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W.P.No.14095 of 2015



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

CORAM

THE HONOURABLE MRS.JUSTICE **R. KALAIMATHI**

W.P.No.14095 of 2015

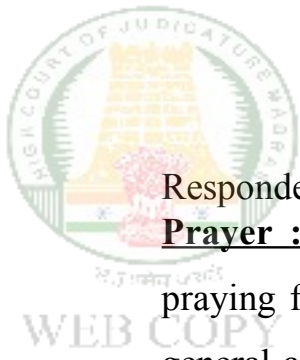
K. Pavithran  
Petitioner

...

-Vs-

1. The Superintending Engineer  
TANTRANSCO,  
General Construction Circle,  
Tatabad, Coimbatore 641 012.
2. The Superintending Engineer  
TANTRANSCO  
General Construction Circle  
A-10, Thiru Vi Ka Industrial Estate,  
Guindy, Chennai 600 032.
3. The Chief Engineer  
TANTRANSCO  
NPKRR Maligai, 6th floor,  
144, Annasalai,  
Chennai 600 002.
4. The Chief Engineer / Personnel,  
TANGEDCO, TNEB  
NPKRR Maligai, 6th floor,  
144, Anna Salai,  
Chennai 600 002.
5. The Chairman Cum Managing Director  
TNEB, 144, NPKRR Maligai,  
Annasalai, Chennai 600 002.

...



Respondents

**Prayer :-** Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents in general and 4th respondent in particular to appoint the petitioner as Surveyor with due seniority and attendant benefits with effect from 2002, to pay salary and other allowances on the date of his immediate juniors as per his representation dated 20.01.2015.

For Petitioner : Mr. A. Deivasigamani

For Respondents : Mr. R. Nikkhilesh Athav  
for Mr.K.Rajkumar

### **ORDER**

Mr.K.Pavithran, petitioner has moved this writ petition directing the respondents in general and 4th respondent to appoint him as Surveyor with due seniority and attendant benefits with effect from 2002 as per the petitioner's representation dated 20.01.2015.

2. The petitioner was initially recruited as Helper on 03.09.1987 through employment exchange. After being promoted from that cadre to various cadre, finally promoted as Ist Grade Civil Maistry on 22.09.2007 which is equal to Grade 2 Foreman. He is holding Diploma in Civil Engineering and working in the general construction circle/ Coimbatore and well versed in the field of construction line and tower erection works.



3. The 4th respondent issued a letter No.052957/438/G.55/2001-2 dated 16.10.2001 calling for applications from the qualified persons i.e Diploma in Civil Engineering, in order to fill up the vacancies of Surveyors which is equal to Junior Engineer/Civil II Grade by internal selection. The eligible employees submitted their applications through proper channel and the 4th respondent prepared the list consisting of 114 employees, out of which 22 employees were issued with appointment order for the post of Surveyor.

4. The petitioner further submits that he was selected as Junior Engineer/Civil II Grade and allotment order was issued on 19.03.2012. The relevant posting order was issued only on 22.04.2016. He was kept in darkness for the past 10 years regarding the appointment of Surveyor and specifically for the past 2 years regarding Junior Engineer/Civil II Grade.

5. Heard Mr.Deivasigamani, learned counsel for the petitioner and Mr.Nikkhilesh Athav for Mr.K.Raj Kumar, learned Standing Counsel for the respondents.

6. Mr.Deivasigamani, learned counsel for the petitioner vehemently contended that though the petitioner is qualified to be appointed as Surveyor as



he is holding Diploma in Civil Engineering, for a long period he was not considered for the said post. Only in the year 2012 allotment order was issued for appointment of Junior Engineer/Civil II Grade and posting order was issued on 26.08.2016. Had it been considered for appointment in the year 2002 he would have been selected. Proper procedure for selection and appointment was not followed. He further submitted that the G.O.Ms.No.105 dated 20.06.2000 was not properly followed and had it been properly implemented, the petitioner who is coming under the OC category might have been selected and appointed in the year 2002 itself. Therefore, he seeks direction to the respondents to appoint the petitioner as Surveyor with due seniority and attendant benefits with effect from 2002.

7. Mr.R.Nikkhilesh Athav, learned representing counsel for the respondents would strenuously contend that the petitioner if at all has got any grievance he should have ventilated within six months from the date of issuance of the order or atleast within a year. He would further submit that as the cause of action arose in the year 2002 itself and the writ petition was only filed in the year 2014 after 13 years. In support of his contentions, he placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of ***Union of India Vs C.Girija and others*** reported in (2019) 15 SCC 633



8. The Hon'ble Supreme Court has elaborately discussed about the delay/laches in filing the representation. In a similar matter the Hon'ble Supreme Court of India in the case of ***C.Jacob Vs Director of Geology and Mining and another*** reported in (2008) 10 SCC 115 has held as follows:-

*"9. The courts/tribunals proceed on the assumption that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any "decision" on rights and obligations of parties. Little do they realise the consequences of such a direction to "consider". If the representation considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to "consider". If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignore".*

9. What is the effect of belated representation is also discussed by the Hon'ble Supreme Court of India in the case of ***Union of India and others Vs M.K.Sarkar*** reported in (2010) 2 SCC 59. The relevant portion is extracted



hereunder:-

***15. When a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.***

10. Therefore the representation of the petitioner pertains to the year 2002 which was made in the year 2015. He had grievance in the year 2002 and for which he has only given representation in the year 2015 after 13 years. The reason being that so many probations would have been made and so many changes would have come. This sort of action is commented upon by the Hon'ble Supreme Court of India in the case of ***P.S.Sadasivasamy Vs State of Tamil Nadu*** reported in (1975) 1 SCC 152, wherein seniority parametres have been laid down by the Hon'ble Supreme Court of India and the relevant portion is extracted hereunder:-

***A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the***



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W.P.No.14095 of 20



*most a year of such promotion: It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.*

11. The petitioner being not considered for the post of Surveyor as he is holding Diploma in Civil Engineering, seeking to appoint him as a Surveyor with effect from 2002 with all attendant benefits has given only representation in the year 2015 would go to show that his claim is stale and he is trying to turn it as a live claim. At the best he should have raised his little finger within a year, failing to do so and so many appointments have been made and now seeking to appoint him as Surveyor with effect from 2002 cannot be considered as a live claim.

12. Based on the aforesaid observations, the writ petition stands dismissed. No costs.

24.04.2024

Neutral Citation: Yes/No



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To

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**R. KALAIMATHI, J.**

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