral Citation : yes / no
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To

1.The Chairman,
Tamil Nadu Water Supply and Drainage Board,
31, Kamarajar Salai,
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2.The Managing Director,
Tamil Nadu Water Supply and
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W.P.Nos. 5754 to 5757 of 2016

21..02..2023