



W.P.No.6970 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:07.06.2023

Delivered on: 04.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.6970 of 2016

S.M.A.Ram @ S.M.Arumugam

... Petitioner

Vs.

1.The Director
Indian Institute of Technology
Chennai-600 036

2.The Chairman and Counsel for Wardens
Hostel Management
Indian Institute of Technology
Chennai-36

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration declaring that the action of the respondents 1 and 2 is imposing the punishment of reduction in Scale of Pay and Pay retrospectively and without mentioning any period and also without issuing any final order as illegal and consequently direct the respondents to regularize the period of suspension from 07.06.2001 to 14.02.2005 as duty with pay for all purposes and to restore my original scale of pay and pay from

1/23



W.P.No.6970 of 2016

the date from they were reduced with all consequential revision, increments, arrears and all other consequential benefits, together with interest.

For Petitioner : Mr.R.Jaikumar
for
M/s.T.Fenn Walker Associates

For Respondents : Mr.R.Parthiban

ORDER

Petitioner is aggrieved by the imposition of punishment of reduction in scale of pay retrospectively, without mentioning any period and without issuing any final order.

2. The petitioner has prayed for issuance of a Writ of Declaration to declare the actions of the respondents 1 and 2 as illegal. The case of the Writ Petitioner is that he joined the services of the 1st respondent institute as helper in the year 1971 and thereafter his employment as a delivery boy was regularized on 01.04.1979. He was assigned the duty of distribution of milk in the Central Supply Unit within IIT Madras Campus and in 1995 his designation was changed to Distribution Attendant. The petitioner was



W.P.No.6970 of 2016

transferred to Tapti Hostel Office on 15.10.1998 without any change in his designation. The petitioner along with 11 other persons wrote a letter to the General Secretary, Indian Institute of Technology Hostel Employees Association setting out the difficulties faced by them and requesting them to take action, especially to specify the nature of work expected from them. It is the petitioner's case that subsequently after a lapse of 5 months, he was again transferred from Tapti office to Central Supplies Unit. While so, on 19.03.1999, he received a letter from the 2nd respondent stating that the order dated 15.10.1998 was partially modified and he was assigned the duty of distribution of milk in the morning and evening to the hostels, maintaining accounts, preparation of fortnightly bills and that he had to join duty from 22.03.1999. The petitioner joined duty and when he was discharging his duties diligently, he was issued an order on 29.12.1999 transferring him from Central Supplies Unit to Godavari Mess. It is the grievance of the petitioner that he was asked to do all other duties which were not covered under the duties of a Distribution Attendant. The 2nd respondent with malafide intention and ulterior motive complained of dereliction of duty by the petitioner to



W.P.No.6970 of 2016

which the petitioner gave a detailed reply on 20.01.2000, denying the allegations, besides also mentioning that he was called upon to do lower category works which were not required of a person holding the part of a Distribution Attendant. On 27.10.2000, the 2nd respondent issued a show cause notice as to why disciplinary action should not be taken against the petitioner on the basis of an alleged report regarding the petitioner's duty and performance not being satisfactory. The petitioner sent a reply letter dated 04.11.2000, denying the charges. When the petitioner requested for the basic compliant, the respondent sent him a report for the year 1999-2000 where the petitioner's performance was shown to be poor. The petitioner once again replied by letter dated 13.01.2001, stating that without even informing him the nature of his work or duties, contrary to principles of natural justice and Schedule V of duties and responsibilities of employees of terms of employment and conditions of service, the petitioner's performance was incorrectly valued. The petitioner was slapped with a charge memo on 26.04.2001 for which he gave his explanation on 02.05.2001, requesting for the charges to be dropped. A suspension order came to be passed on



W.P.No.6970 of 2016

07.06.2001, behind the back of the petitioner, when he was on medical leave.

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The petitioner approached this Court and this Court in and by order dated 02.08.2001, permitted to participate in the enquiry. The petitioner sought for legal assistance. However, the respondent fixed the date of enquiry as 05.04.2004 after nearly three years and without scrutinizing the issue, the 2nd respondent has informed the petitioner that the charges have been proved. The petitioner gave a detailed explanation on 03.05.2004, to the 2nd respondent alleging that the enquiry itself was illegal and in violation of principles of natural justice. However, without accepting the explanation, 2nd respondent issued a show cause notice on 10.07.2004, proposing the penalty of bringing down the pay scale of the petitioner by one step. Though the petitioner gave a reply to the 2nd respondent on 25.07.2004, seeking to set aside the punishment proposed since there was no response to the same the petitioner filed appeals on 12.08.2004, 27.09.2004 and 02.11.2004. However, the Appellate Authority being the 1st respondent, or the 2nd respondent for that matter never passed any orders. However, on 07.02.2005, the 2nd respondent issued an order regarding his reduced time scale of pay from



