



W.P.Nos.27213 of 2021 etc batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.08.2023

DELIVERED ON: 21.09.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE TMT.JUSTICE P.B.BALAJI

W.P.Nos.27213, 27216, 27217, 27220, 27221, 27225 & 27226 of 2021

and

WMP.Nos.28708, 28712, 28714, 28717, 28718, 28722

and 28725 of 2021

- 1.Union of India,
Rep. by the Secretary to Government of India,
Department of Company Affairs,
Shastri Bhavan,
Dr.Rajendra Prasad Road, New Delhi-110 001.
 - 2.The Joint Director,
Department of Company Affairs,
Shastri Bhavan, Block II,
V floor, Haddows Road,
Chennai-600 006.
 - 3.The Regional Director (SR),
Department of Company Affairs,
Shastri Bhavan, Block-I,
V Floor, Haddows Road,
Chennai-600 006.
- .. Petitioners in W.Ps.

Vs.



W.P.Nos.27213 of 2021 etc batch

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R.Parvathy	..	Respondent in W.P.No.27213 of 2021
A.Gopalan	..	Respondent in W.P.No.27216 of 2021
A.P.Govindan	..	Respondent in W.P.No.27217 of 2021
P.John Victor Raj	..	Respondent in W.P.No.27220 of 2021
N.Nirmala	..	Respondent in W.P.No.27221 of 2021
M.S.Venkataraman	..	Respondent in W.P.No.27226 of 2021
J.Perumal	..	Respondent in W.P.No.27225 of 2021

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records in relation to the impugned order dated 01.04.2021 passed by the Central Administrative Tribunal in O.A.Nos.730, 727, 728, 731, 725, 726, 729 of 2018, and consequently quash the same for being in derogation of principles of law and without due consideration of materials placed before it in the circumstances of the case.

For Petitioner : Mr.AR.L.Sundaresan,
Assistant Solicitor General
for Mr.S.Diwakar, Senior Panel Counsel

For Respondents : Mrs.Y.Kavitha,
for M/s.Giridhar & Sai,

COMMON ORDER

D.KRISHNAKUMAR, J.

The official respondents in the original applications are the petitioners herein and aggrieved by the allowing of the original applications filed by the respondents seeking to absorb the applicants as regular Lower Division Clerk in the office of the third petitioner with



W.P.Nos.27213 of 2021 etc batch

effect from the date of their appointment as Estate Clerk, with all consequential benefits, including refixation of their pay, pension and payment of arrears, has filed the instant writ petitions.

2. Facts of the case leading to the filing of the writ petition are as follows:

2.1. The respondents entered the service as Estate Clerk / Staff, vide order of appointment dated 06.04.1981, 01.07.1978, 12.10.1982, 04.05.1981, 15.05.1981 in the office of the Official Liquidator, High Court of Madras on consolidated pay of Rs.250/-. They were absorbed as Lower Division Clerk on 03.01.2002, 19.01.2001, 20.05.2003, 14.12.2001, 10.05.2010. Subsequently, all of them attained the age of superannuation and retired from service between the years 2002 and 2014.

2.2. While that being so, the High Court of Kerala, vide judgment in **27.08.1993 in O.P.No.9732/1990 [P.P.Bridget & Ors. v. Union of India & Ors.]** directed the respondents / Department of Company Affairs



W.P.Nos.27213 of 2021 etc batch

to absorb the similarly placed persons as regular Lower Division Clerks in the office of the Official Liquidator from the respective date of appointment as Estate Clerks and to grant them the benefit of pay fixation and arrears.

2.3. Several cases were filed in various High Courts, including Calcutta High Court which were also allowed. SLPs filed against the judgment of Kerala High Court and other High Courts and the said SLPs were disposed of, vide order dated 27.08.1999 in C.A.No.5677 of 1994.

