



W.A.(MD).Nos.991 & 992 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 02.08.2024

PRONOUNCED ON : 21.08.2024

CORAM

**THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDRA
AND
THE HON'BLE MR. JUSTICE K. RAJASEKAR**

W.A.(MD).Nos.991 & 992 of 2018

W.A.(MD).No.991 of 2018:

J.R.Prabhakaran

... Appellant/Petitioner

vs.

1. The Registrar,
Madurai Kamaraj University,
Madurai – 21.

2. K. Sundaramoorthi

3. K.Manoharan

4. K.L.Prabhakaran

5. S.Rajendran

6. R.Malaichamy

7. Arun Kumar

8. Uthayasurian

... Respondents/ Respondents



W.A.(MD).Nos.991 & 992 of 2018

Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order passed by this Court in W.P.(MD).No.19134 of 2015, dated 30.01.2018 in so far as upholding the proceedings dated 14.11.2005 is concerned.

W.A.(MD).No.992 of 2018:

S.Rajan

... Appellant/Petitioner

vs.

1. The Registrar,
Madurai Kamaraj University,
Madurai – 21.
2. K. Sundaramoorthi
3. K.Manoharan
4. K.L.Prabhakaran
5. S.Rajendran
6. R.Malaichamy
7. Arun Kumar
8. Uthayasurian
9. A.Tamilselvi
10. S.Subramanian
11. S.Thulasiram
12. K.Bala
13. A.Pandiaraj
14. T.Chellapandian
15. P.Suguna



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16. C.Ramesh

17. R.Jeyamahendran

... Respondents/ Respondents

Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order passed by this Court in W.P.(MD).No.19135 of 2015, dated 30.01.2018 in so far as upholding the proceedings dated 14.11.2005 is concerned.

For Appellants in both appeals : Mr.V.Panneer Selvam

For R1 : Mr.T.Sakthi Kumaran

For R2 to R9, R11 to R13 & R15 : No appearance

For R14 : Mr.S.Ramasamy
For Mr.Alagarsamy

COMMON JUDGMENT

[Judgment of the Court was delivered by K.RAJASEKAR,J.,]

Writ Appeals have been filed challenging the common order passed by a learned Single Judge in W.P.Nos.19134 and 19135 of 2015, dated 30.01.2018, whereby, the learned Single Judge has partly allowed the Writ Petitions by extending the pay benefits from their original date of promotion i.e., 29.12.2011 to their promoted post.



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2. Aggrieved over the denial of seniority in the promotional post these Writ Appeals have been filed.

3. The case of the Writ Petitioners is as follows:

The Writ Petitioners were appointed in the post of Attenders on compassionate grounds in the year 2001. In the year 2005, they were asked to participate in the written test along with other casual labourers and NMRs for appointment in the post of Clerks. Accordingly, these Writ Petitioners were appointed as Clerks with effect from 14.11.2005 and they have been permitted to continue under old pension scheme. As per letter dated 12.06.2007, it was stated that their seniority was fixed based on the mark secured in the test. But marks were not published till now. Subsequently, the Writ Petitioners were promoted to the post of Assistant. Immediately, the Writ Petitioners sent representation requesting fixation of the seniority on the basis of their original appointment as Attender at the next level promotional post of Superintendent. As per order dated 29.12.2011, the Writ Petitioners were promoted jointly in the post of Superintendent. In the meantime, there was allegation that improper



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regularization of persons working in the University and Commission for enquiry was ordered in this regard. After submission of report by the Commission, by way of proceedings dated 27.03.2013, a seniority list was published in which, the Writ Petitioner viz., J.R.Prabakaran was placed in Serial No.1 and another Writ Petitioner S.Rajan was placed in Serial No.22. The placing of persons who have been promoted in the year 2013 on par with the Writ Petitioners who have been promoted in the year 2011 is not valid and hence they have immediately sent representation to re-fix their seniority with effect from 29.11.2011 on the basis of their original date of joining in the year 2001. This re-fixation of the seniority in the year 2013 is not proper and aggrieved over the same, they have come forward with the Writ Petitions.