W.P.No.6970 of 2016

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Rs.4590/- to Rs.3050/- and the 2nd respondent has mentioned as if the appellate authority passed an order on 03.02.2005, confirming the charges levelled against the petitioner. Thereafter, the petitioner has sent several representations to the respondents to reconsider his case. After several attempts on 28.10.2012, the petitioner approached the Chairman of the grievance committee and according to the petitioner, the said chairman Mr.M.Sampath was convinced that the petitioner was being targeted and being discriminated because he belongs to the Scheduled Caste community. The petitioner under such circumstances raising several grounds has sought for issuance of a Writ of Declaration.

3. The respondents have filed a detailed counter affidavit denying the various claims made by the petitioner. The preliminary objection taken by the respondents is that the petitioner has approached this Court after a delay of 11 years and such a belated challenge cannot be entertained. The respondents also stated that the petitioner retired from service on 29.02.2016 and all his retiral benefits were paid in full on the date of retirement and even today the



W.P.No.6970 of 2016

petitioner continues to receive pension every month. It is also contended that the prayer in the nature of a Writ of Declaration is not maintainable. The various allegations and grounds put forth in the affidavit in support of the Writ Petition have been met by way of the said counter affidavit, justifying the action taken. According to the respondents, only after giving full opportunity to the petitioner, the decision was arrived at and even the appellate authority turned down his appeal and therefore prayed for dismissal of the Writ Petition.

4. Heard Mr.R.Jaikumar for M/s.T.Fenn Walter Associates, learned counsel for the petitioner and Mr.R.Parthiban, learned counsel for the respondents.

5. Learned counsel for the petitioner relied on certain additional documents filed by way of additional documents. It is seen from the minutes of meeting of the grievance committee dated 26.04.2013 that no positive conclusion was arrived at in the said meeting. The communication of the



W.P.No.6970 of 2016

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National Commission for Scheduled Caste dated 17.06.2016 reveals that the petitioner had made a complaint to the Commission and the proceedings dated 28.10.2016 also indicate that hearings were conducted on the complaint of the petitioner. However, it is seen from the counter affidavit that on 04.11.2016, the Commission, after hearing the petitioner as well as the respondents authorities rejected the petitioner's case holding that no further action was possible in view of petitioner's appeal itself being rejected by the appellate authority way back in the year 2005.

6. Learned counsel for the petitioner relied on the following judgments:

“ (i) *M.V.Bijlani Vs. Union of India & Ors*,
reported in 2006(5) SCC 88;

(ii) *State of Uttaranchal & Ors Vs. Kharak Singh* reported in (2008) 7 SCC 670;

(iii) *W.P.No.31218 of 2006 in the case of P.Thangaiah Vs. State of Tamil Nadu*

(iv) *W.P.No.24210 of 2010, in the case of Ismail Pillai Annavi Vs. The Additional Chief Secretary to Government & another*



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W.P.No.6970 of 2016

(v) *Union of India Vs. Ram Lakhan Sharma,*
reported in (2018) 7 SCC 670.”

i) In *M.V.Bijlani*'s case, referred herein supra, the Hon'ble Supreme Court held that disciplinary proceedings are quasi-criminal in nature and an enquiry officer performing a quasi-judicial function must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record and that while doing so, he cannot take into consideration any irrelevant fact; he cannot refuse to consider relevant facts; he cannot shift the burden of proof; he cannot reject relevant testimony of witnesses and he cannot enquire into allegations with which the delinquent officer had not been charged with.

ii) In *State of Uttaranchal*'s case, the Hon'ble Supreme Court has held that when the enquiry officer exceeded his limit by offering his views to the effect that the officer has no right to continue in Government service and has to be dismissed with immediate effect, the entire action and course adopted by the said enquiry officer is contrary to well known principles enunciated by the Hon'ble Supreme Court.



W.P.No.6970 of 2016

WEB COPY

iii) In W.P.No.31218 of 2006, a learned Single Judge of this Court held that non supply of documents and non examination of the witnesses in support of the documents would be fatal to the disciplinary enquiry proceedings.

iv) In W.P.No.24210 of 2010, another learned Single Judge of this Court held that when the disciplinary authority had overlooked the legal requirements as well as basic principles for establishing a charge by adopting a procedure known to law and arriving at the conclusion based on the legal evidence, it was a case for interference.

v) In *Union of India's* case, the Hon'ble Supreme Court held that the disciplinary proceedings being quasi-judicial in nature, the enquiry officer is an independent adjudicator and is obliged to act fairly and impartially and in good faith without bias. The Hon'ble Supreme Court also held that principles of natural justice have to be read in to the regulations, even if the rule did not specifically require hearing of the delinquent officer.