2.4. On 19.10.2001, Tmt.P.P.Bridge and others, who are similarly placed, submitted representations requesting that they should be absorbed in service with effect from the date of their appointment as Estate Clerks as per the order of the High Court in W.P.(C)No.473/1998 and O.P.No.9732/1990. Since the order of the Supreme Court was not complied with, Tmt.P.P.Bridge and other employees filed O.A.No.249/2022 challenging the OM dated 21.02.2002 and by order dated 31.03.2004, the Central Administrative Tribunal, Ernakulam Bench



W.P.Nos.27213 of 2021 etc batch

WEB COPY

allowed the same and directed the respondents to absorb the applicants therein as Regular Lower Division Clerks in the office of Regional Director, Department of Company Affairs, Southern Region with effect from the respective dates of appointment as Estate Clerks and to grant them the benefits of pay fixation and all admissible allowances and also to pay them arrears being limited for the period from the date of filing O.P.No.9732/1990.

2.5. Challenging the order in O.A.No.249/2012, W.P.No.22810/2004 was filed and it was dismissed on 28.02.2008. CA.No.5564, 5565 of 2010 filed by the petitioner challenging the order in W.P.No.22810/2004 was also dismissed by the Hon'ble Apex Court on 16.05.2017. Review Petition in No.451/2018 in CA.No.5564/2010 was filed and the same was also dismissed on 22.02.2018 and eventually the order dated 08.03.2018 was issued in implementing the judgment in O.A.No.249/2013 dated 31.03.2004 and C.A.Nos.5564, 5565 of 2010 dated 16.05.2017, by granting the absorption of Estate Clerks as Lower Division Clerks with effect from the date of appointments as Estate Clerks.



W.P.Nos.27213 of 2021 etc batch

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2.6. Pursuant to the aforesaid order of the Hon'ble Supreme Court, the respondents/applicants submitted representations dated 17.03.2018 seeking absorption as Lower Division Clerks with effect from the date of appointment as Estate Clerks, however by order dated 27.03.2018 of the third petitioner, the representations of the applicants/respondents were rejected on the ground that they are not eligible for any relief, since they are not a party in O.A.No.249/2022. Therefore, the applicants / respondents filed Original Applicants before the Tribunal, challenging the rejection order passed by the third petitioner.

2.7. The Tribunal, allowed the original applications, vide separate orders dated 01.04.2021. Challenging the same, the official respondents therein have filed the instant writ petitions.

3. Mr.AR.L.Sundaresan, learned Assistant Solicitor General made the following contentions:

3.1. The impugned order of the Tribunal ex-facie establishes non-application of mind as the Hon'ble Apex



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W.P.Nos.27213 of 2021 etc batch

Court in its order dated 16.05.2017 in C.A.No.5564/2010 has stated that the said order shall not be treated as a precedent and further the Apex Court, in the appeal, made its observations abundantly clear that the benefits insofar as the individuals before it was concerned, were peculiar and hence, the order so granted would inure to the benefit of those persons alone and no future claims of any nature in this regard ought to be entertained.

(ii) The Tribunal failed to consider the principle that in the event, affected individuals / persons fail to challenge any wrong done to them and acquiesced to the same, cannot now choose to raise objections after a lapse of long time, owing to the fact that their counter parts were granted the benefit due to their proactive approach. Therefore, the respondents were necessarily estopped from raising such claims at a belated stage after having derived benefits from the existing scheme. Such persons who chose to remain silent and not raised any questions against any action, were found to be fence sitters and delay and laches would be a sufficient ground for dismissal of their claim.

(iii) The Tribunal failed to appreciate that despite not having written any examination or passing requisite



W.P.Nos.27213 of 2021 etc batch

tests, the respondent had already been granted benefit under the 1999 Scheme. The benefits provided to the respondents had been accepted in toto as early as in the year 2000, when their appointment as a Lower Division Clerk was made and therefore, the respondents are estopped from raising issues relating to the same, after a period of 18 years.

The learned Assistant Solicitor General has relied upon the decision in ***State of Uttar Pradesh and Others v. Arvind Kumar Srivastava and Others [(2015) 1 SCC 347]***.