4. The case of the respondents is that these Writ Petitioners' were appointed as per Office Memorandum dated 11.11.2001 on compassionate ground. Even though they were eligible to be appointed as Clerk since there was no vacancy they were appointed in the post of Attenders with a condition that they have to complete in M S office [computer course] within one year, failing which, no increment would be granted. In the year



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2005, the Syndicate has decided to regularise the persons who were working on contractual basis or NMRs and appoint them in the post of Clerk. In that process, the Writ Petitioners who were working as Attenders were permitted to appear for the test for appointing them in the post of Clerk. Based on the test conducted, the Writ Petitioners' were appointed in the post of Clerk and their seniority was fixed based on the date of appointment as Clerk by a proceeding dated 14.11.2005. Based on the representations submitted by the Writ Petitioners', as per proceedings dated 12.06.2007, the service of the Writ Petitioners' rendered prior to 01.04.2003 was taken as qualifying service for pension. Accordingly, the Old Pension Scheme was extended to them with a rider that their seniority would be only based on the date of their appointment in the post of Clerk. It was not objected by the Writ Petitioners' at that point of time and they have accepted the proceedings dated 12.06.2007. Subsequently, on 29.12.2011, the Writ Petitioners' were promoted to the post of Superintendent with a condition that they shall accept the seniority set out in the Official Memorandum dated 14.11.2005. They were also directed to execute a written undertaking accepting the seniority, accordingly, they have also accepted the same. The Syndicate in the meeting held on 09.01.2013 had



considered the question of seniority of individuals appointed during November 2005 and resolved to accept the Committee Report to incorporate modifications in the seniority list. Accordingly, the seniority list was updated. The Writ Petitioners' have challenged the re-fixation of scale of pay in Memorandum dated 27.03.2013 and they have not challenged the Syndicate Resolution dated 09.01.2013 or re-fixation of seniority under Memorandum dated 31.01.2013. Thereby, the orders of seniority still holds good and the Writ Petitioners' have no valid ground to challenge the seniority list and the Writ Petitions are liable to be dismissed.

5. After considering the submissions of both sides, a learned Single Judge in his order in para 5 as observed as follows:

“5.It is beyond dispute that the Writ Petitioners did not question the seniority list dated 14.11.2005, even when promotion to the post of Superintendent was given on 29.12.2011. It has been specifically mentioned therein that promotion is given to the petitioners on condition that they should accept the seniority as informed to them vide memo dated 14.11.2005. In other words, promotions were given to the petitioners by incorporating the aforesaid condition. The petitioners did not question the incorporation of such condition in their promotion order dated 29.12.2011. Therefore, the petitioners are clearly estopped in law from challenging the same. However, there is considerable merit in the contention



that the university acted illegally and arbitrarily in fixing the petitioners pay in the post of Superintendent from the subsequent date namely 31.01.2013. When the Writ Petitioners had admittedly joined pursuant to the promotion orders dated 29.12.2011 in the promoted post, their pay in the promoted post should also be fixed only from the said date. Therefore, the impugned order dated 27.03.2013 is quashed to that extent insofar as the petitioners are concerned. However, the petitioners are bound by the condition set out in the aforesaid order dated 29.12.2011 that the seniority as informed to them vide memo dated 14.11.2005 will hold good.”

6. Aggrieved over the above findings, the Writ Petitioners have approached this Court by way of these Appeals.

7. The learned counsel appearing for the appellant in both appeals would contend that the re-fixation of the seniority as per Memorandum dated 31.01.2013 is not valid since they are originally appointed in the year 2001 and placing them along with other persons while appointing them as Clerk in the year 2005 is not proper. The learned counsel for the appellants would further contend that in the matter of seniority, the date of appointment is very important and in this case, the initial appointment of the Writ Petitioners in the year 2001 and their services were also taken into



consideration for calculating the pension and they have been placed along with the persons who have directly appointed in the post of Clerk in the year 2005 is also not proper. Similarly, the modified seniority list in the post of Superintendent is also illegal since these Writ Petitioners were promoted in the year 2011 itself whereas, others were promoted only in the year 2013. The modification of the seniority list in the year 2013 has caused serious prejudice to the Writ Petitioners' and it prevents further promotions to the Writ Petitioners.

