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WP(MD).5620 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.02.2025

PRONOUNCED ON : 17.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE SHAMIM AHMED

WP(MD)No.5620 of 2022

T.Koodalingam

Petitioner(s)

Vs

1. The Director General of Police, Chennai-4
2. The Commissioner of Police, Greater Chennai, Vepery, Chennai
3. The Accountant General (Accounts A&E), Pension Section
Annasalai, Chennai

Respondent(s)

Prayer:- This Writ Petition has been filed, under the Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the Respondents to accept the Pre-Foundation Course qualification of the Petitioner and to grant him a notional promotion as an Assistant Commissioner of Police with consequential monetary and pensionary service benefits.

For Petitioner(s) : Mrs.Porkodi Kannan

For Respondent(s) : Mr.P.Thambidurai, Government Advocate-RR1&2
Mr.P.Gunasekaran-R3

ORDER

1. This Writ Petition has been filed, under the Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the Respondents to accept the Pre-Foundation Course qualification of the Petitioner and to grant him a notional promotion as an Assistant Commissioner of Police



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with consequential monetary and pensionary service benefits.

2. The facts of case, in a nutshell, led to filing of this Writ Petition and necessary for disposal of same, are as follows:-

(a) The Petitioner was enlisted as a Police Constable Grade-II on 15.10.1977 in the Tamil Nadu Police with the qualification of Discontinued SSLC-1976 and then, he was promoted as a Head Constable on 27.08.1984 and was further promoted as a Sub Inspector of Police (AR) in 1991 and thereafter, he was promoted as an Inspector of Police on 14.02.2003.

(b) In 2010, when the Petitioner submitted an application, seeking promotion to the post of Assistant Commissioner of Police (AR), his name was not included in the list for promotion to the said post, due to lack of educational qualification (SSLC qualification). Thereafter, in 2013, the Petitioner passed the Pre-Foundation Course offered by the Madurai Kamaraj University, which is equivalent to the SSLC qualification. The Petitioner made several representations, seeking promotion. The Petitioner retired on 29.02.2016. In 2021, the Petitioner made a last representation on 29.11.2021, but the same has not been considered till today. Hence, this Writ Petition has been filed, seeking the relief as stated supra.

3. In the counter affidavit filed by the Respondents 1 and 2, it is stated as follows:-

(a) The Petitioner was enlisted as a Police Constable in the Tamil Nadu



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Police in 1997, with the qualification of “Discontinued SSLC” and he was promoted as a Head Constable on 27.08.1984 and then, promoted as a Sub-Inspector of Police (AR) on 31.12.1991 and thereafter, promoted as an Inspector of Police (AR) on 26.02.2003. Since his educational qualification was “SSLC Discontinued”, his name was not considered for promotion to the post of Deputy Superintendent of Police (Category 2) for the year 2009-2010.

- (b) Thereafter, in 2013, the Petitioner passed the Pre-Foundation Course offered by the Madurai Kamarajar University on 11.11.2013, which is equivalent to Secondary School Leaving Certificate, as per the G.O.Ms.No.528, dated 18.05.1985. However, as per the qualification prescribed in Sub-Rule (D) of Rule 4 of the Special Rules for the Tamil Nadu Police Service, for appointment as Deputy Superintendent of Police (Category 2), the Petitioner is educationally not qualified for promotion to the said post.
- (c) The Pre-Foundation course passed by the Petitioner is not eligible for admission to the College Course. Further, as per the G.O.Ms.No.107, dated 18.08.2009, the Government have ordered that the Degrees, obtained through Open University Scheme, after passing SSLC and HSCt (+2) in regular scheme, alone will be recognized for the purpose of employment or promotion in Public Service.
- (d) As per Government Letter No.33448/M/2010-4, dated 03.12.2010, it is clarified that a degree awarded by the Open Universities after passing



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Pre-Foundation Course and Two Years Foundation Course through Open University cannot be recognised as a degree as per the norms of the UGC. Further, as per G.O.(Ms.) No.144, dated 20.11.2017, the Pre-Foundation Course and the Foundation Course offered by various Universities in the State are not equivalent to SSLC and HSC(+2) respectively.

(e) The Petitioner retired from service as the Inspector of Police (AR) on attaining the age of superannuation on 29.02.2016. While in service, he was not able to get himself fully qualified for promotion, as per the aforesaid GO. After six years from the date of his retirement, now the Petitioner has requested notional promotion to the post of Assistant Commissioner of Police (AR)/Deputy Superintendent of Police (Category-2), without getting himself fully qualified for promotion while in service. In such circumstances, this Writ Petition is liable to be dismissed, on the ground of laches and also for want of merits.

