



W.P.No.12822 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE N. MALA

W.P.No.12822 of 2016

L.V.Radhakrishnan

... Petitioner

Vs.

1. The Besant Theosophical Higher Secondary School rep. by its Correspondent/Secretary, No.2, Arundale Beach Road, Chennai 600 090.
2. The Director of School Education College Road, Chennai – 600 006.
3. The Joint Director of School Education College Road, Chennai 600 006.
4. Chief Educational Officer, Panagal Maligai, Saidapet, Chennai 600 015.
5. The District Educational Officer, Central Chennai, Saidapet, Chennai 600 015.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, to issue Writ of Certiorarified mandamus calling for the entire records



W.P.No.12822 of 2016

relating to the so called order of dismissal dated 07.03.1988 passed by the Enquiry Committee held at Besant Theosophical High School Arundale Nagar, Chennai-90 and quash the same and direct the 1st respondent to make suitable arrangements to reconstruct service register of the petitioner enabling the petitioner to receive the pensionary benefits from the date of his eligibility.

For Petitioner : Mr.S.Jaganathan

For Respondents : Mr.N.Omprakash for R1

ORDER

This writ petition is filed challenging the dismissal dated 07.03.1988 passed by the Enquiry Committee, to quash the same and to direct the 1st respondent to reconstruct the service register of the petitioner to enable him to receive the pensionary benefits from the date of his eligibility.

2. The petitioner being a Tamil Pandit served as Tamil Teacher in Bishop Heeber Higher Secondary School Trichy (Government Aided School) during the period between 18.06.1968 and 14.07.1971 and thereafter he joined Besant Theosophical Higher Secondary School, Besant Nagar as Tamil Teacher during the year 1971 and continuously served the said school from 15.07.1971 to 30.03.1990. Since he was continuously bedridden he wrote several letters



WEB COPY

about his health condition enclosing the medical certificates and fitness certificates to the Head Master. The first respondent without considering the leave letters and his letter for willingness to join duty issued a letter dated 24.03.1986, acknowledging the receipt of his medical certificates but rejected the same on technical grounds of not filing in proper format. The 1st respondent further directed the petitioner to submit an explanation for his absence once again. The first respondent thereafter issued a memorandum dated 26.11.1987, calling for the petitioner's explanation for his continuous absence within ten days in writing or in person, failing which the petitioner was informed that an ex-parte enquiry would be conducted against him. The petitioner submitted his written explanation on 12.12.1987.

3. According to the petitioner, though the petitioner intimated to the respondents to give him a personal hearing the respondents, without giving an opportunity of personal hearing conducted an enquiry on 07.03.1988, and passed an ex-parte order of dismissal without considering the petitioner's explanation and without following proper procedure contemplated under the Rules. The first respondent communicated the termination order only on 30.03.1990 i.e., after more than two years. The petitioner put in more than 20



WEB COPY

years of service and he had already requested vide letter dated 04.03.1988, to the first respondent School, to relieve him from service under Voluntary Retirement Scheme. The first respondent by reply dated 12.04.1988, stated that the petitioner had not completed 50 years of age and that minimum period of service for VRS was 20 years. The petitioner stated that from the reply dated 12.04.1988 it was very clear that no enquiry was conducted on 07.03.1988 and no order of termination was passed on 30.03.1990 and so the 1st respondent's statement that the petitioner was terminated with effect from 07.03.1988 was totally false. It is further stated that the letter dated 12.04.1988 refusing to extend VRS scheme to the petitioner would show that he continued to be in service on the said date, more-so, when there was no reference to his alleged termination on 07.03.1988. The petitioner stated that he was not able to file an appeal against the dismissal order due to the demise of his father and mother on account of prolonged illness and his wife's continuous treatment. Thereafter, the petitioner also fell seriously ill and underwent bye-pass surgery and he was advised to take bed rest. It was only after recovering from the above surgery the petitioner approached the first respondent to trace his service register which was misplaced by one Kannan. The 1st & 5th respondents informed the petitioner that his service register could not be reconstructed and hence advised him to get



WEB COPY

the service certificate counter signed by District Educational Officer, Trichy and from the Correspondent of the Bishop Heeber Higher Secondary School in which the petitioner was employed as Teacher in the beginning. Thereafter, the petitioner obtained the certificate and handed over the same to the Head Mistress of the 1st respondent school but she returned the same stating that the service register was missing and that she was not empowered to reconstruct the service register. The petitioner issued a letter dated 03.04.2015 to the 1st respondent and the Chief Minister's Cell for immediate action with regard to his pensionary benefits in view of the aforesaid extraordinary circumstances. On receipt of the said letter the 5th respondent issued letter dated 09.04.2015, 2nd respondent issued letter dated 04.05.2015 and 4th respondent issued letter dated 21.05.2015 to the 1st respondent to consider the petitioner's letter. Since the 1st respondent failed to issue any reply, the 4th respondent issued a reminder dated 11.08.2015, to consider the petitioner's application. Only after that the 1st respondent issued a reply to the 5th respondent stating that the petitioner was already dismissed from service on 07.03.1988. The petitioner stated that as the first respondent intimated about the dismissal order only through the letter dated 13.03.1990, it was evident that no enquiry was conducted on 07.03.1988, and therefore left with no other alternative the petitioner approached this Court



to set aside the said dismissal order.