4. Mrs.Y.Kavitha, learned counsel for the respondents/original applicants would contend that the service rendered as Estate Clerk and the service rendered after absorption as Lower Division Clerk cannot be delinked and are inseparable, as it is a combined and continuous service and therefore, the Tribunal has rightly observed that the Department was obliged to absorb all the applicants and could not have left out anyone and based on the findings of the Kerala High Court, all the petitioners are eligible and entitled to be absorbed as Lower Division Clerks with effect from the dates of their initial appointment as Estate Clerks has been



W.P.Nos.27213 of 2021 etc batch

affirmed by the Hon'ble Apex Court. It is further contended that as per Gratuity Act, 1972, Gratuity shall be payable to an employee on the termination of their employment after he has rendered continuous service of not less than 5 years and since the applicants/respondents have rendered more than 20 years of service without any break, they are eligible for payment of Gratuity and it cannot be restricted to the services after absorption. The learned counsel for the respondents further contended that the respondents / applicants are entitled for all the benefits granted in favour of Tmt.P.P.Bridget and others, who are juniors to them and that right to pension is a Fundamental Right to Livelihood under Article 21 of the Constitution of India and the pension payable to the employees upon superannuation is a property right under Article 300A of the Constitution of India and hence, the applicants/respondents cannot be denied in the case of the respondents herein and prayed for dismissal of these writ petitions.

4.This Court has considered the submissions made and also perused the materials on record.



W.P.Nos.27213 of 2021 etc batch

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5. The point for consideration in this writ petition is whether the respondents / applicants is entitled for retrospective regularization with effect from the date of their initial appointment as Estate Clerks and for consequential refixation of pay and pensionary benefits with arrears?

6. A perusal of the impugned order would disclose that the issue of absorption of Estate Clerks in the appellants' department was the subject matter of O.P.No.9732 of 1990 before the High Court of Kerala at Ernakulam, which came to be allowed. This was taken up on appeal before the Hon'ble Supreme Court in Civil Appeal No.5677 of 1994 and vide judgment dated 27.8.1999, the Apex Court upheld the judgment of the Kerala High Court. Subsequently, since the framing of scheme was not uniformly applied to all the petitioners in the original petition before the Kerala High Court, some of them filed O.A.No.249 of 2002 before the Central Administrative Tribunal, Ernakulam Bench. In the said case, the CAT of Ernakulam Bench directed the respondents therein to absorb the applicants as regular Lower Division Clerks with effect from their



W.P.Nos.27213 of 2021 etc batch

respective dates of appointments as Estate Clerks, and to grant them the all other pay benefits along with arrears.

7. The matter was once again taken up on appeal before the Kerala High Court in W.P.(C) No.22810 of 2004 and vide order dated 28.02.2018, the Kerala High Court dismissed the writ petition. This was again challenged before the Hon'ble Supreme Court and it was dismissed confirming the order of the CAT, Ernakulam Bench. However, the Hon'ble Apex, while dismissing the Civil Appeals, left the question of law open and also observed that the said order may not be taken as a precedent for future cases.

8. The Tribunal, in the impugned order, has observed that merely harping on the point that the Hon'ble Apex Court mentioned that the dismissal of the Civil Appeal will not help the case of the respondents, since the facts and circumstances of the case of the applicants in comparison with that of the applicants, who were before the Ernakulam Bench in O.A.No.249/2002 are similar and taking into consideration of



W.P.Nos.27213 of 2021 etc batch

the fact that the official respondents have not stated anywhere that the case of the applicants is entirely different from that of the applicants in O.A.No.249/2002, except for the fact that they were not before the Tribunal in that case, has allowed the original applications.

9. Be that as it may, admittedly, the respondents were engaged as Estate Clerks in various periods during the years 1978 to 1982, by way of back-door entry, without following any procedure or recruitment process and without any legal sanctity. They were absorbed into regular service as Lower Division Clerks between the years 2000 and 2010, based on the directions of the Hon'ble Supreme Court in Civil Appeal No.5677 of 1994 dated 27.08.199. The said decision to regularize the respondents in the post of Lower Division Clerk is a concession given by the appellants' Department. Since the initial appointment of the respondents itself is by way of backdoor entry, without following regular recruitment process, their claim for regularization from the date of initial appointment as Estate Clerks, that too after they retired on attaining the age of superannuation, is liable to be rejected in the light of the decision



