



W.P.(MD) No.12979 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.12979 of 2021

and

W.M.P.(MD) No.10043 of 2021

A.M.S.Kathija

... Petitioner

Vs.

- 1.The Government of Tamilnadu,
Rep., by its Secretary to Government,
Revenue Department and Disaster
Management Department,
Secretariat, Chennai-600 009.
- 2.The Director of Survey and Settlement Officer,
Survey House, Chepauk,
Chennai-600 005.
- 3.The Additional Director of Survey and
Land Records,
Survey House, Chepauk,
Chennai-600 005.
- 4.The Assistant Director,
Survey and Land Records Office,
Madurai-650 020.



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5. The Joint Director,
Central Survey Office,
Chepauk, Chennai-600 005.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in Na.Ka.Gnal/42629/2010(Nee.A) dated 17.09.2012 and consequential proceedings in Na.Ka.Gnal/26320/2020(Nee.A) dated 28.04.2021 and quash the same and consequently direct the respondents to promote the petitioner with effect from 30.10.1998 with all attendant benefits.

For Petitioner	:	Mr.S.Chellapandian for Mr.D.R.Selvin Jeyakkumaran
For Respondents	:	Mr.N.GA.Natraj Government Advocate

ORDER

This writ petition has been filed questioning the proceedings in Na.Ka.Gnal/42629/2010(Nee.A), dated 17.09.2012 and the consequential proceedings in Na.Ka.Gnal/26320/2020(Nee.A), dated 28.04.2021, wherein the claim of the petitioner for promotion to the post of Head Draftsman with retrospective effect was negatived on the ground of delay.



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2.1. The undisputed facts that are relevant for the disposal of the writ petition are as follows:

2.2. The petitioner herein was initially appointed as Draftsman on 02.09.1980 and thereafter, she was promoted to the post of Grade Draftsman, Head Draftsman and Technical Manager on 05.07.1984, 21.10.1999 and 03.07.2007 respectively. Finally, the petitioner was also promoted to the post of Technical Officer and retired from service on 28.02.2018. The claim that was made by the petitioner for promotion to the post of Head Draftsman with effect from 30.10.1998, instead of her actual date of promotion, i.e., 21.10.1999, was negatived by the 2nd respondent by passing the impugned order dated 17.09.2012.

2.3. The petitioner, who was promoted to the post of Head Draftsman on 21.10.1999, for the first time raised a dispute about her entitlement for promotion to the post with effect from 30.10.1998 by submitting a representation in the year 2009 and the same was rejected by the 2nd respondent by passing the impugned order in the year 2012. Thereafter,



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the petitioner got further promotions and finally retired from service on 28.02.2018. It is only thereafter, the petitioner made claim for promotion with retrospective effect in the cadre of Head Draftsman and the same was negatived by the 2nd respondent by passing the proceedings dated 28.04.2021 duly intimating the petitioner that her claim was negatived as early as on 17.09.2012. Aggrieved by the said proceedings, dated 28.04.2021, the petitioner approached this Court by filing this writ petition.

3. As already noted above, the grievance of the petitioner if at all has got any substance, that relates back to the year 1998 when her juniors were promoted ahead of the petitioner. Even thereafter, the petitioner accepted her promotion in the year 1999 and kept quiet without raising any little finger till 2009. Even that objection raised by the petitioner in the year 2009 was negatived in the year 2012. In spite of the same, the petitioner has not chosen to agitate her rights till she retired from service on 28.02.2018. It is only in the year 2021, the petitioner approached this Court by filing the present writ petition.



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4. Further, the alleged juniors, who are promoted a head of the petitioner and against whom the petitioner has chosen to make several allegations and the manner in which they got exemption from the requisite qualification etc., are not made parties to the writ petition. This Court, having taken note of the same, by order dated 14.08.2023, directed the petitioner to implead the effected parties. But so far, no steps have been taken to implead the persons, who are stated to be the juniors to the petitioner, but promoted ahead of the petitioner.

5. Learned counsel for the petitioner placed reliance on a decision of the Hon'ble Apex Court in the case of ***Chairman, State Bank of India vs. M.J.James⁽ⁱ⁾*** contending that laches are unlike limitation and is flexible and contended that delay and laches may not apply to the case on hand, as the action of the respondents is a continuous wrong and therefore, the question of delay and laches does not arise in the case on hand.

(i) (2022) 2 SCC 301



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6. This Court has thoroughly gone through the order of the Hon'ble Apex Court and the Hon'ble Apex Court has been pleased to hold at Paragraph No.40 as under:

“40. Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person. [See Vidyavathi Kapoor Trust v. CIT, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] Given the aforesaid legal position, inactive acquiescence on the part of the respondent can be inferred till the filing of the appeal, and not for the period post filing of the appeal. Nevertheless, this acquiescence being in the nature of estoppel bars the respondent from claiming violation of the right of fair representation.”



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7. The Hon'ble Apex Court, in the above decision, has been pleased to hold that acquiescence virtually destroys the right of the person. In the case on hand also, it is not as if the petitioner is not aware of the promotion of her juniors a head of her. Though the petitioner is fully aware of the promotion given to her juniors in the year 1998, she kept quiet till the year 2009 and made complaint for the first time only in the year 2009 and when such complaint was negatived in the year 2012, she kept quiet till the date of her retirement in the year 2018. Thus, the petitioner is fully aware of the factum of her juniors being promoted a head of her and thereafter also, the petitioner was promoted by two stages only after her juniors were promoted, but the petitioner consciously slept over for more than a decade and therefore, this Court is not inclined to entertain the writ petition and the same is accordingly dismissed on the ground of delay and laches. No costs. Consequently, connected miscellaneous petition is closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes

26.02.2024

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MUMMINENI SUDHEER KUMAR, J.

ABR

To

1. The Secretary to Government,
The Government of Tamilnadu,
Revenue Department and Disaster
Management Department,
Secretariat, Chennai-600 009.
2. The Director of Survey and Settlement Officer,
Survey House, Chepauk,
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3. The Additional Director of Survey and
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