



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 24.11.2023

Judgment Pronounced on : 12.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

And

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No. 29282 of 2019

K. Dayalan

.. Petitioner

Versus

1. Union of India
Represented by the Chief Postmaster General
Tamil Nadu Circle, Chennai – 600 002.

2. The Manager,
Mail Motor Service
Greams Road, Chennai – 600 006.

3. The Registrar,
Central Administrative Tribunal
Madras Bench, Chennai – 600 104.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, prays to call for the records from the files of the 3rd respondent Tribunal in OA/310/00700/2019 and quash the order made therein dated 14.08.2019.

For Petitioner : Mr.K.M. Ramesh, Senior Counsel
For Mr.V. Subramani

For Respondents : Mr.N. Ramesh,



Senior Standing Counsel
[Central Administrative Tribunal]



ORDER

WEB COPY

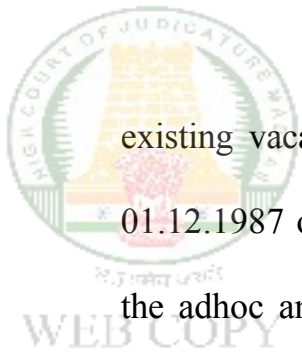
N. SENTHILKUMAR, J.

This Writ Petition has been filed challenging the impugned order passed by the 3rd Respondent Central Administrative Tribunal, Madras Bench, in OA/310/00700/2019 dated 14.08.2019 whereby the Petitioner'

The relevant **facts** leading to the filing of the present Writ Petition, as averred by the Petitioner, is as follows:

2. The petitioner was sponsored by the Employment Exchange for the post of a Daily Wage Driver. The second respondent informed the petitioner by a letter dated 18.03.1995, to come in person along with the relevant documents. There was a further letter issued dated 15.04.1995 calling for the Petitioner to attend a personal interview and scrutiny of all documents. After scrutinizing all the relevant documents, the Petitioner was engaged as Daily Wage Driver from 19.04.1985. On 25.04.1987, he was informed by the second respondent that he was provisionally selected for engagement as casual Driver on daily wage basis.

3. *Vide* letter dated 16.11.1987, the second respondent directed the petitioner to undergo medical examination and to produce certificate regarding his fitness. Subsequently, the Petitioner was appointed, *vide* order of the 2nd Respondent dated 30.11.1987 as a Motor, Jeep, Lorry and Staff Car driver with the scale of pay of being Rs.950-1500 in the

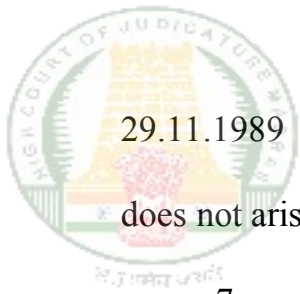


existing vacancies in the 2nd Respondent Mail Motor Service, Madras, with effect from 01.12.1987 on temporary and adhoc basis. On 31.12.1987, the second respondent extended the adhoc and temporary appointment of the Petitioner for a period of two months from 29.02.1988. Again, by order dated 31.05.1988 the adhoc appointment was extended for a period of six months from 01.06.1988 to 30.11.1988. As per the Petitioner, the second respondent thereafter issued a Corrigendum dated 24.06.1988 stating that the word “adhoc” appearing in the initial order and the subsequent extension orders treated as deleted and by order dated 08.12.1988, the “adhoc” appointment was extended until further orders.

4. According to the petitioner, his services were confirmed by order dated 06.12.1994 with effect from 01.01.1994 and he was promoted to Grade-II Driver by way of Memo dated 30.01.2008 with effect from 01.02.2008. On 23.12.2010, he was promoted to Grade-I Driver and was further promoted to Special Grade Driver vide order dated 28.02.2019.

5. While things stood thus, the petitioner gave a representation on 19.09.2018 requesting the 2nd Respondent to regularize his service with effect from 19.04.1985 instead of 01.12.1987. The Petitioner submitted a further representation dated 26.12.2018 to the respondents along with a copy of the order passed in O.A.Nos.288, 737 and 838 of 2009, dated 20.10.2010, passed by the 3rd Respondent wherein the claim for retrospective regularization of co-employees of the petitioner was considered and granted.