WEB COPY

4. The first respondent filed a detailed counter and stated that the writ petition was liable to be dismissed on the ground of delay and laches as the petitioner approached this Court after 28 years of the dismissal order dated 07.03.1988. The first respondent further stated that the petitioner suppressed several facts including that he was running 11 Educational Institutions in the State of Tamil Nadu. These Institutions were run by him through the Besant Educational and Cultural Society of which he was the founder and administrator apart from managing the same. The 1st respondent stated that the address of the said Society is No.33, 1st Avenue, Besant Nagar, Chennai 90 which is same as the address of the writ petitioner. Moreover, the acronym for LVR in the above said educational institutions is L.V.Radhakrishnan. The 1st respondent further stated that the writ petition was liable to be dismissed also on the ground that the petitioner failed to challenge the approval order dated 17.09.1991 of the Chief Educational Officer, Chennai, where-under approval for dismissal of the petitioner was accorded.

5. The 1st respondent on facts stated that the petitioner was served with charge memo for unauthorised absence for the period from 13.08.1985 to



WEB COPY

26.08.1985 onwards. The reply of the petitioner to the charge memo was considered and the 1st respondent sent a notice to the petitioner informing him of the date and time of the enquiry, but the petitioner failed to participate in the enquiry. As no request was made for adjourning the enquiry, on the basis of the explanation submitted by the petitioner, the enquiry committee on its findings that the charges were proved, passed the ex-parte order of dismissal. The Enquiry report was placed before the School Committee meeting that was held on 23.04.1988 and the School Committee unanimously resolved to remove the petitioner from service with effect from 07.03.1988. The 1st respondent therefore prayed that the writ petition be dismissed.

6. The learned counsel for the petitioner submitted that though there was a delay of 28 years in approaching the Court, the same was sufficiently explained at para 7 of the affidavit. Since the delay was properly explained this Court ought not to dismiss the writ petition on the said ground. The learned counsel further submitted that there was no suppression as alleged.

7. The learned counsel for the 1st respondent submitted that the prayer in the writ petition is to reconstruct the service register of the petitioner and the



WEB COPY

same cannot be done in view of the inordinate delay of 28 years, in approaching the Court and even otherwise the writ petition was not maintainable as the petitioner did not challenge the approval order of the Chief Educational Officer, Saidapet, Chennai. Hence, the learned counsel submitted that the Writ petition was devoid of merits.

8. Heard both sides and perused the materials available on record.

9. The petitioner has filed the writ petition after a lapse of 28 years.

In **Chennai Metropolitan Water Supply and Sewerage Board Vs. T.T.Murali**

Babu reported in **2014 (4) SCC 108**, the Hon'ble Apex Court stated 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 scrutinize 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



W.P.No.12822 of 2016

WEB COPY

like a phoenix. Delay does bring in hazard and causes injury to the lis."

10. Admittedly, the petitioner has been acquiescent, lethargic and indolent in approaching this Court. This Court should be judicious in exercising its discretionary jurisdiction. The reasons for the astronomical delay of 28 years in filing the writ petition are found in Paragraph No.7 of the affidavit. I have gone through para 7 of the affidavit in which para the petitioner claims to have explained sufficiently the delay of 28 years in approaching this Court. I find that the averments in para 7 lack particulars and are insufficient for condoning the inordinate delay of 28 years. I find that the petitioner has only explained the reasons for not filing the appeal against the dismissal order, but no plausible reasons are cited for the delay in approaching this Court. The very fact that the prayer in the writ petition includes the reconstruction of his service register shows that the petitioner has been dilatory in seeking redressal of his grievance. In the absence of cogent and proper reasons for the exorbitant delay of 28 years, I am of the view that the writ petition deserves to be dismissed on the ground of delay and laches.

11. I am of the further view that the petitioner is also guilty of



WEB COPY

suppressing facts regarding his role in the Society which ran 11 Educational Institutions in the state of Tamil Nadu. The petitioner only after the issue was advanced by the respondents, came forward to explain his role in the 11 institutions. Therefore even on the ground of suppression of facts, the writ petition deserves to be dismissed. It would be relevant here to refer to the judgment of the Hon'ble Apex Court in ***State of Maharashtra Vs Digambar*** reported in ***1995 (4) SCC 623***. The Hon'ble Apex Court held as follows:

"19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the Court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct."

12. Last but not the least, the petitioner has not challenged the order issued by the Chief Educational Officer approving the dismissal order dated 07.03.1988, passed by the 1st respondent and therefore the writ petition in the absence of a challenge to the approval order cannot be sustained. Hence for all the above reasons, I find no merit in the Writ Petition and hence the same is dismissed.



W.P.No.12822 of 2016

WEB COPY

13. In the result, the writ petition stands dismissed. No costs.

04.09.2024

dpq

Index : Yes /No

Speaking Order : Yes/No

To

1. The Besant Theosophical Higher Secondary School rep. by its Correspondent/Secretary, No.2, Arundale Beach Road, Chennai 600 090.
2. The Director of School Education College Road, Chennai – 600 006.
3. The Joint Director of School Education College Road, Chennai 600 006.
4. Chief Educational Officer, Panagal Maligai, Saidapet, Chennai 600 015.
5. The District Educational Officer, Central Chennai,



W.P.No.12822 of 2016

Saidapet, Chennai 600 015.

WEB COPY

N. MALA, J.

dpq

W.P.No.12822 of 2016



WEB COPY



W.P.No.12822 of 2016

04.09.2024