
(2015) 06 MAD CK 0545

In the Madras High Court

Case No : Writ Petition (MD) No. 9920 of 2012 and M.P. (MD) No. 1 of 2012

S. Vincent

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 04-06-2015

Acts Referred:

Citation : (2015) 06 MAD CK 0545

Hon'ble Judges : V.M. Velumani, J

Bench : Single Bench

Advocate : Xavier Rajini, for the Appellant; M. Murugan, Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.M. Velumani, J—The petitioner has filed this writ petition seeking a direction to the second and third respondents herein to approve the appointment of the petitioner from the original date of his appointment i.e., 01.06.1996 instead of 07.07.1999 and disburse the grant-in-aid towards petitioner's salary and allowances with effect from the said date with all attendant benefits.

2. The petitioner was appointed as Physical Director on 01.06.1996 in the fourth respondent college. When one M. Francis retired from service, fourth respondent wrote to Manonmaniam Sundaranar University, seeking qualification approval. The University granted qualification approval by Letter No. MSU/CD/Q.A/2/97, dated 17.11.1997. Thereafter, fourth respondent sent a proposal to the third respondent for approval of the petitioner's appointment. Respondents 2 and 3 informed the 4th respondent that prior approval for petitioner's appointment was not obtained and therefore, did not approve his appointment from 01.06.1996. The second respondent, by his proceedings, dated 07.07.1999, permitted the fourth respondent College to fill up the post of Physical Director from 07.07.1999, by promoting the petitioner. The third respondent, by proceedings in Mu.Mu. No. EE2/11470/99, dated 19.8.1999, informed the fourth respondent that the petitioner can be appointed as Physical Director with effect from

07.07.1999. As per the said approval, the petitioner's salary was disbursed as Physical Director from 07.07.1999.

3. According to petitioner, he sent a representation, dated 31.01.2000 through Madurai Kamaraj and Manonmaniam Sundaranar Universities Teachers Association seeking to approve his appointment/promotion from 01.6.1996, the original date of his appointment/promotion as Physical Director. The second respondent by his proceedings, dated 22.02.2000, bearing Reference No. O.Mu. No. 5827/F4/2000, replied to the effect that the petitioner's case for approval from 01.6.1996 is pending before this Court. According to petitioner, the said statement is wrong. The writ petition filed by him related to fixing scale of pay in the post of Assistant Physical Director. According to petitioner, he made several representations and no orders were passed. He retired from service on 31.5.2000. Hence, the petitioner has approached this Court with the above prayer.

4. The learned counsel for the petitioner relied on following Judgments:

"(i) W.A. No. 191 of 2006, dated 23.01.2008 [S. Vincent v. State of Tamil Nadu and others], wherein in paragraph 4, it has been held as follows:

4. From the above, though there is upgradation in scales of Librarians, Directors/Instructors of Physical Education on the basis of the recommendation of the University Grants Commission was brought vide G.O. Ms. No. 524 Education dated 18.3.1983, subsequently the said G.O. was modified through G.O. Ms. No. 393 Education dated 16.4.1985. Para 9 of the G.O. Ms. No. 393 Education dated 16.4.1985 states that as the Physical Training Instructors who are now in the scales of Rs. 350-600 have not been brought under the University Grants Commission scale of pay so far, they need not be brought within the purview of the orders issued. Therefore, though the appellant has stated that he has agitated his claim that he was in service, no particulars were given, except filing this writ petition seeking to extend the benefits of pay scales of the UGC to the Assistant Physical Director or Instructors. Therefore, the learned single Judge has rightly dismissed the writ petition. We see no reason to entertain the writ appeal. The writ appeal fails and is dismissed accordingly. No costs.

(ii) Union of India (UOI) and Others Vs. Tarsem Singh, (2008) 118 FLR 1079 : (2008) 11 SCALE 594 : (2008) 8 SCC 648 : (2008) 2 SCC(L&S) 765 : (2009) 1 SLJ 371 , wherein in paragraph 7, it has been held as follows:

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception.

If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

(iii) P. Ravichandran Vs. State of Tamil Nadu, (2014) LabIC 166 : (2014) 1 LLN 216 : (2013) 5 LW 514 : (2013) 7 MLJ 641 , wherein in paragraph 14, it has been held as follows:

14. In the light of the above statutory provisions, the Director of Collegiate Education cannot insist Private Aided College managements to get prior permission to fill up the vacant posts available in sanction posts, by issuing circulars/administrative instructions.