6. The 2nd respondent herein, by a letter dated 20.02.2019, disposed the Petitioner's representation stating that he was appointed as a Casual Leave Driver prior to



29.11.1989 and the question of regularization of the service prior to regular appointment does not arise as per Dte. Letter 45-95/87-SPB-I, dated 12.04.1991.

WEB COPY

7. The Petitioner, being aggrieved by the said letter of the 2nd Respondent rejecting the request of the Petitioner, challenged the said letter of the 2nd respondent dated 20.02.2019 before the 3rd Respondent Central Administrative Tribunal in OA/300/00700/2019. The 3rd Respondent Tribunal, *vide* the order dated 14.08.2019 which is impugned before us, dismissed the said Application filed by the Petitioner herein on the ground of delay in making a representation to the 2nd Respondent.

SUBMISSIONS:

8. The learned Senior Counsel appearing for the Petitioner submitted that the Tribunal, namely the third respondent, has given a positive direction in O.A.Nos. 288, 737 and 838 of 2009 dated 20.10.2010 to regularize the service of a few co-employees of the Petitioner, operative portion of which is extracted below:-

7. For the reasons stated above, the applicant in all these applications are also entitled for the grant of relief sought for by them. Accordingly, the applications are allowed and the orders of respective impugned orders in these applications are set aside and there will be direction to the respondents to regularize the services of the applications in the cadre of driver with retrospective effect from the date of their appointment with all the attendant benefits arising therefrom. The above exercise shall be completed within a period of six weeks. In the circumstances, there will be no order as to costs.

9. It was argued by the learned Senior Counsel for the Petitioner that based on the



order dated 20.10.2010, the petitioner had preferred a representation dated 26.12.2018 to the 2nd respondent to regularize the service that he rendered from 19.04.1985 instead of

01.12.1987, which was rejected by the 2nd Respondent vide a letter dated 20.02.2019,

which is extracted below:-

“No. MSE/B9-7/CL, dated 20.02.2019 at Chennai – 600 006,

Sub : Regularization of the temporary service – reg.

Ref : 1) C.O. Letter No. ESB/300-MMS GDS dlgs 2013, dated 18.11.2013 2) Your representation dated 26.12.2018 received in two separate covers.

Since, you were appointed as CL driver prior to 29.11.1989, regularization of the service prior to regular appointment does not arise as per the Directorate Letter No. 45-95/87-SPB-1, dated 12.04.1991. Further, it is intimated that the case referred in your letter dated cited above 26.12.2018 in respect of Shri A. Raman & R. Angusamy are case specific. Hence, your request could not be acceded to.

Manager,

MMS,

Chennai-600 006.”

10. The learned Senior Counsel vehemently contended that the second respondent did not follow the order passed by the 3rd Respondent in the above OAs and therefore, the petitioner challenged the order of the 2nd Respondent before the 3rd Respondent.

11. It is the submission of the learned Senior Counsel for the Petitioner that dismissal of OA.No./310/00700/2019 by the 3rd Respondent Tribunal is absolutely in



deviation of its earlier order in O.A.Nos.288, 737 & 838 of 2009, and that the petitioner's service is entitled to retrospective regularization based on the order in the above OAs. The learned Senior Counsel further contended that the Tribunal did not consider the various representations made by the petitioner herein to regularise his service and his application was summarily rejected by the Tribunal.

12. Per contra, the learned Senior Standing Counsel (CAT) appearing for the respondents would contend that it is not in dispute that the petitioner was engaged only as a Daily Wage Driver purely on a temporary basis since April, 1985.

13. It was submitted that the petitioner was appointed as a Time Scale Driver provisionally, vide 2nd respondent's Memo No. MSE/B9-19/IV dated 30.11.1987 by following the recruitment Rules and the petitioner assumed charge on 01.12.1987. The Petitioner's appointment was confirmed on 01.01.1994 and then he was promoted as Grade-II Driver with effect from 01.02.2008. The relevant portion of the Counter Affidavit filed on behalf of the 2nd Respondent is extracted below:-

"The petitioner was then confirmed on 01.01.1994 vide 2nd respondent order No. MSE/B15-2/Ch./VII, dated 06.12.94 and promoted as Grade II Driver with effect from 01.02.2008 vide first respondent order No. STA/37-110/07, dated 30.01.08. Further, the petitioner was promoted as Grade I Driver with effect from 24.10.2010 vide first respondent order No. STA/37-186/2005, dated 23.12.2010. Subsequently the petitioner was promoted as Special Grade Driver with effect from 07.07.2018 vide 1st respondent order No. STA/37-186/2013, dated 28.06.2018."

