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WA No.345 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

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1.The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore,
Chennai-600 008.

2.The Chairman/Member, Sub Committee,
Coimbatore Centre,
Coimbatore District.

... Appellants

versus

S.Manikandan

... Respondent

PRAYER: Writ Appeal filed against the order of the learned Single Judge in WP No.21982 of 2021 dated 08.10.2021.

For the Appellants :Mr.P.Kumaresan
Additional Advocate General
Assisted by Mr.J.Daniel
Government Advocate

For the Respondent : No appearance



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JUDGMENT

(Judgment of the Court was delivered by *D.KRISHNAKUMAR, J.*)

This Writ Appeal is filed against the order of the learned Single Judge in WP No.21982 of 2021 dated 08.10.2021.

2. Though notice was served on the respondent, none appeared for the respondent.

3. Challenging the disqualification slip dated 30.07.2021, issued by the second appellant, against the respondent, the respondent had filed the writ petition. The writ court, by order dated 08.10.2021 disposed of the writ petition by relying on WP Nos.18777 of 2021 etc. batch dated 07.09.2021 with the following observations:

"Considering the fact that the petitioner has stated that he is 167 cms. in height, the respondents are directed to consider the case of the petitioner along with similarly placed persons and send the petitioner for re-testing in a Government recognized institutions where there



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are standardized equipments/instruments to measure the height.

The respondents are therefore directed to identify the Government institutions in each Districts for carrying out retesting of heights of those candidates within a period of three months from the date of receipt of a copy of this order.

In case, it is found that the petitioner and such of those successful candidates who qualified in the written examination but were wrongly denied an opportunity to participate in the next stage of the selection, the respondents are directed to permit such of those persons to participate in the next recruitment by dispensing with the requirement of filing of application on the written examination."

4. Challenging the order passed by the writ court, the appellant Board has filed the present intra-court appeal.

5. Learned Additional Advocate General appearing for the appellant board submits that similarly placed persons had approached this Court in W.P(MD) No.13581 of 2021 etc. Batch. This Court, by order dated 07.09.2021 had allowed the writ petitions and permitted the petitioners therein to participate in the re-measurement of height test to be conducted



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on 22.09.2021 at Trichy Centre, with certain directions. Thereafter, again writ petitions were filed by similarly placed persons in WP (MD) Nos. 16499 of 2021 etc. batch, seeking for similar relief by relying on W.P.(MD) No.13581 of 2021. The Writ Court, by order dated 21.09.2021, had disposed of the said writ petitions by relying WP (MD) Nos.16499 of 2021 etc. batch, with the following directions:

i) The writ petitioners herein are directed to participate in the remeasurement of height test that is proposed to be conducted on 22.09.2021 at Trichy Centre.

ii) The respondents shall take the measurement only through the digital method and shall videograph the same

iii) Based on the revised measurement, the respondents shall take a final decision for the selection of the petitioners to the posts of Grade-II Constable, Grade II Jail Warder and Firemen;

iv) The said exercise shall be completed as expeditiously as possible without any further delay; and

v) It is open to the respondents, if any fresh writ petitions are filed, the same can also be agitated on the ground of latches.

6. He further submits that pursuant to the said direction, the petitioners therein had appeared before the appellant board for re-



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measurement of the height. Based on that, final selection list has been published on 25.11.2021 and thereafter, appointment orders have also been issued by the appellant Board.

7. Learned Additional Advocate General appearing for the appellant Board would further submit that the disqualification slip has been served to the respondent on 30.07.2021, Challenging the said order, he has filed writ petition before this Court on 07.10.2021, whereas the writ petitions in WP (MD) Nos. 16499 of 2021 etc. batch, filed by the similarly placed persons were disposed on 21.09.2021. In the said order of the Writ Court, it is clearly stated that if any fresh writ petition is being filed, the same can be agitated on the ground of laches. Therefore, the present case squarely attracts the principles of delay and laches as the petitioner has filed the writ petition on 07.10.2021, challenging the disqualification slip dated 30.07.2021 issued by the appellant board.

