



W.A.(MD).No.835 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.07.2024

PRONOUNCED ON : 01.08.2024

CORAM

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

W.A.(MD).No.835 of 2018

Rev.Fr.S.Basil Xavier

... Appellant/Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Higher Education,
Fort St.George, Chennai - 600 009.

2.The Director of Collegiate Education,
College Road, Chennai - 600 006.

3.The Joint Director of Collegiate Education,
Madurai Region,
Madurai - 625 001.

4.Madurai Kamaraj University,
Palkalai Nagar,
Madurai - 625 021.
(not pressed because it is not a necessary party)

5.The Secretary,
Arul Anandar College (Autonomous)
Karumathur,
Madurai - 625 514.

... Respondents/Respondents



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, praying to set aside the order dated 20.02.2018 in W.P.(MD).No.3460 of 2018, allow the Writ Petition as prayed for.

For Appellant : Mr.K.Ragatheeshkumar
for M/s.Isaac Chambers
For R-1 to R-3 : Mr.D.Sadiq Raja
Additional Government Pleader
For R-4 & R-5 : No appearance

JUDGMENT

(Judgment of the Court was made by K.RAJASEKAR,J.)

This intra-Court appeal is filed by the writ petitioner aggrieved over the rejection of his claim to direct the third respondent to approve the writ petitioner's appointment as Lecturer in Philosophy from his original date of appointment with effect from 01.07.1998 and disburse the grant-in-aid towards the salary and allowances from the said date.

2. The case of the writ petitioner is that he is working as a Lecturer in Philosophy in the fifth respondent College. He was originally appointed on 01.07.1998 in the sanctioned vacant post of Lecturer in Philosophy in the



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fifth respondent College. After his appointment, the College has submitted a proposal to the third respondent seeking for approval of the writ petitioner's appointment and sanction for grant-in-aid for the said post. As per the proceedings of the third respondent dated 23.02.2000, the writ petitioner's appointment was approved with effect from 28.10.1999. The grievance of the writ petitioner is that he was appointed on 01.07.1998, whereas, the approval was granted with effect from 28.10.1999. Hence, he has sent a representation dated 14.06.2002 seeking to rectify the same. However, no action was taken by the third respondent in this regard. Thereafter, the writ petitioner has also made several oral representations to the second and third respondents to grant approval from his original date of appointment, i.e., 01.07.1998. Due to their inaction, the writ petitioner has lost the promotional opportunities including promotion to the post of Principal of the College and hence, he has approached this Court by filing Writ Petition.

3. The learned Single Judge, after hearing the parties, has dismissed the Writ Petition on the ground of laches. The learned Single Judge has observed that technically also, the Writ Petition is not maintainable and



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there is a delay of 18 years in filing the Writ Petition, that too, without challenging the order of approval, which was passed in the year 2000. It is also observed by the learned Single Judge that if the writ petitioner's prayer is granted, it would certainly have a bearing on the inter se seniority of the other teaching staff working in the same college and accordingly, the Writ Petition was dismissed.

4. Aggrieved over the order passed by the learned Single Judge, the writ petitioner has come forward with this Writ Appeal claiming that in the matters of service benefits, a fresh cause of action arises every month when the employee is being paid his monthly salary on the basis of a wrong computation made contrary to the Rules. Hence, the question of limitation would not apply to the service matters.

5. The learned counsel for the appellant/writ petitioner submitted that the appellant is continuously pursuing his claim by approaching the authorities to redress his grievance and the learned Single Judge has not properly appreciated his claim and dismissed the Writ Petition. He would further submit that the approval for the purpose of appointment of any



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teaching staff in the private aided colleges in the sanctioned post is only a procedural aspect and it is not mandatory for the Management to get prior approval for appointment of teaching staff. Since the writ petitioner was appointed in the sanctioned vacant post on 01.07.1998, the approval shall also be granted with effect from the date of appointment. In support of his submissions, the learned counsel has relied on the following judgments:

(i) Judgment of the Division Bench of this Court in ***N.Jwahar and others Vs. The Government of Tamil Nadu, Represented by its Secretary to Government and others*** in ***W.A.Nos.815, 1532 and 1691 to 1693 of 2010 dated 07.07.2011***,

(ii) Judgment of the Hon'ble Apex Court in ***Tukaram Kana Joshi and others Vs. Maharashtra Industrial Development Corporation and others*** reported in ***(2013) 1 SCC 353*** and

(iii) Judgment of the Division Bench of this Court in ***P.Ravichandran Vs. State of Tamil Nadu, represented by Secretary to Government, Department of Higher Education, Chennai and others*** reported in ***(2013) 7 MLJ 641***.

6. Per contra, the learned Additional Government Pleader appearing for the respondents 1 to 3 submits that it is true that the writ petitioner had



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been appointed in the year 1998 and approval was accorded on 23.02.2000 with effect from 28.10.1999 for the academic year 1999-2000. After passing of this order, the appellant has not challenged the same and unless the same is challenged, the appellant is not entitled to claim any relief in this Writ Appeal. Since this order is not challenged, the same is binding on the appellant and he cannot once again demand by filing a Writ of Mandamus to issue fresh approval from the date of his original appointment. He would further submit that the appellant has approached this Court belatedly nearly after 18 years and the third party inter se seniority issue is also accrued. Hence, the delay could not be condoned in this proceedings and thereby, he prays for dismissal of the Writ Appeal.

