
(2010) 09 MAD CK 0314

In the Madras High Court

Case No : Writ Petition No's. 12255, 12643, 12661 to 12710 and 12846 to 12895 of 2009 and 141 to 170, 474 to 497, 513, 531, 534, 660 to 675, 869 to 890, 1066 to 1073, 1619, 1632, 1818 to 1827, 1829 to 1842, 2192 to 2227, 2275 to 2295, 2298, 2422 to 2425, 2930, 2961

S. Krishnasamy

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226, 32

Citation : (2010) 09 MAD CK 0314

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : A. Rahul, S.V. Nagarajan, B. Alagarsamy, H. Arumugam, PT.S. Narendravasan, V. Venkatasamy, C.A. Ganapathi, S. Ramaraju, S. Visvalingam, S.K Arthik, S. Xavier Rajini, V. Panneerselvam, for C.S. Associates and S. Ramasamy, for the Appellant; V. Challammal, A.A.G. and S.C. Herold Singh, GA, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides. The Petitioners are all retired Teachers. Some of them have got retired 10 years back. The present prayer of the Petitioners was to direct the Respondents to accord Selection/Special Grades to the Petitioners in the post of Headmaster of Elementary School by counting the total service rendered by them in the post of Secondary Grade Teacher prior to 01.06.1988 with all consequential benefits including payment of arrears of pay and allowances and re-fixation of pension on that basis and payment of arrears flowing therefrom.

2. The cause of action for the Petitioners to approach this Court as stated in the affidavits is that the Government had issued G.O. Ms. No. 234, School Education Department dated 10.9.2009, wherein and by which 63 Teachers were given such benefit. Therefore, the Petitioners should also be given such benefits.

Nowhere in the affidavit, the Petitioners have stated as to why they had never approached the court or the Tribunal at an earlier point of time with reference to their service grievance, if at all there was any grievance. They cannot place their right on the basis of the so-called orders passed by the Government in G.O. Ms. No. 234, School Education Department dated 10.9.2009.

3. The circumstances under which the said Government Order came to be passed is set out in the G.O. The G.O itself very categorically states that the benefit will only be available to 63 Teachers, who have filed cases before the Tamil Nadu Administrative Tribunal. The order of the Tamil Nadu Administrative Tribunal came to be challenged before a Division Bench of this Court. The Division Bench dismissed the Writ Petition. Therefore, the order of the Tamil Nadu Administrative Tribunal became final. Hence the Government was forced to implement that order. Merely because the Government had chosen to implement certain orders of the Tribunal or court, that by itself will not give any cause of action to the Petitioners to move the Court that too after three decades regarding their so-called service grievance.

4. Mr. S. Xavier Rajini, one of the counsel for the Petitioners contended that the earlier decision of this Court in Mr. Palanisamy Vs. The State of Tamilnadu is not a good law and there is no impediment for this Court to give direction to consider the representation. He also stated that there were directions given by the other learned Judges to consider the representation. Therefore, similar directions may be issued. He further submitted that in the alternative, all the matters may be placed before a division bench for an appropriate consideration of the issues. He also submitted that there is a move by the Government to consider the grievance of such teachers. It was taken up by various teachers' organisations and till such time the matters are considered by the Government, these batch of writ petitions can be adjourned sine die .

5. It is rather unfortunate that the counsel should address such arguments which were neither based upon any law nor on legal reasoning. If the Petitioners wanted their grievance to be addressed at the hands of the Government, there is no necessity for them to file number of writ petitions so as to revive stale claims. It is regrettable to note that requests are made to place writ petitions seeking for directions to consider the representations to be heard by a division bench as if single judges of this Court cannot decide such issues based on law and reason. It is only when there is conflict of opinion, the question of referring matters to a larger bench will arise. Hence this Court is not inclined to consider the request for placing the matter before a division bench or to await eternally for Government to consider their case. It was also advised that the Petitioners can withdraw their writ petitions and seek their grievance redressed by the Government. On the other hand, the Respondents have filed counter affidavits dt. Nil (March, 2010) regarding the claim made by the Petitioners. In W.P. (MD)Nos. 1066 to 1073 of 2010 and W.P.(MD) No. 2930 of 2010, the claims of the Petitioners, the representations made by the Petitioners have been rejected

by the State Government and they are again before this Court challenging those orders of rejection.