8. He further submitted that subsequently, some of the candidates, filed writ petition in WP No.21755 of 2021 by relying on the decision in WP



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Nos.18777 of 2021 etc. batch dated 07.09.2021 . The writ court, by order dated 08.10.2021, had directed the appellant Board to consider the case of the petitioner therein along with similarly placed persons and to send the petitioner therein for re-testing in a Government recognize institutions. Challenging the said order, the appellant Board had filed writ appeal in WA No.405 of 2022. The appellant court, by order dated 03.03.2022 allowed the appeal and set aside the order in WP No.21755 of 2021 dated 08.10.2021.

9. He further submits that in the present case also, the writ court has allowed the writ petition following the decision in WP. Nos.18777 of 2021 dated 07.09.2021, which was subsequently set aside by the decision of the appellate court in WA No.405 of 2022 dated 03.03.2022. Further, the respondent herein has not approached the Court seeking for appropriate direction at the earliest point of time. However, the writ court had directed the respondent to appear before the Government recognized institution for re-measuring the height of the respondent herein. Further, directed the appellant to consider for selection for the next recruitment without insisting upon the filing of application on written examination. Now at this juncture, it is not feasible to consider the request of the respondent herein. Hence, he



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seeks to set aside the order of the writ court and allow the writ appeal.

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10. Pursuant to the recruitment notification issued by the appellant Board, the respondent herein has participated in the written examination and he also appeared for the physical measurement test/endurance test. According to the respondent, he has passed in all the tests but the Department has issued the disqualification slip to the respondent herein/writ petitioner on 30.07.2021 by stating that he has not satisfied the height measurement as per the terms of the notification. Challenging the said order, he has filed instant writ petition before this Court on 07.10.2021, and this Court, by considering the earlier order passed in WP. No.18777 of 2021 dated 07.09.2021 has allowed the respondent herein/writ petitioner to appear before the Government hospital for re-measurement of his height. However, a similar writ petition in WP No.21755 of 2021 was allowed by the writ court following WP No.18777 of 2021 was subsequently set aside by this court in WA No.405 of 2022 dated 03.03.2022.

11. Considering the facts and circumstances of the case, we are satisfied that the respondent herein has not approached this Court



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challenging the aforesaid disqualification slip dated 30.07.2021 at the earliest point of time, on the other hand, he slept over the matter and observing the course of proceedings in WP (MD) No.18777 of 2021 filed by the similarly placed persons and only thereafter he filed the present writ petition on 07.10.2021 before this Court after the disposal of WP No.18777 of 2021, dated 07.09.2021, when particularly in the recruitment cases, the candidates should approach this Court within a reasonable time. Therefore, the said writ petition filed by the writ petitioner also suffers from delay and laches. Further, the decision rendered by the Division Bench of the Delhi Court in the case of ***Union Of India And Ors. vs Sandeep Kumar Swaroop And Ors in Writ Petition (CIVIL) No.1473/2017***, squarely applies to the facts the case on hand. The relevant portion of the order is extracted hereunder:

"A careful reading of the aforesaid principles reveals that the principle of in rem in the second sense is not absolute. It is preferable to follow the said principle so that there is no discrimination or violation of Article 14 in service matters for all similarly situated persons should be treated alike and not differently. However, delay and laches as well as acquiescence can be a ground to deny benefit to fence sitters. Those who



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do not approach the Court in a timely and prompt manner can be denied "equal treatment". Thus, it will be right to hold that doctrine of in rem in the second sense is not unconditional or unimpeachable. However, this exception would not apply where the earlier judgment pronounced by the Court is with the intent to give benefit to all similarly situated persons, whether they had approached the Court or not. Benefit should not be extended when the said intent is not there and the judgment expressly or impliedly states that the benefit of the judgment would be extended to those, who had sought to enforce their rights and their petitions were not stale on account of delay and laches or acquiescence."

12. Further similar matter in WP No.21715 of 2021, which has also been challenged in WA No.405 of 2022 and subsequently, the said writ appeal was allowed. The decision rendered in WA No.405 of 2022 dated 03.03.2022 and the decision rendered by the Division Bench of the Delhi High Court squarely applies to the facts and circumstances of this case. Hence, the order passed by the writ court in WP No.21982 of 2021 dated 08.10.2021 is set aside and consequently, the writ appeal stands allowed. There shall be no order as to costs

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