14. The learned Senior Standing Counsel for the respondents contended that the petitioner vide its representation dated 19.09.2018 and 26.12.2018 seeking to regularize his temporary service from 19.04.1985 to 01.12.1987 as a Casual Wage Driver. It was



submitted that though the petitioner has relied upon an order passed by the 3rd Respondent Tribunal in O.A.Nos. 288, 737 & 838 of 2009, there was a delay of 31 years in seeking to regularize his “*Adhoc*” service between 19.04.1985 to 01.12.1987. Learned Senior Standing Counsel for the Respondents further contended that, even after a positive direction was passed by the Tribunal dated 26.10.2010 in O.A.Nos.288, 737 & 838 of 2009, the petitioner has waited for almost 9 years and did not make any attempt to regularise his service. The Learned Senior Standing Counsel therefore submitted that the 3rd Respondent Tribunal was right in dismissing the application at the threshold due to the delay and laches of the Petitioner in seeking regularization.

15. The Learned Senior Standing Counsel further relied upon various precedents in support of his submissions for the following propositions:

- i. **State of UP and Others Vs. Arvind Kumar Srivatsava, (2015) 1 SCC 347** for the proposition that delay and laches is material in considering an application filed for regularization.
- ii. **Dhampur Sugar Mills Limited vs. Bhola Singh, 2005 SCC (L&S) 292**, on the proposition that when a workman is appointed in terms of a scheme of daily wages, he does not derive any legal right to be regularized in service even after completion of 240 days of continuous service in a year, since that may not by itself be a ground for directing regularization, particularly in a case when the workman had not been appointed in accordance with the extant rules.



iii.

The Chief Commissioner of Income Tax & others v. Susheela Prasanna &

others, (2007) 12 SCC 402, for the proposition that that regularization of an employee employed on a casual basis without following procedure for appointment on permanent basis, is not regular and cannot be regularised.

iv.

Harminder Kaur and Others Vs. Union of India & Others, (2009) 13 SCC

90, for the proposition that long Ad-hoc contractual service, without following recruitment rules, and calling for applications is irregular.

v.

Accounts Officer, APSRTC Vs. Ramana and Others, 2007 (1) L.L.J. 1042,

for the proposition that absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or adhoc employees dehors the rules and constitutional scheme of public employment, cannot be granted by the Courts and even if the contract labourers or casual workers or Adhoc employees have worked for a long period they cannot be regularized dehors the rules for selection.

vi.

Kendriya Vidyalaya Sangathan Vs. L.V. Subramanyeswara, (2007) 5 SCC

326, wherein the Hon'ble Supreme Court held that candidates not selected by regular selection committee and appointed on adhoc basis in leave vacancies, even if they worked for a long time, cannot be regularized.

It was submitted that by the Learned Senior Standing Counsel for the Respondents that in view of the judgments cited supra and the Recruitment Rules on the subject, the petitioner seeking regularization of his adhoc services as daily wage driver purely on temporary and



need basis from April 1985 till his regular appointment on 01.12.1987 is not entertained in the eyes of law.

DISCUSSION:

16. We have heard the learned Senior Counsel for the Petitioner, and the Learned Senior Standing Counsel for the Respondents, and have perused the materials available on record.

17. The Writ Petition challenges an order dated 14.08.2019 passed by the 3rd Respondent Tribunal. *Vide* the said impugned order, the Tribunal dismissed the application filed by the Petitioner challenging an order dated 20.02.2019 passed by the 2nd Respondent. The impugned order before the Tribunal was issued pursuant to the Petitioner's representations dated 19.09.2018 and 26.12.2018.

18. A perusal of the affidavit filed in support of the Writ Petition and the arguments advanced on behalf of both the Petitioner and the Respondents before us make it clear that the scope of the present Writ Petition is on the question of whether the 3rd Respondent Tribunal was right in dismissing the application of the Petitioner challenging the 2nd Respondent's order, at the threshold stage.

