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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.09.2023**

CORAM

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.1250 of 2020
and
C.M.P.(MD)No.7109 of 2020

1.The Principal Secretary to Government,
Department of Rural Development and Panchayat Raj,
Fort St.George, Chennai.

2.The Director,
Directorate of Rural Development and Panchayat Raj,
Chennai-600 015.

3.The District Collector,
Dindigul District, Dindigul.

...Appellants

-Vs.-

K.Senthil Vel

...Respondent

PRAYER:- Writ Appeal - filed under Clause 15 of Letters Patent Act, to
set aside the order dated 03.01.2020 made in W.P.(MD)No.12179 of 2015
on the file of this Court.



For Appellants :Mr.S.Shaji Bino
Special Government Pleader
For Respondent :Mr.M.Jerin Mathew

JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.**)

The State has challenged an order passed by Writ Court on 03.01.2020. We have Heard Mr.S.Saji Bino, learned Special Government Pleader appearing for the appellants and Mr.M.Jerin Mathew, learned Counsel for the respondent.

2.The Writ Petitioner was appointed as a Rural Welfare Officer (RWO) Grade-II on 18.11.1968. While in service, he was promoted to the post of Executive Officer and thereafter, superannuated on 31.07.2004 from the post of Block Development Officer (BDO). While in service, he was issued with a charge memo on 11.12.1997 and had suffered a punishment of stoppage of increment for three years with cumulative effect. He has challenged the same by way of Statutory Appeal. That appeal came to be decided on 25.01.2000 reducing the



punishment to six months stoppage of increment without cumulative effect.

3.He thereafter challenged the rejection of his request for notional promotion to the post of Assistant Director for the panel year 1999-2000. The critical/crucial date for constitution of panel was the 1st of March of the following year, being 01.03.2000 for panel year 1999-2000. It is the case of the Writ Petitioner that as on 01.03.2000, he was fully qualified for promotion and thus, the promotion of his junior one Muthulingam, who had been promoted as Deputy Director for the year 2001-2002 with effect from 10.07.2001 was incorrect. For this position, he relied on the appellate order dated 25.01.2000, which had reduced his punishment to stoppage of increment for six months without cumulative effect.

4.Per contra, it is the case of the State that the original punishment, ie., stoppage of increment of three years with cumulative effect, should be reckoned for deciding whether his name ought to have been impleaded in the panel otherwise. At any rate, the critical date, ie.,



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01.03.2000, was during the currency of six months reduced punishment and on that account also, his name was not considered for inclusion.

5.To add to the confusion, there was a second charge memo issued on 21.03.2002 that culminated with an order imposing punishment of stoppage of increment for six months with cumulative effect. The currency of punishment was between 01.03.2003 and 31.03.2004. Thus, all in all, the case of the respondents was that the Writ Petitioner was disentitled for inclusion for the years comprising 31.03.2000 to 01.03.2004.

6.The Writ Court did not agree with the respondents noticing that the second charge was a minor charge under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules (in short 'Rules') and hence, would not stand in the way of his inclusion for the later years. Even as regards panel year 1999-2000, though the charge was one framed under Rule 17(b) of the Rules, with the reduction in appeal of the punishment, the gravity of the punishment imposed stood reduced to six months which would bring it under the cover of a minor violation.



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7. This point found favour with the Writ Court that allowed the Writ Petition directing notional promotion of the petitioner as Assistant Director with effect from the date on which his junior was promoted with all consequential benefits. Before us, the State reiterates the submissions made before the Writ Court pointing out that the Writ Petitioner has been disentitled on the critical dates relating to the period between 1999-2000 and 2003-2004.

8. In addition, the learned Special Government Pleader would urge that the delay, that had been occasioned between 31.07.2004, when the Writ Petitioner superannuated, and 31.10.2010, when he made a representation seeking notional promotion and benefits, had not been explained at all. Thus, according to him, laches were writ large and the Writ Petitioner is not entitled to the relief that had been granted in light of the substantial delay in approaching the Court.

9. We note that this point has not been pleaded as a defence, neither in the counter filed in the Writ Petition nor in the appeal grounds



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raised before us. It is only in the course of oral arguments that the question of delay is raised. Hence, we do not deem it fit to non-suit the Writ Petitioner in an appeal filed by the State on the basis of a defence that has not been raised at any stage in the proceedings till now.