6. Mr. B. Alargasamy, one of the counsel for the Petitioners had filed a written brief. It was stated that the Government having promised to the officials of teachers' unions cannot back track from the promise made. For this proposition, the decision of the Supreme Court in *Bhim Singh and Others Vs. State of Haryana and Others*, was referred to. A fresh cause of action will arise every month when salaries are paid on the basis of wrong computation and for that, inspiration was drawn from the judgment of the Supreme Court in *M.R. Gupta Vs. Union of India and others*, . Even after a lapse of 12 years, the question of seniority can be determined by the court as can be seen from the facts set out in the decision of the Supreme Court in *G.P. Doval and Others Vs. Chief Secretary, Government of U.P. and Others*, . A delay cannot defeat the right under Article 32 of the Constitution of India and a reliance was placed upon the judgment of the Supreme Court in *Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others*, . The question of laches will not apply when illegality continues. In such case, there is continuous cause of action as held by the Supreme Court in *H.D. Vora Vs. State of Maharashtra and Others*, . The Government should not reject genuine and just claims on the plea that it was barred by limitation as held by the judgment of the Supreme Court in *Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s*, . In case of termination for misconduct, if some persons were reinstated, others cannot be denied similar benefit on ground of delay and laches. Reference was made to *Lt. Governor of Delhi and others Vs. Const. Dharampal and others*, . The benefit granted by the court can be extended to other affected persons who never moved the court. Reliance was placed upon the judgment of the Supreme Court in *State of Kerala Vs. Kumari T.P. Roshana and Another*, . Ultimately it was contended that without waiting for persons to move the court the State itself should grant relief to all the Petitioners.

7. Mr. S.V. Nagarajan and Mr. PT.S. Narendravasan, learned Counsels after adopting the argument addressed above, contended that since it is a case of discrimination, Article 14 of the Constitution is attracted. Therefore, the Petitioners who are similarly placed must also get the benefit as was granted to teachers covered by G.O. Ms. No. 234, School Education Department, dated 10.09.2009.

8. Per contra, Mrs.V. Chellammal, learned Additional Advocate General stated that the issues are squarely covered by the earlier decision of this Court in *Mr. Palanisamy Vs. The State of Tamilnadu* . She stated that there is no case for reconsideration of that decision. The said decision was based on reasons and legal precedents. She also stated that G.O. Ms. No. 234, School Education Department, dated 10.09.2009 has been issued as some cases reached finality and there was no option for the Government except to implement the same. But that does not give rise to a cause of action for the present writ Petitioners whose

cases are stale and no directions can be issued to revive the stale cause of action.

9. The Supreme Court in Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, has held that merely because the Government had chosen to implement a wrong order which became final, that by itself will not give any cause of action to the other persons without deciding the issue on merit. It is therefore necessary to extract para 26 of the judgment and it reads as follows:

A particular judgment of the High Court may not be challenged by the State where the financial repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non-comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realised, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others. Of course, the position would be viewed differently, if Petitioners plead and prove that the State had adopted a "pick-and-choose" method only to exclude Petitioners on account of mala fides or ulterior motives. Be that as it may. On the facts and circumstances, neither the principle of res judicata nor the principle of estoppel is attracted. The administrative law principles of legitimate expectation or fairness in action are also not attracted. Therefore, the fact that in some cases the validity of the circular dated 29-10-1999 (corresponding to the Defence Ministry circular dated 11-9-2001) has been upheld and that decision has attained finality will not come in the way of the State defending or enforcing its circular dated 11-9-2001.

10. The Supreme Court in Chandigarh Administration and another Vs. Jagjit Singh and another, held in paragraph 8 as follows:

8. Generally speaking, the mere fact that the Respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the Petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the Petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the Respondent authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the Respondent authority has passed one illegal/ unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/ unwarranted action must be corrected, if it can be done according to law-indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law-but

even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the Respondent authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the Petitioner if it is found that the Petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the Petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the Petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course-barring exceptional situations-would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world.

11. The Supreme Court in *Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others*, held in paragraph 9 as follows:

9. There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be State within the meaning of Article 12 of the Constitution, so far such Petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such Petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal

procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the Petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been discrimination.

12. These two judgments came to be quoted with approval in a recent judgment in *Bondu Ramaswamy v. Bangalore Development Authority* 2010 (7) SCC 129.

13. The Supreme Court in a case in *Shanti Sports Club and Another Vs. Union of India (UOI) and Others*, after referring to all the previous case laws has held that no court shall issue such a mandamus on the specious plea of either discrimination or they were unequally treated. It is necessary to extract the following passages found in paragraphs 71 and 72 which read as follows:

71. Article 14 of the Constitution declares that:

14. Equality before law.-The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

The concept of equality enshrined in that article is a positive concept. The Court can command the State to give equal treatment to similarly situated persons, but cannot issue a mandate that the State should commit illegality or pass wrong order because in another case such an illegality has been committed or wrong order has been passed. If any illegality or irregularity has been committed in favour of an individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court and seek a direction that the same irregularity or illegality be committed in their favour by the State or its agencies/instrumentalities. In other words, Article 14 cannot be invoked for perpetuating irregularities or illegalities.