19. A perusal of the impugned order passed by the 3rd Respondent would reveal that the application filed by the Petitioner has been dismissed on the ground of delay and latches. Relying on the judgment of the Hon'ble Supreme Court in *State of U.P & Ors. v.*



Arvind Kumar Srivastava & Ors., (2015) 1 SCC 347, the Tribunal has held thus (relevant portions extracted):

“3. ...Therefore, it is clear that the cause of action in the instant case arose actually in the year 2010 itself. Thereafter, no action was taken by the application till the year 2019 when he filed this OA. It is also seen that the first representation was made by the application on 19.09.2018, i.e., after a period of more than eight years...There is no explanation offered by the applicant as to why he did not approach the Tribunal for such a long time.

*...
From the above, it is clear that the applicant was a fence-sitter and he slept over the matter till 2019 and has now come before this Tribunal seeking a similar relief which was passed by this Tribunal in 2010 in O.A.Nos.288, 737 & 838 of 2009. The applicant could not give any explanation for the inordinate delay and the OA is clearly barred by limitation as per Section 21 of the AT Act.*

4. Accordingly, the OA is dismissed at the threshold itself as barred by limitation. No costs.”

20. It is relevant to refer to affidavit filed in support of the Writ Petition, and also the arguments advanced on behalf of the Petitioner, on the grounds of challenge to the impugned order:

i. That the cause of action for filing the application before the 3rd Respondent arose only in 2019 when the Petitioner's representations were rejected.

ii. The finding of the 3rd Respondent Tribunal that the application filed by the Petitioner was barred by limitation as per Section 21 of the Administrative Tribunals Act, 1985, is erroneous in view of the fact that the Petitioner had approached the Tribunal within the time prescribed under Section 21 of the said Act.

21. At this juncture, it is important to note the essence of the impugned order before us. Though the final portion of the impugned order ends with the line:

“3. ...The application could not give any explanation for the inordinate delay and



the OA is clearly barred by limitation. So, this OA cannot be entertained as it is hopelessly barred by limitation as per Section 21 of the AT Act.

22. The relevant portions of Sections 20 and 21 of the Administrative Tribunals Act, 1985 reads as thus:

“20.Applications not to be admitted unless other remedies exhausted.—

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,—

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance...

21. Limitation - (1) A Tribunal shall not admit an application,—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made...”

23. Though the application of the Petitioner before the 3rd Respondent Tribunal was filed within one year from the date of order of the 2nd Respondent (20.02.2019), we are able to discern that the application of the Petitioner was dismissed by the 3rd Respondent on the ground of delay and laches on the part of the Petitioner in agitating the issue. This is evident from the impugned order where the Tribunal holds that as follows:



WEB COPY

“3. ...From the above, it is clear that the applicant was a fence-sitter and he slept over the matter till 2019 and has now come before this Tribunal seeking a similar relief which was passed by this Tribunal in 2010 in O.A.Nos.288, 737 & 838 of 2009. The applicant could not give any explanation for the inordinate delay.”

24. The question of delay and laches on the part of the Petitioner was also vehemently argued by both the parties. The learned Senior Counsel for the Petitioner argued that the Petitioner approached the 2nd Respondent only based on the order of the 3rd Respondent Tribunal in the applications filed by allegedly similarly-situated employees. Learned Senior Standing Counsel for the Respondents vehemently argued that the Petitioner is late by almost three decades in agitating the issue.

25. On the question of delay and laches, the only point that needs consideration is whether the Petitioner has invoked his legal remedy within a reasonable time after being aggrieved by a wrong.

26. In the present case, the Petitioner, as evident from the Application filed before the 3rd Respondent Tribunal, and also in the affidavit filed in support of the present application, has not explained the delay in approaching the 2nd Respondent for regularisation. The relevant portion of the affidavit filed in support of the Writ Petition is as follows:

“6. I submit that on coming to know that some of my colleagues who also worked on casual/ad hoc basis and subsequently regularized in service, approached the Hon'ble Central Administrative Tribunal for granting retrospective regularisation from the date of their initial entry in to service. I submitted a representation dated 19.09.2018 to regularise



my service with effect from 19.04.1985 instead of 01.12.1987....”