7. Per contra, learned counsel for the respondents would submit that



W.P.No.6970 of 2016

the prayer itself is not maintainable in the eye of law and consequently, the Writ Petition itself is liable to be dismissed at the very thresh hold. According to the learned counsel for the respondents only a Writ of Certiorari would lie and not Writ of Declaration. Apart from the said preliminary objection, the counsel for respondents would also contend that the petitioner has chosen to remain silent for several years and has chosen to approach this Court belatedly. On the ground of delay and laches also, according to the counsel for the respondents, the Writ Petition is liable to be dismissed. The learned counsel for the respondents relied on the judgment of the Hon'ble Supreme Court in **CMWSSB Vs. T.T.Murali Babu**, reported in **(2014) 4 SCC 108**, where the Hon'ble Supreme Court dealing with the effect of delay, held that the Doctrine of delay and laches cannot be lightly brushed aside and that a Writ Court should weigh the explanation offered and also the acceptability of such explanation though as a Constitutional Court, the Writ Court has a duty to protect the rights of citizens. However, simultaneously the Writ Court should be alive to the primary principle that when an aggrieved person, without adequate reason, approaches the Court at his own



W.P.No.6970 of 2016

leisure or pleasure then, delay would come in the way of equity. Ultimately, the Hon'ble Supreme Court noticed that four years delay in approaching the Court was lackadaisical and unacceptable.

8. First and foremost, it would be relevant to address the issue of maintainability of the Writ Petition. The petitioner has sought for issuance of a Writ of Declaration. It is seriously contended by the counsel for the respondents that only a Writ of Certiorari would lie and not a Writ of Declaration. The scope of Writs of Declaration and Certiorari are as hereunder:

The principal purpose of a Writ of Certiorari is to quash an order which is ultravires. The order issued by issuing a Writ of Certiorari is to technically bring a decision of a public body to the High Court and determine the same and arrive at a conclusion that it is not valid. In some instances mere quashing the order would not suffice, as it may have other legal consequences. In such circumstances, wherever further orders or directions become necessary, it has become the practice to seek issuance of a Writ of



W.P.No.6970 of 2016

Certiorarifeid Mandamus, which is in the nature of firstly quashing the impugned order and secondly to consequently direct to do or forbear from doing something, as the facts of the case may warrant.

9. Coming to a Writ of Declaration, the High Courts under Article 226 of the Constitution of India are empowered to issue Writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari. In so far as Writ of Declaration is concerned, even though the word Declaration is not expressly mentioned in Article 226 of the Constitution of India, Courts have been granting the relief of Declaration in cases warranting the same. The issuance of Writs of Declaration are therefore not unknown. Article 226 of the Constitution of India is extracted for easy reference.

“ 226. Power of High Courts to issue certain writs:

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government,



W.P.No.6970 of 2016

within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

[(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1) , without-

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for



W.P.No.6970 of 2016

the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated]

[(4)] The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32]"

10. From the above, it can be seen that the language employed by the frames of the Constitution is that the High Court shall have power to issue Writs including Writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari. The language thus makes the



W.P.No.6970 of 2016

nature of Writs that can be issued by the High Court only illustrative and not exhaustive. If the case is one that affects fundamental rights, the Court is empowered to grant a declaratory order or Writ, if it is the proper relief that should be given to the aggrieved party. Courts have also granted relief by issuing Writs of Declaration where, acts of statutory bodies are established and found to be ultra vires, even though a Writ of Declaration is not appearing in Article 226 of the Constitution of India.

11. In the above backdrop, it would be relevant to test the preliminary objection taken by the counsel for the respondent. The prayer in the Writ Petition runs thus:

“ This Hon'ble Court may be pleased to issue a Writ of direction, more particularly in the nature of a Writ of Declaration declaring that the action of the respondents 1 and 2 is imposing me the punishment of reduction in Scale of Pay and Pay retrospectively and without mentioning any period and also without issuing any final order as illegal and consequently direct the respondents to regularize the perid of my suspension from



W.P.No.6970 of 2016

07.06.2001 to 14.02.2005 as duty with pay for all purposes and to restore my original scale of pay and pay from the date from they were reduced with all consequential revision, increments, arrears and all other consequential benefits, together with interest, award costs and thus render justice.”