W.P.Nos.27213 of 2021 etc batch

of the Hon'ble Supreme Court in *Secretary to Government, School Education Department, Chennai v. Govindaswamy and Others [(2014)*

4 SCC 769], wherein the Supreme Court has held as follows:

“8. This Court in State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

*“8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, **back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.**” (emphasis supplied)*

10. The Tribunal, in the impugned order, has placed heavy reliance on the judgment of the Apex Court in Civil Appeal No.5677 of 1994



W.P.Nos.27213 of 2021 etc batch

dated 27.08.1999. However the said judgment cannot be cited as a precedent in future as observed by the Hon'ble Apex Court and issues therein were left open. In the light of the decision of the Hon'ble Supreme Court in **Govindaswamy's case**, the claim of the applicants / respondents is liable to be rejected.

11. That apart, the respondents/applicants having chose to remain silent for many years, they are estopped from raising such claims at a belated stage, based on the orders granted in favour of similarly placed persons. In this regard, it is useful to refer to the decision of the Division Bench of Delhi High Court in **Arjun Lal Makhija v. Government of N.C.T. Of Delhi and Others [W.P.(C) No.8931 of 2014 dated 07.04.2015]**, wherein the Division Bench of Delhi High Court has considered the various decisions of the Hon'ble Apex Court, including the judgment in **State of U.P. & Ors. V.Arvind Kumar Srivatsava & Ors [(2015) 1 SCC 347]**, relied on by the learned Assistant Solicitor General and the same is extracted hereunder:

“In **State of U.P. & Ors. V.Arvind Kumar Srivatsava & Ors [(2015) 1 SCC 347]**, the Apex Court took a view that



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W.P.Nos.27213 of 2021 etc batch

it is a normal rule that when a particular set of employees is given relief by the Court, all other identically situated persons should be treated alike by extending the same benefit since not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. While laying down this principle, the Court further observed that this normal rule is subject to well- recognized exceptions in the form of laches and delays as well as acquiescence which would be a valid ground to dismiss their claim but such an exception could not be applied to those cases where the judgment pronounced by the Court was judgment in rem with intention to bestow benefit on all similarly situated persons irrespective of the fact whether such persons had approached the Court or not. Relevant paras of the said judgment wherein these legal principles have been culled out are reproduced as under:-

"Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

However, *this principle is subject to well recognized 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*



W.P.Nos.27213 of 2021 etc batch

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. (emphasis supplied).

The proposition laid down in the aforesaid decisions squarely applies to the fact of the instant case.

12. The respondents/applicants having remained silent for several years i.e., from the date of their absorption as Lower Division Clerks, cannot seek the relief of absorption from the date of their initial appointment as Estate Clerks, based on the relief granted in respect of similarly placed persons by relying upon the order of the Apex Court in C.A.No.5677/1994 dated 27.08.1999, that too after they attained the age of superannuation between the years 2010 to 2014. The respondents / applicants, being fence sitters, are estopped from raising questions on the validity of the Scheme or lacuna in the scheme at a belated stage, that too after obtaining all retiral benefits and therefore, their claim is liable to be dismissed on the ground of delay and laches in the light of the aforesaid decisions of the Hon'ble Supreme Court. This Court finds force in the contentions put forth by the learned Assistant Solicitor General



W.P.Nos.27213 of 2021 etc batch

appearing for the appellants.

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13. The Tribunal has failed to consider the factual aspects in a proper perspective and simply relied upon the order passed by the Apex Court in respect of similarly placed persons and passed the impugned order, which in the considered opinion of this Court, warrants interference.

14. In the light of the reasons assigned above, the Writ Petition stands allowed and the order of the Central Administrative Tribunal, Madras Bench in O.A.Nos.730, 727, 728, 731, 725, 726, 729 of 2018 dated 01.04.2021 are set aside. No costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K., J.,] [P.B.B., J.]
21.09.2023

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W.P.Nos.27213 of 2021 etc batch

**D.KRISHNAKUMAR, J.,
&
P.B.BALAJI, J.**

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**Common Order in
W.P.Nos.27213 of 2021 etc., batch**

21.09.2023