4. This Court heard Mrs.Porkodi Kannan, the learned counsel for the Petitioner and Mr.P.Thambidurai, the learned Government Advocate for the Respondents 1 and 2 and Mr.P.Gunasekaran, the learned counsel for the 3rd Respondent.
5. The learned counsel for the Petitioner has submitted that in 2010, since his name was not included in the list for promotion to the post of Assistant Commissioner of Police (AR) due to lack of educational qualification (SSLC), subsequently, in 2013 he passed the Pre-Foundation Course,



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which is equivalent to SSLC as per GO.Nos.19 and 528, dated 18.05.1985 and hence, he is eligible for promotion to the post of Assistant Commissioner of Police (AR)/Deputy Superintendent of Police (Category-2) and that his subsequent representations, seeking promotion were not considered and thereafter, he retired on 29.02.2016 and that thereafter, he made a representation on 29.11.2021, seeking notional promotion and its consequential retirement benefits, which is not considered so far and hence, this Writ Petition has been filed.

6. Per contra, the learned Government Advocate for the Respondents 1 and 2, while reiterating averments made in their counter, has submitted that though the Petitioner retired from the service on 29.02.2016, he sent a representation belatedly only on 29.11.2021, which was more than 5 years after his retirement and this Writ Petition has been filed in the year 2022, 6 years after his retirement.
7. The learned Government Advocate has further submitted that even on merits, though the Petitioner has stated that since he had passed the Pre-Foundation Course, he is eligible to get notional promotion and its consequential benefits, but, as per G.O.(Ms.) No.144, dated 20.11.2017, the Pre-Foundation Course and the Foundation Course offered by various Universities, in the State are not equivalent to SSLC and HSC(+2) respectively, which is the criteria for such promotion and thus, the Petitioner's claim for notional promotion and consequential retirement benefits, is untenable, since he passed only the Pre-Foundation Course,



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which is not equivalent to SSLC. Therefore, this Writ Petition is liable to be dismissed, for want of merits and on the ground of laches.

8. I have given my careful and anxious consideration to the contentions put forward by the learned counsel on either side and also perused the entire materials available on record.
9. According to the Petitioner, the Petitioner was enlisted as a Police Constable Grade-II on 15.10.1977 in the Tamil Nadu Police Service, with qualification of "Discontinued SSLC" and he was promoted as a Head Constable on 27.08.1984 and was further promoted as a Sub Inspector of Police (AR) in the year 1991 and thereafter, he was promoted as an Inspector of Police on 14.02.2003.
10. In 2010, when the Petitioner submitted a petition, seeking promotion to the post of Assistant Commissioner of Police (AR), his name was not included in the list for promotion to the said post on the ground that he did not possess the required educational qualification, namely, SSLC. Thereafter, in 2013, the Petitioner passed the Pre-Foundaiton Course offered by the Madurai Kamaraj University, which according to the Petitioner, is equivalent to the SSLC qualification.
11. It is not in dispute that the Petitioner retired on 29.02.2016 and that he had made a representation on 29.11.2021, seeking notional promotion and consequential retirement benefits. Thus, it is clear that the said representation of the Petitioner was belatedly made after 5 ½ years of his retirement and that the Petitioner has filed the present Writ Petition for the



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relief claimed on 28.03.2022 almost six years after his retirement from service.

12. After perusal of records, this court finds that there is no proper and satisfactory explanation for giving such a belated representation and also filing the present Writ Petition almost six years after his retirement. Hence, the Petitioner's claim for retrospective promotion and its consequential retirement benefits is a time barred one and it cannot be sustained on the ground of laches.
13. The expression "sufficient cause" and satisfactory explanation has been held to receive a liberal construction so as to advance substantial justice and generally a delay in preferring a petition may be condoned in interest of justice where no gross negligence or deliberate inaction or lack of bona fide is imputable to parties, seeking condonation of delay. In the case of **Collector, Land Acquisition Vs. Katiji**, reported in 1987(2) SCC 107, the Honourable Supreme Court said that when substantial justice and technical considerations are taken against each other, cause of substantial justice deserves to be preferred, for, the other side cannot claim to have vested right in injustice being done because of a non deliberate delay. The Court further said that judiciary is respected not on account of its power to legalise injustice on technical grounds, but because it is capable of removing injustice and is expected to do so.
14. In the case of **P.K. Ramachandran Vs. State of Kerala**, reported in AIR 1998 SC 2276, the Honourable Supreme Court was pleased to observe



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as under:-

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“Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds.”

15. The Rules of limitation are not meant to destroy rights of parties. They virtually take away the remedy. They are meant with the objective that parties should not resort to dilatory tactics and sleep over their rights. They must seek remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The statute relating to limitation determines a life span for such legal remedy for redress of the legal injury, one has suffered. Time is precious and the wasted time would never revisit. During efflux of time, newer causes would come up, necessitating newer persons to seek legal remedy by approaching the Courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The statute providing limitation is founded on public policy. It is enshrined in the maxim ***Interest reipublicae up sit finis litium*** (it is for the general welfare that a period be put to litigation). It is for this reason that when an action becomes barred by time, the Court should be slow to ignore delay for the reason that once limitation expires, other party matures his rights on the subject with attainment of finality. Though it cannot be doubted that refusal to condone delay would result in foreclosing the suiter from putting forth his cause but



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simultaneously the party on the other hand is also entitled to sit and feel carefree after a particular length of time, getting relieved from persistent and continued litigation.

