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**(1986) 04 MAD CK 0008**

**In the Madras High Court**

**Case No :** Writ Petition No's. 2616 and 5202 of 1983

P.R. Seetharaman

APPELLANT

Vs

Government of Tamil Nadu and Others

RESPONDENT

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**Date of Decision :** 23-04-1986

**Acts Referred:**

Constitution of India, 1950 — Article 226

Limitation Act, 1963 — Section 3

Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 20, 39

**Citation :** AIR 1988 Mad 45

**Hon'ble Judges :** Nainar Sundaram, J

**Bench :** Single Bench

**Advocate :** G. Subramaniam, T.R. Mainand and T. Srimivasaraghavan, for the Appellant; K. Chandru and Chandrasekharan, Government Advocate, for the Respondent

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## Judgement

Nainar Sundaram, J.—In these two writ petitions, there is no need to encumber the order, with more facts than necessary, because of a

formidable proposition, which the real contestant in these Writ petitions finds it insurmountable and which requires countenance in view of the legal

position. It is better to refer to the parties either by their names or by their designations rather than by their array in these two writ petitions, which

is dissimilar.

2. Madura College, a private college, governed by the Tamil Nadu Private Colleges (Regulation) Act. 1976, hereinafter referred to as the Act

offered Post Graduate degree courses also at the relevant point of time and also satisfied the student strength prescribed, thereby coming within the

rule laid down for having a post of a Manager. On 19-1-1979, the director of Collegiate Education, Madras, permitted Madura College to have

the post of Manager on purely temporary basis, for a period up to 31-5-1979. It must be pointed out that, on the introduction of Plus 2 system in

the schools with effect from 1978, and withdrawal of Pre-University course in colleges with effect from June 1979, the prescribed student strength

of the Madura College, which enabled it to have a Manager, naturally fell down thereafter. The stand of Madura College is that the order of the

Director of Collegiate Education dt. 19-1-1979 had this contingency contemplated when it sanctioned the post only up to 31-5-1979. On 25-1-

1979 R. Sundaram a Bachelor of Arts, working as a junior assistant in the Madurai College, was appointed, on temporary basis, to the post of

Manager, Madura college and he was informed that the post was purely temporary till 31-5-1979 and he would be reverted back to his original

post on 1-6-1979 if the post of manager was not continued and if he was interested to accept the offer of appointment, he should join duty in the

above post immediately. I am told that R. Sundaram joined duty as Manager on 27-1-1979. On 31-5-1979 Madurai College informed R.

Sundaram that the post of manager was not continued, since the sanction was given up to 31-5-1979 and accordingly he was reverted back to his

original post with effect from 1-6-1979 as junior assistant. It is admitted by Mr.K.Chandru, learned counsel appearing for Mr. R. Sundaram that

the order was served on his client on the very same day, viz, 31-5-1979. One G. G. David, general secretary of the Tamil Nadu on-teaching staff

Association, Madurai, addressed a letter dt. 10-6-1979, to the Director of Collegiate Education Madras stating that he had received an appeal

from R. Sundaram of Madurai College, who was reverted as junior assistant as per order dt. 31-5-1979 and the said G. G. David referred to

certain Government Orders providing job security and the necessity -to continue the post of the manager in Madurai college and ultimately

requested the Director of Collegiate, Education to take adequate steps to restore the post of manager to R. Sundaram. A copy of the

communication is found disclosed in the files produced by Mr. P. Chandrasekharan, Government Advocate, who appears for the Government of

Tamil Nadu and the Director of Collegiate Education, Madras. It is nobody's case that this communication from G. G. David, for whatever it is

worth, ever reached the Government of Tamil Nadu, who is the appellate authority prescribed under R. 14 of the Rules framed under the Act, to

hear appeals under S. 20 of the Act. I shall presently refer to S. 20 of the Act, since a controversy has been raised with reference to the

implications arising from its language. On 11-10-1979, R. Sundaram presented an appeal petition to the Government of Tamil Nadu, whereby

after setting forth the justification there for, he prayed for setting aside the order, of Madura College, reverting him to the post of Junior Assistant,

from post of Manager. In this appeal petition, there is a reference to the appeal given through G. G. David on 10-6-1979, to the Director of

Collegiate education. This appeal petition dt. 11-10-1979 necessitated remarks being called for from Madurai college by the Director of

Collegiate education, Madura, and Madura college offered its remarks therefor. I am not referring to these proceedings in detail, because in my

view, the salient point raised by the petitioners in these writ petitions can be adjudicated even without reference to the factual merits of the case.

Ultimately, on 10-3-1983, the Government of Tamil Nadu, department of education, Science and Technology, by the impugned G.O.Ms. No.

