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W.P. No.26818 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM:
THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
and
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P. No.26818 of 2023 and W.M.P. Nos.26243 to 26245 of 2023

S. Sivaraman

Petitioner

v

1 The Registrar General
Hon'ble High Court of Madras
High Court Buildings
Chennai 600 104

2 The Principal District Judge
Villupuram District Court
Villupuram

3 The Judicial Magistrate
Judicial Magistrate Court No.1
Villupuram

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records relating to the proceedings dated 12.01.2005 of the second respondent in A.P. No.1378 of 2002 and the proceedings dated 29.03.2004 of the third respondent in Crl.M.P. No.1 of 2004 and to issue consequential directions to the respondents to reinstate the petitioner with all consequential benefits.



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ORDER

(made by S. VAIDYANATHAN, J.)

This writ petition has been filed impugning the enquiry officer's report dated 29.03.2004 and the proceedings dated 12.01.2005 of the disciplinary authority, in and by which, the petitioner was removed from service.

2 The succinct facts giving rise to this writ petition are as under:

2.1 The petitioner, an Office Assistant in the Principal District Court, Villupuram, availed leave on medical grounds for more than sixty days. Hence, he was referred to the Medical Board twice, as is the procedure. However, he did not appear before the Medical Board nor did he submit leave application. Hence, for non-submission of leave application, he was issued with an official memorandum dated 23.05.2003, which did not evoke any response from. Therefore, by way of another official memorandum dated 15.10.2003, he was directed to appear before the second respondent, for which also, the response from the petitioner was no different.

2.2 Hence, four charges were framed against him under Section 17(b) of the Tamil Nadu Civil Services (D & A) Rules for dereliction of duty, negligence and carelessness, misconduct and insubordination, respectively.



The third respondent was appointed as the Enquiry Officer, who, held that all the four charges were proved. Even after serving of the Enquiry Officer's report on him, there was no further representation from him.

2.3 Eventually, on the ground that he absented himself for more than two years, he was removed from service by the second respondent *vide* proceedings dated 12.01.2005. The report of the third respondent, who is the Enquiry Officer, holding the charges to be proved and the removal order passed by the second respondent, are under assail in this writ petition. Further, the petitioner seeks reinstatement in service.

3 Heard both sides.

4 The above summation of facts clearly reflects that the capital punishment of removal from service was inflicted on the petitioner only after he was given a long rope and not without giving him any opportunity. That the petitioner did not care to respond to any of the correspondences from the Principal District Court, Villupuram, either asking him to report before the Medical Board or before the Enquiry Officer or before the Principal District Judge himself, reflects only his recalcitrant and lackadaisical attitude which is unbecoming of a Government servant.



5 The reason assigned by the petitioner in his affidavit that since he was bedridden, he could not submit his leave letter, deserves to be stated only to be rejected, for, nothing prevented him from submitting his leave letter through any of his kith or kin, even with a delay of a few days, which is not the case here. That apart, he cannot sleep over his right of assailing the removal order and suddenly wake up from slumber after a long period of 18 years like Rip Van Winkle and seek to assail the order of removal. His claim is clearly hit by delay, laches and acquiescence. This view of ours is supported by a catena of judgments of the Supreme Court and suffice to advert to a few of them.

5.1 In **Ex-Capt. Harish Uppal v Union of India [1994 SCC Supp (2) 195]**, the Supreme Court held as under:

"8. The petitioner sought to contend that because of laches on his part, no third party rights have intervened and that by granting relief to the petitioner no other person's rights are going to be affected. He also cited certain decisions to that effect. This plea ignores the fact that the said consideration is only one of the considerations which the court will take into account while determining whether a writ petition suffers from laches. It is not the only consideration. It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of Constitution of India and that is what precisely the Delhi-High Court has done. We cannot say that the High Court was not entitled to say so in its discretion."



5.2 In **Karnataka Power Corporation Ltd. v K.Thangappan**

[(2006) 4 SCC 322], the Supreme Court, held as follows:

“6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party.....”

16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time Delay and laches are relevant factors for exercise of equitable jurisdiction.”

5.3 In **Chennai Metropolitan Water Supply and Sewerage Board**

v T.T.Murali Babu [(2014) 4 SCC 108], the Supreme Court held as follows :

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant - a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the



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and
K. RAJASEKAR., J.

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6 The learned counsel for the petitioner submitted that, if directed, the petitioner is ready and willing to appear before the Medical Board now. This submission does not merit acceptance, because, on examination of the petitioner, the Medical Board can give its opinion only *qua* his present health condition and not his health condition in 2002 when he was asked to appear before the Medical Board on two occasions.

In view of the foregoing discussion, this writ petition fails and is accordingly dismissed as being bereft of merits. Costs made easy. Connected W.M.Ps. are closed.

(S.V.N., J.) (K.R.S., J.)
13.09.2023

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To

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