7. We have considered the submissions made on both sides and perused the materials available on record.

8. The Division Bench of this Court, in ***P.Ravichandran Vs. State of Tamil Nadu*** cited supra, has considered the requirement of getting prior permission to fill up vacant post in the aided colleges and held that there is no requirement under the Tamil Nadu Private Colleges (Regulation) Act,



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1976 and Tamil Nadu Private Colleges (Regulation) Rules, 1976 to seek prior permission to fill up any vacant post in an aided college, which has already been sanctioned for the academic year by the Director of Collegiate Education under Rule 11(1) of the Rules. It is further held that only after the Regional Joint Director finds that the appointment was made in violation of any of the statutory provision, grant in aid to that person to be denied. If there is no rival candidate for any post, the appointment made by the College Committee is bound to be approved for the purpose of payment of pay and allowances by the Regional Joint Director of Collegiate Education. These observations made by the Division Bench clarifies that there is no need for prior permission for appointment, if the post is already a sanctioned vacant post. However, the approval is mandate for payment of pay and allowances to the candidate of the post appointed.

9. In this case, the appellant was appointed on 01.07.1998 and the proposal for approval of his appointment was forwarded to the Regional Director of Collegiate Education on 09.11.1998. The third respondent issued proceedings dated 23.02.2000 approving the appellant's appointment with effect from 28.10.1999 only. So far, this order has not been challenged



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by the appellant herein. Instead of challenging the approval order, the appellant has come forward with the Writ of Mandamus seeking to grant approval from 01.07.1998. He claims that he has also sent a representation in the year 2002 itself and thereafter, he approached the respondents 2 and 3 and orally requested them to modify the approval order. Except these averments, the appellant has not produced any document to substantiate that he has continuously demanded or sent representations to explain the delay in approaching this Court.

10. The Division Bench of this Court in ***N.Jawahar and others Vs. The Government of Tamil Nadu and others*** in ***W.A.Nos.815, 1531 and 1691 to 1693 of 2010 dated 07.07.2011***, while considering the claim for extending certain monetary benefits, has observed in paragraphs 16 to 18 as follows:

“16. The Supreme Court has carved out an exception to the Rule regarding laches in the matter of belated service related claims. The Supreme Court in a series of judgments evolved the concept of continuing wrong which gave rise to a recurring cause of action each time the employee was paid his salary which was not computed in accordance with.



17. In *M.R. Gupta vs. Union of India* (1995 (5) SCC 628), the Supreme Court observed that so long as the employee is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules and he would be entitled to be paid according to the properly fixed pay scale in future and the question of limitation would arise only for recovery of the arrears for the past period.

18. The Supreme Court in *Union of India and others vs. Tarsem Singh* 2008 (8) SCC 648, held that where a service related claim is based on a continuing wrong, relief could be granted inspite of long delay. The Supreme Court said:-

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be



entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition." "

11. The Hon'ble Apex Court in ***Tukaram Kana Joshi and others Vs. Maharashtra Industrial Development Corporation and others*** cited supra, while dealing with the question of condonation of delay in entertaining the Writ Petitions, has held in paragraphs 13 and 14 as follows:

“13. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the courts to exercise their powers under Article 226, nor is it that there can never be a case where the courts cannot interfere in a matter, after the passage of a



certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide P.S. Sadasivaswamy v. State of T.N. [(1975) 1 SCC 152 : 1975 SCC (L&S) 22 : AIR 1974 SC 2271] , State of M.P. v. Nandlal Jaiswal [(1986) 4 SCC 566 : AIR 1987 SC 251] and Tridip Kumar Dingal v. State of W.B. [(2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119])

14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide Durga Prashad v. Chief Controller of Imports and



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Exports [(1969) 1 SCC 185 : AIR 1970 SC 769] , Collector (LA) v. Katiji [(1987) 2 SCC 107 : 1989 SCC (Tax) 172 : AIR 1987 SC 1353] , Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur [(1992) 2 SCC 598 : AIR 1993 SC 802] , Dayal Singh v. Union of India [(2003) 2 SCC 593 : AIR 2003 SC 1140] and Shankara Coop. Housing Society Ltd. v. M. Prabhakar [(2011) 5 SCC 607 : (2011) 3 SCC (Civ) 56 : AIR 2011 SC 2161] .)”

12. In this case, the appellant herein claims that due to improper fixation of the appointment date, he has lost the promotional avenue as a Principal of the College. The issue relates not only to his appointment, but it will also reopen the issue of settled rights of third parties and issue of promotion, which would be consequence, if the plea of the appellant is accepted. The appellant has approached this Court belatedly, that too, without challenging the approval order after a lapse of almost 18 years. The learned Single Judge had dismissed the case of the appellant on the ground that the latches and inordinate delay has already created third party interest by way of inter se seniority. Hence, considering the case of the appellant at this stage is not proper. The pleadings of the appellant would clearly reveal that loss of one year seniority has resulted in losing the promotional post of



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Principal of the College. As held by the Apex Court in *Union of India and others Vs. Tarsem Singh* cited supra, if the third party rights were involved, then even the claim relating to monetary benefits could not be considered. Even though no hard and fast Rule can be laid down in exercising jurisdiction under Article 226 of the Constitution of India, since the appellant has moved this Court after a considerable delay, which is unexplained, we find that no justified conduct exists to entertain his claim. Accordingly, we are of the view that the learned Single Judge has rightly dismissed the Writ Petition and we are not inclined to interfere with the order of the learned Single Judge.

13. In the result, the Writ Appeal stands dismissed and the order of the learned Single Judge passed in W.P.(MD).No.3460 of 2018 dated 20.02.2018 stands confirmed. There shall be no order as to costs.

(A.D.J.C.,J.) (K.R.S.,J.)
01.08.2024

NCC : Yes / No
Index : Yes / No
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To

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Department of Higher Education,
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