



W.P.No.6915 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.6915 of 2022

P.Tharabai

...Petitioner

-Vs-

1. The Union of India,
Rep. by Secretary to Government,
Ministry of Corporate Affairs,
Room No.502, 505 & 538,
Shastri Bhawan 'A' – Wing, 5th Floor,
Dr.R.P.Road,
New Delhi-110 001.

2. The Regional Director (SR),
Ministry of Corporate Affairs,
Shastri Bhavan, Block-1, V Floor,
26, Haddows Road,
Chennai-600 006.

3. Official Liquidator,
High Court, Madras,
Ministry of Corporate Affairs,
Corporate Bhavan, II Floor,
No.29, Rajaji Salai,
Chennai-600 001.

...Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents to absorb the petitioner as Lower Division Clerk with effect from the date of initial appointment as Estate Clerk i.e., with effect from 01.08.1981 with arrears of pay and all other consequential benefits including re-fixation of pay and to sanction pension w.e.f July 2014 with arrears of pension and all other consequential benefits in favour of the petitioner.

For Petitioner : M/s.Giridhar and Sai
For Respondent 1 & 2 : Mr.S.Diwakar,
Central Government Standing
Counsel

ORDER

This writ petition has been filed for direction to the respondents to absorb the petitioner as Lower Division Clerk with effect from the date of initial appointment as Estate Clerk i.e., with effect from 01.08.1981 with arrears of pay.

2. The petitioner was retired from service on superannuation on 30.06.2014. Now the petitioner seeks to absorb as Lower Division Clerk, that too after a period of eight years from the date of her retirement. Similar



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issue was already dealt by Hon'ble Division Bench of this Court in a batch of writ petitions in W.P.Nos.27213 of 2021 etc., cases. By order dated 21.09.2023, the Hon'ble Division Bench of this Court passed order as follows:

"11. That apart, the respondents/applicants having chose to remain silent for many years, they are estopped from raising such claims at a belated stage, based on the orders granted in favour of similarly placed persons. In this regard, it is useful to refer to the decision of the Division Bench of Delhi High Court in Arjun Lal Makhija v. Government of N.C.T. Of Delhi and Others (W.P.(C) No.8931 of 2014 dated 07.04.2015). wherein the Division Bench of Delhi High Court has considered the various decisions of the Hon'ble Apex Court, including the judgment in State of U.P. & Ors. V.Arvind Kumar Srivatsava & Ors [(2015) 1 SCC 347), relied on by the learned Assistant Solicitor General and the same is extracted hereunder:

"In State of U.P. & Ors. V.Arvind Kumar Srivatsava & Ors (2015) 1 SCC 347), the Apex Court took a view that

it is a normal rule that when a particular set of employees is given relief by the Court, all other identically situated persons should be treated alike by extending the same benefit since not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. While laying down this principle, the Court further observed that this normal rule is subject to well-recognized exceptions in the form of laches and delays as well as acquiescence which would be a valid ground to dismiss their claim but such an exception could not be applied to those cases where the judgment pronounced by the Court was judgment in rem with intention to bestow benefit on all similarly situated persons



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irrespective of the fact whether such persons had approached the Court or not. Relevant paras of the said judgment wherein these legal principles have been culled out are reproduced as under:-

"Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim. (emphasis supplied). The proposition laid down in the aforesaid decisions squarely applies to the fact of the instant case.

12. The respondents/applicants having remained silent for several years ie.. from the date of their absorption as Lower Division Clerks, cannot seek the relief of absorption from the date of their initial appointment as Estate Clerks, based on the relief granted in respect of similarly placed persons by relying upon the order of the Apex Court in CA.No.5677/1994 dated 27.08.1999, that too after they attained the age of superannuation between the years 2010 to 2014.



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The respondents / applicants, being fence sitters, are estopped from raising questions on the validity of the Scheme or lacuna in the scheme at a belated stage, that too after obtaining all retiral benefits and therefore, their claim is liable to be dismissed on the ground of delay and laches in the light of the aforesaid decisions of the Hon'ble Supreme Court. This Court finds force in the contentions put forth by the learned Assistant Solicitor General appearing for the appellants."

3. Therefore, the case of the petitioner cannot be considered and the writ petition is devoid of merits and liable to be dismissed. Accordingly, this writ petition is dismissed. No costs.

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Index : Yes/No
Internet: Yes/No
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G.K.ILANTHIRAIYAN,J.
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To

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