



WA(MD). No.4 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 08/04/2024

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**The Hon`ble Mr.Justice N.SESHASAYEE
and
The Hon`ble Mr.Justice P.VADAMALAI**

**WA(MD). No.4 of 2018
and CMP(MD) No.18 of 2018**

1.State of Tamil Nadu
Represented by the
Commissioner cum Secretary to Government
Public Works Department
Fort St. George,
Chennai 9

2.The Chief Engineer (General)
Public Works Department
Chepauk, Chennai 5

3.The Assistant Executive Engineer (i/c)
Buildings and Construction Sub Division,
Thuckalay
Kanyakumari District

... Appellants

Vs

1.V.Thankavale

2.The Accountant General
Anna Salai, Chennai 18.

... Respondents



For Appellants : M/s.V.Nirmal Kumar
Government Advocate
For Respondents : Ms.M.Padmavathy for R1
Mr.P.Gunasekaran for R2

(Judgment of the Court was delivered by N.SESHASAYEE, J.)

2. The facts are as below:

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for more than five years experience as on 24.11.1970. This benefit was extended to the petitioner.

- b) On 09.01.1971, by an order, the Government had redesignated the Work Assistant as Technical Assistant. Subsequently, on 03.02.1973, the Government came out with another Government order in G.O.Ms.No.142 Public Works Department and prescribed minimum educational qualification for Work Assistant, now known as Technical Assistant. The qualification thus prescribed was possession of a Diploma or a Degree, but the petitioner possessed neither.
- c) In these circumstances, the petitioner was redesignated to the next lower post, namely, Work Inspector after he was posted as Work Assistant. According to the petitioner, this has happened after 13 years.
- d) While so, the petitioner had superannuated sometime in 1994. Some 14 years thereafter, the petitioner had approached the third



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respondent with a representation to redesignate him to the original post as Work Assistant based on an order passed by the State Administrative Tribunal dated 24.11.1970. This came to be rejected on 29.11.2018 and that had become the subject matter of the present writ petition.

3. The third respondent had filed his counter, wherein, it is inter-alia pleaded that the petition is hit by laches and contended that original order dated 29.01.1974, by which the Government had retrospectively given effect to G.O.Ms.No.142 dated 03.02.1973 was not challenged, which implies, that the petitioner's challenge is about 34 years old, since he was redesignated, and some 14 years after his superannuation.

4. As outlined earlier in the opening paragraph, this petition was considered by the learned Single Judge along with another case, wherein, the learned Judge has relied on an order passed by this Court in WA(MD) Nos.581, 582 and 602 of 1984, whereunder this Court has directed that any clarification subsequently prescribed cannot be given retrospective effect to affect all those who have already entered a post.



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6. Mr.V.Nirmal Kumar, learned Government Advocate, made a pointed submission that the present petition was inordinately delayed and in fitness of things, the appellant should have challenged the original order dated 29.01.1974, by which he was redesignated from the post of Work Assistant to a Work Inspector post on G.O.Ms.No.142 dated 03.02.1973. But that was not done. Today, this will have enormous financial implications on the State, and hence this Court may not condone the delay of 34 years in granting a relief to one, who had all the opportunity of challenging it when he was still in service.

7. Per contra, the learned counsel for the writ petitioner/first respondent herein submitted that while delay may be a factor that the Court may reckon but it cannot be the sole ground for refusing to invoke this Court's jurisdiction under Article 226 of the Constitution.

8. Rival submissions are carefully weighed. While as a general proposition that delay and laches may not be the sole criteria that may influence a Court in invoke its jurisdiction under Article 226 of the Constitution, to condone the same depends on the facts and



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circumstances affecting each particular case.

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9. Here is a case where the writ petitioner had all the opportunity to challenge it but he chose to challenge it some 14 years after his superannuation. This is plainly inexplicable. Having stated thus, when this Court had passed its order in a batch of writ appeals in WA Nos.581, 582 and 602 of 1984 that itself was a notice to the respondents/appellants herein to correct all the records vis-a-vis, those who were similarly affected by the retrospective application of G.O.Ms.No.142 dated 03.02.1973.

10. That the petitioner ought to have claimed his right is one part, but it should also be underscored that it is the duty of the Government to implement what is due to its servants. This Court, therefore, chooses to strike a balance to provide some degree of comfort to this writ petitioner.

11. In the result, this appeal is partially allowed. The respondents are directed to redesignate the writ petitioner as Technical Assistant from 29.01.1974. However, he would not be entitled to any arrears of salary



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based on such re-designation nor pension till 09.06.2016, the date on which, the learned Single Judge has passed its order. In other words, the writ petitioner would be entitled to pension, based on the re-designation only from 09.06.2016. The appellants are directed to complete the process within a period of three months (12 weeks) from the date of receipt of the judgment. No costs. Consequently connected Miscellaneous Petition is closed.

(N.S.S.,J.) (P.V.M.,J.)
08.04.2024

NCC : Yes/No
Index : Yes/No

RR
TO

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**N.SESHASAYEE, J.
and
P.VADAMALAI, J.**

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