16. There is no presumption that delay in approaching the Court is always deliberate. No person gains from deliberate delaying a matter by not resorting to take appropriate legal remedy within time but then the words “sufficient cause” show that delay, if any, occurred, should not be deliberate, negligent and due to casual approach of concerned litigant, but, it should be bona fide, and, for the reasons beyond his control, and, in any case should not lack bona fide. If the explanation does not smack of lack of bona fide, the Court should show due consideration to the suiter, but, when there is apparent casual approach on the part of suiter, the approach of Court is also bound to change. Lapse on the part of litigant in approaching Court within time is understandable but a total inaction for long period of delay without any explanation whatsoever and that too in absence of showing any sincere attempt on the part of suiter, would add to his negligence, and would be relevant factor going against him.
17. I need not to burden this judgment with a catena of decisions explaining and laying down as to what should be the approach of Court on construing “sufficient cause” and it would be suffice to refer a very few of them besides those already referred.
18. In the case of **Shakuntala Devi Jain Vs. Kuntal Kumari, reported, AIR 1969 SC 575**, a three Judge Bench of the Court said that unless want of



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bona fide of such inaction or negligence as would deprive a party of the protection, the application must not be thrown out or any delay cannot be refused to be condoned.

19. The Privy Council, in the case of **Brij Indar Singh Vs. Kanshi Ram** reported in ILR (1918) 45 Cal 94, observed that true guide for a court to exercise the discretion is whether the appellant acted with reasonable diligence in prosecuting the appeal. This principle still holds good inasmuch as the aforesaid decision of Privy Council as repeatedly been referred to, and, recently in **State of Nagaland Vs. Lipok AO and others**, AIR 2005 SC 2191.
20. In the case of **Vedabai @ Vijayanatabai Baburao Vs. Shantaram Baburao Patil and others**, reported in JT 2001 (5) SC 608, the Court said that under Section 5 of the Act, 1963, it should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. In the former case consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard and the basic guiding factor is advancement of substantial justice.
21. In the case of **Pundlik Jalam Patil (dead) by LRS. Vs. Executive Engineer, Jalgaon Medium Project and Another**, reported in (2008) 17 SCC 448, in para 17 of the judgment, the Court said :-



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“...The evidence on record suggests neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and state claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and “do not slumber over their rights.”

22. In the case of **Maniben Devraj Shah Vs. Municipal Corporation of Brihan**

Mumbai, reported in 2012 (5) SCC 157, in para 18 of the judgment, the

Court said as under:-

“What needs to be emphasized is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bonafides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.”

23. In my view, the kind of explanation rendered herein does not satisfy the observations of the Honourable Supreme Court that if delay has occurred for reasons, which does not smack of mala fide, the Court should be reluctant to refuse condonation. On the contrary, I find that here is a case, which shows complete careless and reckless long delay on the part of the



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Petitioner, which has remain virtually unexplained at all. Therefore, I do not find any reason to exercise my judicial discretion exercising judiciously so as to justify the condonation of delay in the present case.

24. Seeking retrospective promotion and its consequential benefits, at this stage is highly belated and lacks justification. Even on merits, as per Sub-Rule (D) of Rule 4 of the Special Rules for the Tamil Nadu Police Service, no Reserve Inspector shall be eligible for appointment to the post of Deputy Superintendent of Police (Category-2) unless he is the holder of a SSLC Certificate, eligible for college course of study. Though it is stated by the Petitioner that since he had passed the Pre-Foundation Course, which is equivalent to SSLC, which is the criteria for promotion, he is eligible to get notional promotion and its consequential benefits, but, as per G.O.(Ms.) No.144, dated 20.11.2017, the Pre-Foundation Course and the Foundation Course offered by various Universities in the State are not equivalent to SSLC and HSC(+2) respectively and thus, it can be stated that while in service, the Petitioner was not able to get himself fully qualified for promotion. Therefore, the Petitioner's claim for notional promotion and consequential retirement benefits is untenable, since he passed only the Pre-Foundation Course, which is not equivalent to SSLC, as clarified in above said GO. Therefore, there is no merits whatsoever in this Writ Petition. Accordingly, the Petitioner's claim for retrospective promotion and its consequential retirement benefits is untenable for want of merits and on the ground of laches. Accordingly, this Writ Petition is



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liable to be dismissed.

25. In the result, in the light of the above said observations and discussions made above and in the light of the decisions referred to above, this Writ Petition is dismissed, as devoid of merits. There is no order as to costs.

17.02.2025

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation
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To

1. The Director General of Police, Chennai-4
2. The Commissioner of Police, Greater Chennai, Vepery, Chennai
3. The Accountant General (Accounts A&E), Pension Section
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SHAMIM AHMED, J.

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Pre-Delivery Order in
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