448 dt. 10-3-1983, restored R. Sundaram as manager in Madura College retrospectively from 1-6-1979, on the grounds of violation of its

proceedings relating to job-security to certain personnel and non-obtaining of the prior approval of the competent authority under the Act; and

further directed the Director of Collegiate education to allow the post of Manager in the said college, irrespective of the student strength of the

college; and taking note of its proceedings, on the question of job security, laid down that Madura college shall be eligible for the post of Manager

only so long as R.Sundaram continues to hold the post. The impugned Government Order further directed Madura college to pay R. S. Sundaram

the, difference in salary between 1-6-1979 till the date of his restoration, from out of their own finance, denying Government grant during the said

period, on the ground that Madura College reduced R. Sundaram from his rank without following the rules. The petitioner in W. P. 5202 of 1983

is Madura College Board and therein the first respondent is the Government of Tamil Nadu, the second respondent is the Director of Collegiate

education and the third respondent is R. Sundaram. In W.P. 2616 of 1983, one P. R. Seethiraman, Head clerk of Madura College, is the

petitioner and he claim himself to be a competitor for the post of manager in Madura College. In that writ petition the Government of Tamil Nadu is

the first respondent; the Director of Collegiate Education is the second respondent; Madura College is the third respondent and R. Sundaram is the fourth respondent. In both the writ petitions the same Government Order is the subject-matter of impeachment.

3. According to the petitioners, against the order dt. 31-5-1979, ""Text Removed 31-5-1979, whereby R. Sundaram. was sent back to his original

post as junior assistant, no appeal was competent, since the said order cannot fit in within the ambit of S. 20 of the Act. S. 20 of the Act reads as

follows :

20. Appeal against orders of punishment imposed on teachers and other persons employed in private colleges: Any teacher, or other person

employed in any private college-

(a) who is dismissed removed or reduced in rank or whose appointment is otherwise terminated; or

(b) whose pay or allowance or any those conditions of service are altered or interpreted to his disadvantage, by any order, may prefer an appeal

against such order to such authority or officer as may be prescribed; and different authorities or officers may be prescribed for different classes of

private colleges.

Explanation : - In this section, the expression "order" includes any order made on or after the date of commencement of this Act in any disciplinary

proceedings which, was pending on that date.

Learned counsel for the petitioners would urge that the very sanction for appointment was only for a specified duration up to 31-5-1979 and the

post itself lapsed and hence the incumbent therein would naturally have to be sent back to his original post as junior assistant and it is not a case of

dismissal, removal or reduction in rank or the appointment getting otherwise terminated and equity so it is not a case, where the pay or allowances

or any condition of service getting altered or interpreted to the disadvantage of the employee within the meaning of the provision and hence an

appeal under S. 20 was incompetent to the Government of Tamil Nadu.

4. Mr. K. Chandru, learned counsel for R. Sundaram, would contend otherwise stating that his client's salary and status were reduced by the

order dt. 31-5-1979, and even if the case could not come within S. 20(a), certainly it would come within S. 20(b) of the Act, and hence an appeal

was competent. Submissions and citations were surfeit indeed on this question. However, learned counsel for the petitioners would build an

alternative argument and this has proved to be a formidable one for R Sundaram to surmount. The argument advanced is that assuming the appeal

could be laid under S. 20, even then it had come to be filed beyond time and hence the Government of Tamil Nadu was incompetent to hear the

appeal and pass the impugned Government Order. S. 39(I) of the Act prescribes the time limit for preferring any appeal under the Act and it reads

as follows :

39. Time for appeal and powers of appellate authority :-

(1). No appeal under any provision of this Act shall be preferred after the expiry of one month from the date on which the order, decision or

direction appealed against, was received by the appellant;

Provided, that the appellate authority may, in its discretion, allow further time not exceeding one month for preferring any such appeal if it is

satisfied that the appellant had sufficient cause for not preferring the appeal in time.

As we could see from the above provision, no appeal under any provision of the Act shall be preferred after the expiry of one month from the date

on which the order decision, or direction appealed against was received by the appellant. I have already pointed out that it is the admitted position

that the order which was put in issue in the appeal before the Government of Tamil Nadu, on which alone the-impugned Government Order had

come to be passed was received by R. Sundaram on the very same day namely, 31-5-1979. The initial period of one month had lapsed by the end

on June 1979. The proviso to sub-sec. (1) of S. 39 permits the appellate authority, in its discretion, to allow further time not exceeding one month

for preferring such-appeal, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time. Even this one month period

had lapsed by the end of July 1979. Patently, the appeal presented by R. Sundaram on 11-10-1979, was barred by limitation. I am not able to get

any convincing answer from the learned counsel appearing for R. Sundaram as to how these features, factual and legal, could be omitted to be

taken note of by the appellate authority, namely, the Government of Tamil Nadu, when it chose to entertain the appeal and pass the impugned

Government Order. Significantly, the Government of Tamil Nadu has not filed any counter affidavit offering any explanation for this legal lacuna,

supported by factual data. In the affidavit filed in support of W. P. 5202 of 1983, there is a specific reference to the bar of limitation in ground (1)

of para 10 and it reads as follows -

10 (1). Against the order of the Management dt. 31-5-1979 the 3rd respondent has preferred the appeal to the 1st respondent on 11-10-1979

after a lapse of four months and ten days. Under S. 39 of the Act, the time fixed for appeal is one month and the appellate authority may allow

further time not exceeding one month for sufficient cause shown. The appeal filed by the 3rd respondent is" clearly barred by limitation and could

not have been lawfully entertained by the first respondent.