12. It is not the case of the petitioner that a final order has been passed as can be seen from the above prayer. If it was the case of the petitioner that a final order has been passed, then probably the appropriate remedy would be a Writ of Certiorari, challenging the vires of the said final order. No doubt, it is the specific case of the respondents that final orders were indeed passed and it is too late in the day for the petitioner to approach this Court, that too under Article 226 of the Constitution of India by seeking issuance of a Writ of Declaration. However, testing the prayer in the light of the averments set out in the affidavit in support of the Writ Petition would alone be the proper approach to decide whether the relief as prayed for is maintainable before the Court or not.



W.P.No.6970 of 2016

13. As already discussed, the premise on which the petitioner has approached this Court was that the respondents did not pass any final orders and therefore he sought for declaring the action of the respondents 1 and 2 to be illegal. In such circumstances, the petitioner cannot be found fault with only for the reason that he has moulded the relief in such a fashion and sought for a Writ of Declaration. This Court, therefore does not agree with the preliminary objection taken by the counsel for the respondents and accordingly the said preliminary objection with regard to maintainability of Writ Petition is over ruled.

14. Coming to the merits of the claim of the Writ Petitioner, the petitioner himself admits that he received a letter from the 2nd respondent mentioning that the punishment awarded by him based on the charges stand in view of the order dated 03.02.2005. The petitioner did not treat the said communication as one informing him about the final order and instead he chose to send several representations. It is seen that despite he being put on notice about the fact that the appellate authority has passed an order on



W.P.No.6970 of 2016

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03.02.2005 and that immediately thereafter on 07.02.2005, the 2nd respondent also issued an order to regulate the reduced time scale of pay for the petitioner, the petitioner never took any steps to procure a copy of the said order. Even assuming for a moment without admitting that the petitioner was not put on notice about the same, even the representations thereafter were only after lapse of six and half years. There is absolutely no explanation for the total silence on the part of the petitioner for the period between February 2005 to October 2011. It is also seen that even the National Commission for Scheduled Caste did not entertain the complaint of the petitioner since the appellate authority viz., the 1st respondent had already passed final orders confirming the punishment awarded to the petitioner by the original authority, viz., the 2nd respondent. The petitioner's conduct in obtaining conduct certificate and giving repeated representations are of no avail. The moment the petitioner was put on notice about the fact that the appeal filed by him had been rejected, the petitioner should have, without any delay, approached this Court, challenging the said order of the 1st respondent.



W.P.No.6970 of 2016

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15. As rightly pointed out by the learned counsel for the respondents, relying on the judgment of the Hon'ble Supreme Court, it is a clear case that petitioner has been in deep slumber and slept over his right and after a lapse of nearly 7 years, the petitioner has woken up and even then he did not choose to challenge the disciplinary proceedings awarding punishment to him. Instead, from 2011 to 2016 upto the filing of the Writ Petition, the petitioner has only repeatedly sent representations which would not further the case of the petitioner in any manner. The principle that Court will not come to the rescue of a person who sleeps over his rights applies to Writ Petitions as well. No doubt unlike the Limitation Act, there is no specific period prescribed for filing of a Writ Petition. However, it is now well settled position of law that when a petitioner complains of violation of principles of natural justice or seeks relief on the ground of violation of fundamental rights etc., he should approach the Court at the earliest. The petitioner in this case, admittedly, has not chosen to approach this Court at the earliest point of time. Further, one of the main purpose of not entertaining Writ Petitions citing grounds of delay and laches, especially in disciplinary matters, is to ensure



W.P.No.6970 of 2016

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that the witnesses are available and documents are also intact, so that an enquiry, if directed, can be successfully conducted and completed. Admittedly, the impugned order in appeal came to be passed way back in February 2005 and the petitioner has approached this Court only in 2016. The Courts cannot, in all circumstances, expect the employer to retain all relevant records pertaining to the Writ Petitioner. According to the respondents the matter attained finality way back in 2005 itself. Therefore, even on this ground the Writ Petition cannot be entertained as it suffers from inordinate delay and laches.

For all the above reasons, the Writ Petition is dismissed. No costs.

04.08.2023.

Internet: Yes
Index: Yes/No
Neutral Citation: Yes/No
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W.P.No.6970 of 2016

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To

1.The Director
Indian Institute of Technology
Chennai-600 036

2.The Chairman and Counsel for Wardens
Hostel Management
Indian Institute of Technology
Chennai-36



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W.P.No.6970 of 2016

P.B.BALAJI, J.,
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Pre-delivery order in
W.P.No.6970 of 2016

04.08.2023