8. Per Contra, the learned counsel for the respondents would submit that in the year 2005 itself, the seniority of the Writ Petitioners along with respondents has been fixed and in every proceedings, which were issued at the time of promoting the Writ Petitioners, there is a condition that these Writ Petitioners shall accept the seniority fixed on 14.11.2005. Even at the time of promoting them as Superintendent in the year 2011 also there was a specific condition that they shall accept the seniority fixed on 14.11.2005. They were also been directed to execute the written undertaking that they will accept the seniority fixed on 14.11.2005. Thereby, having accepted the seniority list at the time of availing the benefit of promotion, now they



cannot turn back and say that the seniority list is bad or the condition fixing the seniority list based on 14.11.2005 is illegal.

9. In support of his contention, the learned counsel for the respondents relied on the Apex Court Judgments passed in ***P.S.Gopinathan vs. State of Kerala and Others [2008 (7) SCC 70]*** and ***Shiba Shankar Mohapatra and Others vs. State of Orissa and Others [2010 (12) SCC 471]***.

10. We have considered the submissions made on both sides and perused the records.

11. On a careful analysis of the various entries taken place in the service history of the Writ Petitioners' shows that these Writ Petitioners were appointed on compassionate grounds on 11.01.2001 and they have been directed to complete MS Office Computer course within a period of one year from the date of appointment and in default, they are not eligible for any increment. It also shows that this appointment is purely on temporary basis and will be cancelled at any time without assigning any reasons. Subsequently, on 14.11.2005, these Writ Petitioners' were



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appointed in the post of Clerks along with 46 others. In the appointment orders, it has been stated that the seniority has been fixed based on the marks secured in the entrance test. One of the condition in the appointment order that their appointment is made subject to the condition that they shall not claim any weightage or fixation of seniority or protection of salary for the service in any other appointments to be made in future. They were asked to execute a bond in the enclosed format and report to the Madurai Kamaraj University, Madurai along with the Joining Report.

12. It is an admitted case that the Writ Petitioners' have accepted the seniority fixed and joined in the post of Clerk as per Memorandum dated 14.11.2005. Thereafter, based on the resolutions passed by the Syndicate dated 17.05.2007, the past service rendered by the Writ Petitioners as Attenders, prior to the introduction of new contributory pension scheme was taken into consideration and they were permitted to continue under the old pension scheme. However, it has been clarified that the seniority position and other terms of conditions noted in the Official Memorandum dated 14.11.2005 and 24.11.2005 holds good. These letters shows that the Writ Petitioners' were permitted to avail the benefit of old benefit scheme,



however, their seniority position shall be remain the same as stated in the Memorandum dated 14.11.2005. The Writ Petitioners have not raised any issue regarding the seniority at this stage also. Subsequently, on 29.11.2012, the Writ Petitioners who were working as Assistants were promoted in the post of Superintendent with a condition that they should accept the seniority as informed to them vide Office Memorandum dated 14.11.2005. The another condition prescribed is that they shall accept if there is any change in the seniority mentioned in the above order, they should also give an undertaking to the above effect.

13. It is admitted by the parties that they have executed an undertaking that they accept the promotion with a condition that their seniority will be based on the Office Memorandum dated 14.11.2005. Thereafter, as per Memorandum dated 31.01.2013, another 28 persons were promoted and revised list of promoted persons were published including the names of the Writ Petitioners' and thereafter, as per Memorandum dated 27.03.2013, the pay was fixed stating that the Writ Petitioners' were eligible to be fixation of pay only from 31.01.2013.



14. In ***P.S.Gopinathan vs. State of Kerala***, case cited supra, the

Hon'ble Apex Court has considered the acquiescence and estoppel in the matters relating to promotion and has held in para 33, 36, 37 and 38 as under:

“33.The law of equitable estoppel by acquiescence has been clearly stated by Fry, J. in Wilmott v. Barber. It has been said therein that the acquiescence which will deprive a man of his legal rights should amount to fraud. A man is not to be deprived of his legal right unless he has acted in such a way as would make it fraudulent for him to set up those rights. What, then, are the elements or requisites necessary to constitute fraud of that description, are stated thus:

(i) The plaintiff (i.e. the party pleading acquiescence) must have made a mistake as to his legal rights;

(ii) The plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of the mistaken belief;

(iii) The defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed with the right claimed by the plaintiff. If he does not know of it, he is in the same position, as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights;

(iv) The defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights; and



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(v) The defendant, the possessor of the legal right must have encouraged the plaintiff in his expenditure of money, or in the other acts which he has done, either directly or by abstaining from asserting his legal right. Where all these elements exist, there is fraud of such a nature as will entitle the court to restrain the possessor of the legal right from exercising it, but nothing short of this will do. These principles were followed and applied in many cases in India.

