



W.P. No.5177 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.5177 of 2015

S.Kandasamy

.. Petitioner

Vs.

1. Government of Tamil Nadu,
Rep. by Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai 600 009.
2. The Director of Town Panchayats,
Kuralagam,
Chennai 600 108.
3. The District Collector,
Salem District,
Salem.
4. The Assistant Director of Town Panchayats,
Salem District,
Salem.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records in (1) G.O.(D)No.562, Municipal Administration and Water Supply Department, dated 04.11.2010 of the 1st Respondent (2) Pro.R.C.No.27457/2001/B2 dated



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15.04.2002 of 2nd Respondent and (3) Pro.Na.Ka.No.6534/99/B1 dated 21.08.2001 of the 3rd Respondent to quash the same and to issue consequential direction to the Respondents to consider the claim of the petitioner for promotion with retrospective effect from the date of promotion of his immediate junior with consequential benefits.

For Petitioner : Ms.T.Subhiksha
for M/s. Ravi, Priya Ravi,
M.Sasi Kumar, R.S.Krishnaswamy

For Respondents : Mr.Abishek Murthy
Government Advocate

ORDER

The writ petition is filed praying to calling for the records in (1) G.O.(D)No.562, Municipal Administration and Water Supply Department, dated 04.11.2010 of the 1st Respondent (2) Pro.R.C.No.27457/2001/B2 dated 15.04.2002 of 2nd Respondent and (3) Pro.Na.Ka.No.6534/99/B1 dated 21.08.2001 of the 3rd Respondent to quash the same and to issue consequential direction to the Respondents to consider the claim of the petitioner for promotion with retrospective effect from the date of promotion of his immediate junior with consequential benefits.

2. The petitioner was appointed in the year 1972 as a Bill Collector and



thereafter promoted as a Junior Assistant and followed by another promotion as Executive Director and finally in the year 2008 was promoted as Executive Officer Grade 1 and superannuated in the year 31.05.2008. Disciplinary proceedings were initiated vide charge memo dated 30.12.1999 which culminated in an order of punishment of stoppage of increment for one year without cumulative effect by the 3rd Respondent vide order dated 21.08.2001. The petitioner preferred an appeal before the 2nd Respondent and the same was disposed of vide order dated 15.04.2002. A further appeal was preferred before the 1st Respondent. During the pendency of the appeal before the 1st Respondent, a writ petition came to be filed in W.P.No.5253 of 2005 and this Court was pleased to dispose of the appeal of the petitioner within a period of 8 weeks from the date of receipt of the copy of the order after finding that the writ petition cannot be entertained in view of the fact that the petitioner has already availed the remedy by way of an appeal.

3. Pursuant thereto the impugned order dated 04.11.2010 is passed wherein the order of the lower authority is confirmed. It is against this order dated 04.11.2010, the present writ petition is filed for issuance of writ of Certiorari to quash the said order dated 04.11.2010 and also for a mandamus to consider the claim of the petitioner for promotion with retrospective effect from



the date of promotion of his immediate junior with consequential benefits.

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4. It is submitted by the learned counsel for the Respondents that the petitioner was not considered for promotion in view of currency of punishments. In any view, it was submitted that the present writ petition is liable to be rejected on the ground of laches inasmuch as the impugned order is passed in the year 2010 while the present writ petition is filed after exhausting all the remedies available after a lapse of 5 years from the date of the order of the 2nd appellate authority viz., the 1st Respondent herein. It is submitted that the petitioner ought to have been vigilant and having approached the Court after a period of 5 years is hit by laches and thus cannot maintain the same.

5. The learned Counsel for the petitioner would submit that the charges are not grave and therefore would request that a lenient view would be taken. I am afraid that I am unable to accede to the request made by the learned counsel for the petitioner inasmuch as it is trite law that the remedy under Article 226 of the Constitution of India based on equity is only available for those who are vigilant of their rights and someone who have slept over the rights cannot be extended any benefits. The maxim "*Vigilantibus, et non Dormientibus, Jura Subveniunt*" - the law assists who are vigilant, not those who sleep over their



right is relevant and has been consistently applied by the Apex Court in a catena of cases. Some of them being:

- i) *Delhi Airtech Services (P) Ltd. v. State of U.P.*, reported in (2011) 9 SCC 354.
- ii) *Dohil Constructions Co. (P) Ltd. v. Nahar Exports Ltd.*, reported in (2015) 1 SCC 680.
- iii) *State of U.P. v. Dayanand Chakrawarty*, reported in (2013) 7 SCC 595.

6. In this regard it may be useful to refer to the judgment of Shiba Shankar Mohapatra and others v. State of Orissa and Others, reported in 2010 12 SCC 471, which relied upon the judgment of B.S.Bajwa v. State of Punjab wherein it was found that writ petitions questioning seniority/ promotion must be filed within a reasonable period and that 3 – 4 years was held to be a reasonable period. The relevant portion is held as under :

“23. In *B.S. Bajwa v. State of Punjab* [(1998) 2 SCC 523 : 1998 SCC (L&S) 611] this Court while deciding the similar issue reiterated the same view, observing as under : (SCC p. 526, para 7)

“7. ... It is well settled that in service matters the *question of seniority should not be reopened in such situations after the lapse of a reasonable period* because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a



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grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition.”

(emphasis added)

.....

30. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal, this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.”

(emphasis supplied)

7. In the light of the above discussion, this Court is of the view that the writ petition is hit by laches and thus not entitled to discretionary relief under Article 226 of the Constitution. In view thereof, the writ petition stands dismissed. No Costs.

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Speaking (or) Non Speaking Order

Index: Yes/No

Neutral Citation: Yes/No

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To:



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MOHAMMED SHAFFIQ, J.

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