



WEB COPY



W.A.No.2974 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 17.10.2024

DELIVERED ON: 12.11.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.2974 of 2024

P.Tharabai

.. Appellant

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



W.A.No.2974 of 2024

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 02.02.2024 made in W.P.No.6915 of 2022.

For Appellant : Mrs.Y.Kavitha
for M/s.PVS.Giridhar Associates

JUDGMENT

D.KRISHNAKUMAR, J.

The writ petitioner is the appellant herein. She filed the aforesaid writ petition for a 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 from July 2014 with arrears of pension and all other consequential benefits.

2. Learned Single Judge, taking into consideration of the fact that the writ petitioner having retired from service on superannuation on 30.06.2014, seeks to absorb her as Lower Division Clerk that too after a period of eight years from the date of her retirement and by relying upon the Division Bench of this Court in W.P.Nos.27213 of 2021 etc., batch cases, has dismissed the writ petition as devoid of merits. Being



W.A.No.2974 of 2024

aggrieved by the same, the writ petitioner has filed the present writ appeal.

3. The learned counsel for the appellant mainly relied upon the case of similarly placed persons namely Mrs.P.P.Bridget, Estate Clerk and Others, wherein pursuant to the orders of the Hon'ble Supreme Court in CA.No.5564 and 5565 of 2010, the order passed in O.A.No.249/2022 dated 31.03.2004 was implemented by granting absorption as Lower Division Clerk with effect from the date of their appointment as Estate Clerks and failure to grant her the benefit of absorption with effect from the date of her initial appointment is arbitrary and discriminatory and therefore, prays for setting aside the order of the Writ Court.

4. Heard the learned counsel for the appellant and perused the materials on record.

5. The issue is no longer res integra. A Division Bench of this Court had an occasion to deal with a similar issue in the case of *Union of*



W.A.No.2974 of 2024

India and Others v. R.Parvathy [W.P.Nos.27213 of 2021 etc., batch

dated 21.09.2023], wherein all the grounds raised by the appellant have been elaborately considered by us and observed as under:

"9. Be that as it may, admittedly, the respondents were engaged as Estate Clerks in various periods during the years 1978 to 1982, by way of back-door entry, without following any procedure or recruitment process and without any legal sanctity. They were absorbed into regular service as Lower Division Clerks between the years 2000 and 2010, based on the directions of the Hon'ble Supreme Court in Civil Appeal No.5677 of 1994 dated 27.08.1999. The said decision to regularize the respondents in the post of Lower Division Clerk is a concession given by the appellants' Department. Since the initial appointment of the respondents itself is by way of backdoor entry, without following regular recruitment process, their claim for regularization from the date of initial appointment as Estate Clerks, that too after they retired on attaining the age of superannuation, is liable to be rejected in the light of the decision of the Hon'ble Supreme Court in ***Secretary to Government, School Education Department, Chennai v. Govindaswamy and Others [(2014) 4 SCC 769]***, wherein the Supreme Court has held as follows:

*"8. This Court in **State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193**, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:*

"8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance,



W.A.No.2974 of 2024

WEB COPY

*unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, **back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.**" (emphasis supplied)*

10. The Tribunal, in the impugned order, has placed heavy reliance on the judgment of the Apex Court in Civil Appeal No.5677 of 1994 dated 27.08.1999. However the said judgment cannot be cited as a precedent in future as observed by the Hon'ble Apex Court and issues therein were left open. In the light of the decision of the Hon'ble Supreme Court in **Govindaswamy's case**, the claim of the applicants / respondents is liable to be rejected.

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



W.A.No.2974 of 2024

WEB COPY

& 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 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***



WEB COPY



W.A.No.2974 of 2024

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 i.e., 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 C.A.No.5677/1994 dated 27.08.1999, that too after they attained the age of superannuation between the years 2010 to 2014. 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.

13. The Tribunal has failed to consider the factual aspects in a proper perspective and simply relied upon the order passed by the Apex Court in respect of similarly placed persons and passed the impugned order, which in the considered opinion of this Court, warrants interference.

14. In the light of the reasons assigned above, the Writ Petition stands allowed and the order of the Central Administrative Tribunal, Madras Bench in O.A.Nos.730, 727, 728, 731, 725, 726, 729 of 2018 dated 01.04.2021 are set aside."



W.A.No.2974 of 2024

WEB COPY

6. The aforesaid Division Bench decision of this Court squarely applies to the facts of the present case. In the light of the fact that the claim of similarly placed persons have been rejected by a Division Bench of this Court, divergent view cannot be taken and therefore, claim of the writ petitioner / appellant cannot be considered. The Writ Court has rightly taken into consideration the aforesaid decision of the Division Bench of this Court and dismissed the claim of the writ petitioner/appellant as devoid of merits and therefore, the order of the Writ Court does not warrant interference.

7. The Writ Appeal stands dismissed. No costs.

[D.K.K., J.,] [P.B.B., J.]
12.11.2024

Index:yes/no

Internet:yes

Jvm

To

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



W.A.No.2974 of 2024

WEB COPY

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.



WEB COPY



W.A.No.2974 of 2024

**D.KRISHNAKUMAR, J.,
&**

P.B.BALAJI, J.

Jvm

**Judgment in
W.A.No.2974 of 2024**

12.11.2024