10. That apart, some semblance of an explanation for the delay is put forth by the petitioner. He states that he had approached the Tamil Nadu Administrative Tribunal in O.A.No.2021 of 1995 seeking certain service benefits. That OA came to be transferred to the file of High Court in W.P.No.15194 of 2006(T) and ultimately came to be ordered on 04.02.2008 granting him the benefit of promotion to the post of Deputy Block Development Officer with effect from 18.01.1996 and Block Development Officer with effect from 06.11.1996. A Government Order implementing this order was passed in G.O(D)No.123, Rural Development and Panchayat Raj Department dated 07.03.2012.

11. According to him, it is only upon receipt of this Government Order, his service benefits stood crystalized. Immediately, upon issuance of Government Order dated 07.03.2012, he made a



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representation on 31.10.2012 seeking notional promotion with all consequential benefits. That representation came to be rejected in 2014 culminated in the filing of Writ Petition. Though not entirely convinced with the explanation that has been tendered, we do find that sequence of dates and events in this matter do tally with the explanation tendered by the Writ Petitioner. The argument of the State on delay/laches is rejected.

12. Coming to the merits of the matter, we find that the Writ Court has taken into account the events in proper perspective. Mr. Saji Bino would state that at the time of preparation of panel for 1999-2000, the Writ Petitioner was undergoing currency of punishment imposed on 25.01.2000 and this factor would disentitle him. This argument is to be rejected outright. The date of publication of the panel for 1999-2000 is 05.03.2001 and those candidates who were found eligible should have been included therein.

13. For this purpose, the assessment of eligibility should be proximate to 05.03.2001, when the panel was, in fact, published. It does not stand to reason that eligibility was determined close to the critical



date, 31.03.2000, when the panel was actually published nearly a year later. This is for the reason that, in the interim, there could have been any number of reasons why a candidate could have been disentitled. In light of discussion as aforesaid, the case of appellants does not merit acceptance. The order of the Writ Court is confirmed and the Writ Appeal is dismissed.

14.As regards the benefits, learned SGP, relying on a judgment in the case of *Union of India & Ors. vs. Tarsem Singh* (Civil Appeal No. 5151-5152 of 2008 dated 13.08.2008), would urge that a cap of three years be imposed as far as the arrears are concerned. We do not agree as the facts and legal position arising from the judgment are distinguishable when compared with the present case.

15.In that case, the employee was working in the Indian Army and had been invalidated from Army services for medical reasons on 13.11.1983. He approached the High Court in 1999 seeking a mandamus to the Army to pay him disability pension. An order had been passed on 06.12.2000 directing the respondents to grant him disability pension restricting the arrears to 38 months prior to the filing of the writ petition.



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16.The employee appeared before the medical board and an order had been passed as directed by the respondents releasing the arrears. The employee challenged the order by way of Letters Patent Appeal and the appeal was allowed by the Division Bench granting disability pension from 1983 onwards. In appeal by the Union, the Hon'ble Apex Court took note of the position that though the medical exigency had been occasioned on 13.11.1983, the employee had approached the High Court only in 1999 seeking a mandamus for grant of disability pension.

17.Thus and bearing note of the laches in approaching the High Court, they concurred with the view of the Single Judge that arrears must be restricted only for three years. Interalia, they refer to their judgments in *M.R.Gupta vs. Union of India* (1995 5 SCC 128) and *Shiv Dass vs. Union of India* (2007 9 SCC 274) stating that a belated service-related claim would be rejected on the ground of delay and laches normally. The exception would be the cases relating to continuing wrong.



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18. The summary, at paragraphs 5 and 6 is as follows:

“5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

6. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating



to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.”

19. In light of the fact that the employee had approached the High Court with a delay of 16 years ie., from 1983 to 1999, they were of the view that the matter did not fall within the exceptions. In the present case, we have at paragraphs 8 to 11 above, held that there is no delay in writ petitioner approaching this Court. Hence, in the absence of any delay or laches, the State cannot seek to restrict the service benefits of the petitioner.

20. Likewise, in the case of *Rushibhai Jagdishbhai Pathak vs. Bhavnagar Municipal Corporation* (2022 SCC Online SC 641), the facts are distinguishable when compared with the facts of the present case. In that case as well, the delay in approaching the Court, as seen from para 9 of the judgment was seven years, which renders that judgment distinguishable on facts as well. The concerned authority shall pass an order in compliance with the directions issued by Writ Court within a period of four weeks from date of receipt of a copy of this order and



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determined the amount payable to the petitioner. The payout of the amount so determined shall be within four weeks from date of that order.

No costs. Consequently, connected miscellaneous petition is closed.

**[A.S.M.J.,] & [R.V.J.,]
19.09.2023**

NCC :Yes/No
Index :Yes/No
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