
(2011) 02 MAD CK 0183
In the Madras High Court
Case No : Writ Petition No. 46137 of 2006

K. Muthukumaraswamy

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Citation : (2011) 02 MAD CK 0183

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M. Muthappan, for the Appellant; R. Murali, Government Advocate for Respondents 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The two Petitioners herein earlier filed O.A. No. 5165 of 1992 along with one Thilagavathy seeking to set aside the earlier order of the Government, under which they were excluded as they were having only degrees in Chemistry and denied them the promotion/up gradation.

2. The Original Application came to be allowed by a final order dated 27.05.1997. The operative portion of the order of the Tribunal in para 25 reads as follows:

25. In view of the above, this application is ordered as follows:

The proceedings of the 1st Respondent in G.O. Ms. No. 723, Education, dated 14.08.1992 and G.O. Ms. No. 1081, Education, dated 19.08.89,

insofar as they exclude persons like the applicants who are degree holders in chemistry for further promotion, by up gradation, to the post of

Lecturer under the Flexible Complimentary Scheme are set aside and the

Respondents are directed to upgrade the applicants to the post of Lecturers, with effect from the date on which they have completed 10 years of service, respectively in the post of "Associate Lecturer" and give to the full service benefits. Time two months.

3. Though the time limit was stipulated as two months, the State Government did not implement the order immediately. It has only by way of G.O.

Ms. No. 392, Higher Education Department dated 26.08.1999, the order came to be implemented. By the said order, the State Government

granted up gradation to the post of Senior Lecturer on 02.03.1980 as desired by the first Petitioner and also has granted monetary benefit from

that date. Likewise in the case of the second Petitioner the up gradation was made on 01.02.1987 and the monetary benefit was granted from the

same date. It was also stated that they will be eligible to get arrears from the date of up gradation till 23.10.1997.

4. The Petitioners having obtained the arrears and the up gradation, again filed two Original Applications, viz., O.A. No. 8731 and 8732 of 2000

seeking for payment of 12% interest on the alleged delayed payment. In the said Original Applications, the Tribunal admitted the Original

Applications on 01.12.2000. In view of the abolition of the Tribunal, both the Original Applications stood transferred to this Court and were

renumbered as W.P. Nos. 46137 of 2006 and 46138 of 2006. On notices from the Tribunal, the Respondents have filed reply affidavits dated

01.03.2002 together with supporting documents.

5. The only question that arises for consideration is whether the Petitioners on account of the delayed payment of arrears have entitled for interest

in their second round of litigation.

6. The counsel for the Petitioners is not able to trace any legal provision under which interest can be ordered as a matter of right. In the absence of

any law on such subject, the only contention made by the Petitioners was that the Tribunal had granted them time for two months to comply with

the order. The interest claimed here is from the date of original up gradation and not from the date of the order of the Tribunal. If the Tribunal was

of the opinion that the Petitioners were eligible to get the amounts together with interest, the same should have been granted in the earlier order. It

is not the case of the Petitioners that in the first Original Applications that they

claimed interest and the Tribunal ordered their favour. Therefore, a claim for interest cannot be raised in an independent Original Application and should have been pleaded as part of the original claim made in earlier litigation. It is needless to state that if a relief should be claimed in a particular case and the same has not been claimed or omitted to be claimed, the same cannot be a subject matter of the second round of litigation. The principle contained in Order 2 Rule 2 will also apply to the writ proceedings.

7. In paragraph 43 of the reply affidavit, the Respondents have averred as follows:

43. From the foregoing paras, it could be seen that only reasonable and essential time required was taken to settle the arrears of the applicants.

The applicants are particular only about their arrear claims. The applicants have failed to note the number of other staff working in the Institution

and their various claims standing pending in array. The arrear claims can be settled only in the order of seniority of the receipt of sanction orders.

The time taken to settle the arrear claims is purely administrative delay. For the administrative delay, no interest can be claimed or paid. Moreover,

there is no rule or provision that exists to pay the interest. The claim of the applicants to pay the interest for the delay occurred is highly

impracticable and unjustifiable.

8. In this context, it is necessary to refer to the judgment of the Hon''ble Supreme Court in *Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi*

Vs. Sales Tax Officer, Ratlam and Others, . In paragraph 12, the Hon''ble Supreme Court observed as follows:

12. The present proceedings illustrate how a citizen who has been ordered to pay a tax can postpone the payment of the tax by prolonging legal

proceedings interminably. We have already seen that in the present case, the Appellants sought to raise additional points when he brought his

appeal before this Court by special leave; that is to say, he did not take all the points in the Writ Petition and thought of taking new points in

appeal. When leave was refused to him by this Court to take those points in appeal, he filed a new petition in the High Court and took those

points, and finding that the High Court held decided against him on the merits of those points, he has come to this Court ;but that is not all. At the

hearing of this appeal, he had filed another petition asking for leave from this Court to take some more additional points and that shows that if constructive resjudicata is not applied to such proceedings a party can file as many Writ Petitions as he likes and take one or two points every time. That clearly is opposed to considerations of public policy on which res judicata is based and would mean harassment and hardship to the opponent. Besides if such a course disallowed to be adopted, the doctrine of finality of judgments pronounced by this Court would also be materially affected. We are, therefore, satisfied that the second Writ Petition filed by the Appellant in the present case is barred by constructive res judicata.

9. In the light of the Petitioners not having claimed any such amount or interest in the previous round of litigation and not challenged the earlier order, a separate claim for interest in an independent proceedings is not maintainable. Further, there is no law providing for such direct payment. Hence, the Writ Petitions stand dismissed. No costs.