(iv) W.A. Nos. 851 of 2010 etc. batch, dated 07.07.2011 [N. Jawahar and others v. The Government of Tamil Nadu and others], wherein in paragraph 14, it has been held as follows:

14. The learned Special Government Pleader though justified the order passed the learned single Judge on the ground of laches fairly confirmed the factual position that similar benefits were given to those who have filed original applications before the Tribunal. In short, the objection of the Government appears to be on the ground of laches.

(v) W.P(MD) No. 2427 of 2007, dated 09.03.2012 [Manikandan v. The State of Tamil Nadu and others], wherein in paragraph 15, it has been held as follows:

"15. In another decision reported in Kamaraj Memorial Higher Secondary School Panthaluvilai Vs. The Government of Tamilnadu, (2010) 5 MLJ 172 : (2009) WritLR 825 a learned Single Judge has considered the very same issue with regard to the need for declaration of minority status from the Government and has held at paragraph 7 as follows:--

"7. In the light of the said decisions and having regard to the fact that the competent Civil Court has already granted declaration in favour of the petitioner holding that the petitioner School is a linguistic minority School (Malayalam), the respondents are not justified in demanding further proof of minority status from the petitioner to consider the request of recognition. Therefore, the respondents are bound to treat the petitioner School as a linguistic minority School (Malayalam) and consider the request of the petitioner seeking grant of

recognition from 1.6.2002. Necessary order is directed to be passed by the competent authority within a period of four weeks from the date of receipt of a copy of this order."

Relying on the above Judgments, the learned counsel for the petitioner contended that the respondents 1 to 3 erred in not approving the appointment of the petitioner with effect from 01.6.1996 on the ground that no prior permission was sought for. He also contended that failure on the part of respondents 1 to 3 to sanction and disburse the salary to the petitioner as Physical Director from 01.6.1996 gives rise to continuous cause of action and therefore, the writ petition is not hit by delay and laches.

5. Per contra, the learned counsel for the respondents contended that it is not correct to state that there arises continuous cause of action. The writ petition is hit by delay and laches. The petitioner's appointment was approved with effect from 07.07.1999 and the petitioner did not challenge the said order. Further, by proceedings, dated 22.2.2000, the second respondent rejected the representation of the petitioner for approval of his appointment as Physical Director with effect from 01.6.1996. The petitioner did not challenge the said order.

6. The learned Government Advocate for the respondents 1 to 3 has submitted that filing of repeated representation will not give fresh cause of action. When the petitioner's representation was not favourably considered, the petitioner ought to have agitated at that time itself. The petitioner did not challenge the order, dated 22.2.2000, rejecting the request of the petitioner to approve his appointment w.e.f. 01.06.1996. Further, the petitioner retired from service on 31.5.2000. Therefore, in any event, no cause of action arises after 31.5.2000. He relied on the Judgment in W.P. No. 3738 of 1998 dated 24.3.2005 [S.Vincent v. State of Tamil Nadu and others], wherein in paragraph 5, it has been held as follows:

"5. In such background, the prayer made in the writ petition cannot be granted and it is apparent that the writ petition is hit by the principles of laches. Filing of repeated representations is not contemplated and if the representation of the petitioner, which was made in 1987 or soon thereafter, was not favourably considered, the petitioner should have agitated his grievance at that time. In such view of the matter, the writ petition is liable to be dismissed."

7. I have considered the rival submissions put forth and the Judgments relied on by either side and perused the materials on records.

8. The contention of the learned counsel for the petitioner is that non-payment of salary as Physical Director is a continuous cause of action and therefore, he filed writ petition in the year 2012, is maintainable. The said contention has no force. The various Judgments relied on by the learned counsel for the petitioner is not applicable to the facts of the present case.

9. In the present case, appointment/promotion of petitioner as Physical Director with effect from 01.6.1996 was not approved. The petitioner's appointment was approved only by proceedings, dated 07.07.1999. Further, the representation of the petitioner, dated 31.01.2000, sent through Madurai Kamaraj and Manonmaniam Sundaranar Universities Teachers Association, was rejected on 22.2.2000. The petitioner did not challenge any of these orders. Even, the fourth respondent did not challenge the orders. He challenged non-approval only in the year 2012.

10. In view of the facts stated above, the order relied on by the learned Government Advocate for the respondents 1 to 3 are squarely applies to the facts of the present case. The petitioner has slept over in respect of his right, if any, from the year 1997, when the fourth respondent sought approval of his appointment as Physical Director with effect from 01.6.1996 and when the said proposal was rejected by respondents 1 to 3. Therefore, the writ petition is liable to be dismissed as devoid of merits on the ground of delay and latches.

In view of the foregoing reasons, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.