We also note that the 3rd Respondent Tribunal, in the impugned order, has also recorded absence of any reason on the part of the Petitioner in approaching the 2nd Respondent.

WEB COPY

27. At the cost of repetition, it is important to note the judgment of the Hon’ble

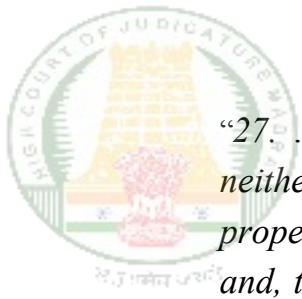
Supreme Court in ***State of U.P &Ors. v. Arvind Kumar Srivastava &Ors., (2015) 1 SCC***

347:

“22.1. The 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.

22.2. However, this principle is subject to well-recognised 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 the claim.”

28. The Hon’ble Supreme Court, in ***State of Uttaranchal v. Sri Shiv Charan Singh Bhandari, (2013) 12 SCC 179***, while considering the issue regarding delay and laches in a case of promotion, referring to earlier judgments on the issue, opined as follows:



WEB COPY

“27.Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion.

28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court.

29. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time.”

29. Recently in **State of U.P v. Rajmati Singh, 2022 SCC OnLine SC 1785**, the

Hon'ble Supreme Court, held as follows:

“20. Taking into consideration the cumulative effect of the facts in this case, coupled with the legal principles cited above, we are satisfied that the claim of the respondent is stale, highly belated, time-barred, and the same ought not to have been entertained by the Tribunal or the High Court after a span of over three decades.

21. We reiterate that undue sympathy and a perceived liberal approach by a judicial forum can lead to significant adverse consequences. It not only gives rise to illegitimate expectations in



themind offencesittingemployees, but also leads to undueburdens on the public exchequer.”

30. It is clear from the above judgments of the Hon'ble Supreme Court that in the absence of any acceptable reasons given by the petitioner in explaining the delay in approaching the 2nd Respondent for regularisation, the Petitioner is not entitled to any reliefs regarding the same. The Petitioner could have approached the 2nd Respondent for regularisation even before an order was passed in respect of similarly-placed employees in 2010. The Petitioner's services having been confirmed by order dated 06.12.1994 with effect from 01.01.1994, the Petitioner has come up with a representation on 19.09.2018 to regularise his services rendered on a daily-wagebasis between 19.04.1985 to 01.12.1987. There has been a delay of more than 24 years. But even going by the Petitioner's own averments, the Petitioner has approached the 2nd Respondent after a lapse of more than 8 years from the date of the order passed by the 3rd Respondent Tribunal in O.A.Nos. 288, 737 and 838 of 2009. This Court does not wish to attend to undue sympathy sought for by the Petitioner under the guise of reliance on previous orders passed by the Tribunal in an allegedly similar matter.

31. We are aware of the fact that entering into any Government Service by way of a temporary appointment is purely for a particular purpose. When the department has given promotion at various stages, the conduct of the petitioner only shows that the Petitioner has acquiesced to his initial services as a daily-wage driver and was not keen in getting his service regularized.



32. Therefore, we are not inclined to interfere with the impugned order passed by the 3rd Respondent Tribunal for the reason that the Tribunal has rightly held that the request of the Petitioner with the 2nd Respondent suffers from inordinate delay and laches, which has not explained in any manner. The order of the Central Administrative Tribunal in OA/300/00700/2019, dated 14.08.2019, is thereby confirmed.

33. With the above observations, the Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions, if any, are closed.

[D.K.K., J] [N.S., J]
12.01.2024

Index: Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
MSM

To
The Chief Postmaster General
1. Union of India,
Tamil Nadu Circle, Chennai – 600 002.

2. The Manager,
Mail Motor Service
Greens Road, Chennai – 600 006.

3. The Registrar,



Central Administrative Tribunal
Madras Bench, Chennai – 600 104.



WEB COPY

D. KRISHNAKUMAR, J
and
N. SENTHILKUMAR, J

MSM



WEB COPY



Pre-Delivery Judgment in
W.P.No. 29282 of 2019

Delivered on
12.01.2024