72. Similar is the ratio of the judgments in *Narain Das and Others Vs. The Improvement Trust, Amritsar and Another*, *Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others*, *Secretary, Jaipur Development Authority v. Daulat Mal Jain* (1997) 1 SCC 37, *Yadu Nandan Garg Vs. State of Rajasthan and Others*, *State of Haryana and Others Vs. Ram Kumar Mann*, *Faridabad M/s. Faridabad Ct. Scan center Vs. D.G. Health Services and others*, *M/s. Style (Dress Land) Vs. Union Territory Chandigarh and Another*, *State of Bihar and Others Vs. Kameshwar Prasad Singh and Another*, *Union of India (UOI) and Another Vs. International Trading Co. and Another*, *Ekta Shakti Foundation Vs. Govt. of NCT of Delhi*, *Sanjay Kumar Munjal v. Chairman, UPSC* (2006) 3 SCC 42, *K.K. Bhalla Vs. State of M.P. and Others*, *National Institute of Technology, Jamshedpur and Others Vs. Chandra Shekhar Chaudhary*, *Vice Chancellor, M.D. University, Rohtak Vs. Jahan Singh*, *State of Kerala and Others Vs. K. Prasad and Another*, *Punjab State Electricity Board and Others Vs. Gurmail Singh, and Panchi Devi Vs. State of Rajasthan and Others*, .

14. It must also be noted that in the present cases, the Petitioners have sent representations belatedly. The question whether such belated representations

can be directed to be considered by courts came up for consideration by the Supreme Court in *C. Jacob Vs. Director of Geology and Mining Indus. Est. and Another*, wherein the Supreme Court held that by giving such a direction to consider the representation, a stale cause of action can never be revived. It is relevant to refer paragraphs 8 to 11 of the said judgment.

8. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation.

9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any "decision" on rights and obligations of parties. Little do they realize the consequences of such a direction to "consider". If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to "consider". If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of "acknowledgment of a jural relationship" to give rise to a fresh cause of action.

(Emphasis Added)

15. The Supreme Court very recently in Union of India (UOI) and Others Vs. M.K. Sarkar, had observed as follows:

14. The order of the Tribunal allowing the first application of Respondent without examining the merits, and directing the Appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob v. Director of Geology and Mining

9. The courts/Tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any "decision" on rights and obligations of parties. Little do they realise the consequences of such a direction to "consider". If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to "consider". If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High courts routinely entertain such application/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

15. When a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A court or tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with

reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale " issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct "consideration" without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect.

(Emphasis Added)

16. Apart from these contentions, the Petitioners' counsel had also contended that the question of delay and laches will not arise in these cases, since it involves issue relating to pay and allowances, there is a continuing cause of action. Further the relief if granted will not affect the rights of the others. They placed reliance upon the judgment of the Supreme Court in Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, . Reliance was placed upon the following passage found in para 10 and it reads as follows:

10. The first preliminary objection raised on behalf of the Respondents was that the Petitioners were guilty of gross laches and delay in filing the petition. The divisional cadre of Mamlatdars/Tehsildars were created as far back as November 1, 1956 by the Government Resolution of that date, and the procedure for making promotion to the posts of Deputy Collector on the basis of divisional select-list, which was a necessary consequence of the creation of the divisional cadre of Mamlatdars/ Tehsildars, had been in operation for a long number of years, at any rate from April 7, 1961, and the Rules of July 30, 1959 were also given effect to since the date of their enactment and yet the Petitioner did not file the petition until July 14, 1969. There was a delay of more than ten or twelve years in filing the petitionsince the accrual of the cause of complaint, and this delay, contended the Respondents, was sufficient to disentitle the Petitioners to any relief in a petition under Article 32 of the Constitution. We do not think this contention should prevail with us. In the first place, it must be remembered that the rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. Each case must depend on its own facts. The question, as pointed out by Hidayatullah, C.J., in Tilokchand Motichand v. H.B. Munshi¹ "is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose.

(Emphasis Added)

17. It is also stated that earlier order of the Tribunal was upheld by an order of this Court. It had become final and implemented by the Government. The order

of the Tribunal is judgment in rem and the benefit must go to all similarly placed persons. An unreported decision was also produced in W.P. Nos. 29644 and 29645 of 2003 dated 21.2.2008. But, there the Division Bench dealt with order passed by the Tribunal in Original Application relating to the year 1997. But the Petitioners have chosen to come to Court 12 to 13 years after those petitions. The decisions relied on by the Petitioners do not help the case of the Petitioners. In fact, it goes against the contentions made by them.

18. The validity of the above prayers made by the writ Petitioners seeking the benefit akin to the Teachers covered by the Government Order or for reviving the cause of action after three decades can never be countenanced by this Court. Hence, all Writ Petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions stand closed.