The counter affidavit filed by R. Sundaram to this writ petition does not answer this point at all. A similar contention on the question of limitation

has also been raised in the affidavit filed in support of W.P. 2616 of 1983. Here again, the counter filed by R. Sundaram in this writ petition does

not answer this question at all.

The well settled rule of limitation is that any proceeding, including an appeal initiated after the prescribed period. subject to exceptions once again

prescribed therefore, shall not have countenance and should be dismissed in limine, although limitation has not been set up as defence. This rule is

not confined to proceedings before the courts alone, but also to statutory tribunals. Equally so, it is well settled that it is not competent to a party to

waive a plea of limitation, so as to absolve the authority from its duty in this behalf.

5. To put it in other words, the bar of limitation does not depend upon its being set up by any party. It is the duty of the court or the statutory

Tribunal to find out, whenever a proceeding is presented before it, as to whether the presentation is within the time, prescribed therefore by the

statute: It will be different matter if the proceedings presented have set out requisite particulars, such as the receipt of the copy of the order of other

relevant data for computation of the period of limitation, showing that the presentation of the proceedings is within the time prescribed. In such a

contingency, the court or the Tribunal can prima facie proceed with the matter, apparently accepting the averments made therefor. In the present

case, the relevant particulars are completely lacking in the appeal petition. Naturally, a distinction has to be drawn between a case where limitation becomes an arguable point, after the plea thereof is raised by the opposite party controverting the allegations set out in the basic proceedings, presented before the court or the statutory tribunal and a case where the very particulars, as they stand disclosed, patently and non-controversially make out that the presentation is out of time. The present case falls under latter category. In the appeal petition dt. 1-10-1979, the date of the order passed by the Madura college is referred to as 31-5-1979, and we get date of presentation of the appeal petition as 11- 10-1979. It is not even claimed (and, of course, in the present case, such a claim could not be projected because of the admitted position) that the order was served, on a date later than 31-5-1979. When we see this factual position, this court has to conclude, that there was a patent error committed by the Government of Tamil Nadu in entertaining the appeal petition, which was out of time, and deciding it on merits. It has been the uniform view of the courts that the court has to dismiss such proceedings, even though the limitation has not been set up as a defence. It has also been the view of the courts that if the inferior forum decides such proceedings, even though the initiation of the proceedings was beyond time, yet the higher forum would certainly interfere and set at naught the order passed by the inferior forum, which it was not competent to pass, in view of the bar of limitation. I do not think the above propositions require the citation of any authority.

6. Mr. K. Chandru, learned counsel appearing for R. Sundaram, would submit that Madura college when called upon to offer its remarks on the appeal petition of R.Sundaram did not raise the plea of limitation at all. The discussion, which has preceded, provides an answer for this contention. Even otherwise, Mr. T. R. Mani learned counsel appearing for Madura College, would submit that. it was only on 17-11-1982, when a query was asked as to whether the approval of the competent authority was obtained before passing the order reverting R. Sundaram, the Madura College got a scent that the appeal is one under S. 20 of the Act and not earlier and in, any event the want of plea on the part of Madura College is no ground to absolve the Government of Tamil Nadu from its obligation, to dismiss the appeal petition as time barred as enjoined by

law. Mr. Chandru, learned counsel appearing for R. Sundaram would also contend that as against the impugned order, under S. 21 of the Act, a second appeal is competent to the Tribunal and all those questions could also be gone into before the tribunal in the second appeal. In fact, learned counsel points out that the petitioner in W.P. 2616 of 1981 has, after the filing of the writ petition, resorted to such an appeal and the said second appeal is pending disposal. When we find that the order that has come to be passed is patently an unsustainable and an incompetent one, and when we do not get any convincing answer with regard to the plea of limitation, I do not think that it will be proper on the part of this court to relegate the matter to any such second appeal" Furthermore, I must point out that the second appeal will be competent only when the matter could fall within S. 20(a) of the Act and not otherwise. That question is also not beyond controversy, as I have already indicated. The parties are at loggerheads as to whether S. 20 would be attracted at all. But the very case of Mr. K. Chandru is that the appeal was preferred and entertained only under S. 20 of the Act. Accepting this Position, the bar of limitation is inescapable. In this view, I have not proposed to touch the other controversies arising between the parties. On the simple ground that "the impugned Government Order had come to be passed on appeal petition presented beyond time prescribed therefor, I am obliged to countenance the case of the writ petitioners for quashing the same. The learned counsel for R. Sundaram. would urge that the petitioner in W.P. 2616 of 1983 is not an aggrieved person so as to invoke the writ jurisdiction of this court, this point has practically receded to insignificance, in view of the fact that the competency of Madura College to maintain the writ petition for the very same relief is not being questioned on this ground. Even otherwise, I am not able to say that the petitioner in W.P. 2616 of 1983, shall not have audience before this court in writ jurisdiction because the averments made before this court do make out that he claims a preferential right over the petitioner for the post of manager, That aspect will be on merits, which I need not decide here.

7. For the above reasons, I am obliged to interfere in writ jurisdiction, and accordingly these writ petitions are allowed and I make no order as to costs.

8. Petitions allowed.