.....

36. Again when the fresh appointment order was issued on 15.7.1992 by the Governor and the appellant was posted on 31.7.1992 treating his first appointment order as a temporary appointment, no protest was made by him. In view of the fact that the Governor issued an order dated 15.7.1992 even when order of 14.1.1992 was in existence, it is apparent that the appointing authority has also treated the first order dated 14.1.1992 as an order of appointment on temporary basis. It is, therefore, apparent from the second appointment order that the appointing authority as well as the posting authority have all along treated the appellant as a temporary District Judge, but the appellant did not object on both occasions when he joined on 7.3.1992 and on 31.7.1992 of he being treated as temporary District Judge. The act and action of the appellant in accepting his appointment as temporary one amounts to his assent to the temporary appointment and the appellant throughout till he raised an objection on 29.10.1992 has slept on his right of being appointed permanently on the post of District & Sessions Judge. By his conduct at the time of the issuance of the order by the High Court on 29.2.1992 and thereafter issuance of the



second appointment order on 15.7.1992 with full knowledge of his own right and the act of the High Court which infringes it, led the High Court to believe that he has waived or abandoned his right.

37. Lord Campbell in Cairncross v. Lorrimer held that ".....generally speaking if a party having an interest to prevent an act being done had full notice of its being done, and acquiesce it, so as to induce a reasonable belief that he consents to it and the position of the others is altered by their giving credit to his sincerity, he has no more right to challenge the act to their prejudice than he would have had if it had been done by his previous licence.

38. The aforesaid facts clearly make out an acquiescence of the appellant of accepting order dated 14.1.1992 being treated as temporary appointment order on the post of District & Sessions Judge and he cannot now be permitted to change his position and claim the permanent appointment from 14.1.1992 to claim seniority on the post. Besides this, the High Court has rightly held that in the absence of the challenge to the second appointment order dated 15.7.1992 from the fresh panel dated 21.2.1992, that order will stand, though later in time, and has to be given effect to as an order of appointing the appellant on permanent basis under Rule 6 of the Rules".

15. In ***Shiba Shankar Mohapatra and Others*** case cited supra, the Hon'ble Apex Court has considered the delay in challenging the seniority and has held in para No.18, 19, 21, 29 and 30 as observed as follows:



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“18. The question of entertaining the petition disputing the long standing seniority filed at a belated stage is no more *res integra*. A Constitution Bench of this Court, in *Ramchandra Shanker Deodhar & Ors. v. State of Maharashtra & Ors.* AIR 1974 SC 259, considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the Court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in *Tilokchand Motichand v. H.B. Munshi*, AIR 1970 SC 898, wherein it has been observed that the principle, on which the Court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under:-

“7. ... The party claiming fundamental rights must move the Court before other rights come into existence. The action of the Courts cannot harm innocent parties if their rights emerge by reason of delay on the part of person moving the court.”

19. This Court also placed reliance upon its earlier judgment of the Constitution Bench in *R.N. Bose v. Union of India & Ors.* AIR 1970 SC 470, wherein it has been observed as under:-

“33. ... It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back



and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years."

.....

21. *The issue of challenging the seniority list, which continued to be in existence for a long time, was again considered by this Court in **K.R. Mudgal & Ors. v. R.P. Singh & Ors. AIR 1986 SC 2086**. The Court held as under:-*

"2. ...A government servant who is appointed to any post ordinarily should at least after a period of 3-4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity....."

.....

7. *...Satisfactory service conditions postulate that there shall be no sense of uncertainty amongst the Government servants created by writ petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him, should approach the Court as early as possible otherwise in addition to creation of sense of insecurity in the mind of Government servants, there shall also be administrative complication and difficulties.... In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches."*

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29. *It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the Court is guilty of delay and the laches. The Court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum. (vide [Aflatoon & Ors. vs. Lt. Governor, Delhi & Ors. AIR 1974 SC 2077](#); [State of Mysore vs. V.K. Kangan & Ors., AIR 1975 SC 2190](#); [Municipal Council, Ahmednagar & Anr. vs Shah Hyder Beig & Ors., AIR 2000 SC 671](#); [Inder Jit Gupta vs. Union of India & Ors. \(2001\) 6 SCC 637](#); [Shiv Dass vs. Union of India & Ors., AIR 2007 SC 1330](#); [Regional Manager, 2 A.P.SRTC vs. N. Satyanarayana & Ors. \(2008\) 1 SCC 210](#); and [City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla & Ors. \(2009\) 1 SCC 168](#)).*

30. *Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In [K.R. Mudgal](#) (supra), this Court has [laid down, in](#) crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation”.*



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16. In the case on hand, the challenge made in the Writ Petitions is certiorarified mandamus calling for the records pertaining to proceedings dated 27.03.2013 and quash the same and consequently, direct the respondents to fix the scale of pay in the cadre of Superintendent with effect from 29.12.2011. These Writ Petitions were filed in the month of October 2015. The prayer in the Writ Petitions shows that they have not challenged the seniority list and the challenge made is relating to pay fixation order dated 27.03.2013 and consequently, sought for re-fixation.

17. The Memorandum dated 27.03.2013 relates to fixation of pay, in which, the date of joining of the petitioners' as Superintendent has been recorded as 31.01.2013. In the Memorandum dated 31.01.2013 itself, the revised seniority list at the time of promoting them from the post of Assistants to the post of Superintendent has been published and this proceedings has not been challenged by the Writ Petitioners.

18. The prayer in the Writ Petitions also shows that they are concerned with only pay fixation and they sought for pay fixation only from their original promotion dated 29.12.2011. This prayer is allowed by the learned



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Single Judge and accordingly, it is also reported before this Court that their pay has been re-fixed. The grievance regarding fixation of seniority is also pleaded in the affidavits filed in support of the Writ Petitioners were raised only in the year 2015. The respondents herein have produced the promotion panel for the post of Senior Superintendent for the year 2012-2013, 2013-2014, 2014-2015. These panel have not been challenged by the Writ Petitioners and based on the subsequent panel they availed benefit of promotion from the post of Superintendent to the post of Senior Superintendent.

19. The Copy of the undertakings executed by the Writ Petitioners while joining in the post of Superintendent was also produced before this Court by way of additional typed set of papers, in which, it is stated that the petitioners viz., J.R.Prabhakaran and S.Rajan have joined in the promotional post of Superintendent and they agreed that they would abide by the condition stipulated in promotional order issued in the Memorandum dated 29.12.2011.



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20. As observed by the Hon'ble Apex Court in ***P.S.Gopinathan*** case cited supra, that Writ Petitioners herein have accepted the seniority list published on 14.11.2005, thereafter, based on same seniority list, various promotions till the post of Superintendent shows acquiescence of the petitioner accepting the seniority fixed on 14.11.2005. Till the year 2013, they have not come forward to challenge the same. At the time of availing the benefit of promotion given to them as per order dated 29.11.2011, they have again accepted the condition that the seniority shall be maintained as prescribed in the year 2005. Further, they have not immediately challenged the said seniority list but only after long delay, they have approached this Court that too only for the relief of re-fixation of their pay and not for challenge the seniority list.

21. Under the said circumstances, this Court is of the view that the Writ Petitioners' are estopped from raising this plea challenging the seniority. Even an erroneous or unjustified term of appointment of promotion order could not be challenged once the appellants accepted the same without any objection thereby acquiesced their seniority list and estopped from challenging later on.



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22. Accordingly, this Court finds that no interference is warranted in the order passed by the learned Single Judge and the Writ Appeals are liable to be dismissed.

23. In the result, these Writ Appeals are dismissed. No order as to costs.

(A.D.J.C., J.) (K.R.S., J.)
21.08.2024

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Index :Yes/No
Speaking Order :Yes/No
Neutral Citation Case : Yes/No



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Pre-delivery Judgment in
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