

(2014) 11 MAD CK 0327

In the Madras High Court

Case No : Writ Appeal No. 1268 of 2014 and M.P. No. 1 of 2014

The State of Tamil Nadu

APPELLANT

Vs

S. Esanulla

RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 11 MAD CK 0327

Hon'ble Judges : Satish K. Agnihotri, J;K.K. Sasidharan, J

Bench : Division Bench

Judgement

1. Indisputably, the respondent / writ petitioner was appointed as Driver-cum-Mechanic Helper in the Central Kitchen of the appellant Department

on 29.09.1972. Subsequently, he obtained heavy vehicle license on 23.8.1975. Thereafter, his service was regularized with effect from 10.12.1975.

2. The other similarly placed employees approached the Tamil Nadu State Administrative Tribunal in the year 1993 in O.A.No. 2549 of 1993,

wherein the Tribunal, by order dated 8.9.1993, directed the authorities to regularize the services of the said drivers with effect from the date of

initial appointment by relaxing Rule 5(b) and 6(b) of the G.O.No. 1429, Education Department dated 23.08.1975. On the basis of relaxation

granted to the other similarly placed employees pursuant to the order dated 8.9.1993 passed by the Tribunal, the writ petitioner / respondent

herein preferred the instant writ petition, seeking direction to the appellant herein/respondent therein to regularise his service with effect from the

actual date of joining on 29.9.1972 with corresponding changes in the service register and salary increments.

3. The learned Single Judge, relying on the order passed by the Tribunal and the subsequent order passed in W.P.No. 2396 of 2007 dated

02.11.2009, directed the authorities to regularize the services of the writ petitioner with effect from 29.9.1972.

4. The basic qualification required for the post of Driver-cum-Mechanic is the possession of heavy vehicle driving licence, which the petitioner did not have before 23.8.1975. But, in other cases, relaxation was granted.

5. The question that arose for consideration in the instant appeal is when some similarly placed employees have been granted relaxation in respect

of required qualification to grant regularisation with effect from the initial date of appointment by the Court / Tribunal, whether the respondent / writ

petitioner is entitled to the same benefit after a period of 20 years from 1993.

6 The fact remains that the qualification required for Driver-cum-Mechanic is possession of driving license with endorsement to drive heavy

transport vehicle, must have experience for a period of not less than 3 years driving heavy transport vehicle, must have height not less than 5 feet 3

inch, clear eye sight, working knowledge of the automobile mechanism so as to be able to attend minor repair and he must not have completed 35

years. Admittedly, the respondent /writ petitioner did not possess the said qualification before 23.8.1975. Therefore, for want of possession of

required minimum qualification, the respondent herein cannot be granted regularization with effect from the initial date of appointment, i.e.,

29.9.1972.

7. It is well settled proposition of law that the petitioner cannot claim the same relief after an inordinate delay without explaining the reasons for

delay. Even otherwise, similarly situated employees as aforesaid were granted regularization with effect from the back date on the basis of

relaxation granted in the qualification. The court cannot direct the employer / authorities to relax the qualification in all cases. In that event, fixing of

qualification, which is prerogative of the employer, would become redundant and this would amount to taking away of the power of the employer

to fix the qualification for a particular post.

8. The Supreme Court in the matter of State of Uttar Pradesh and others Vs Arvind Kumar Srivastava and others [Civil Appeal No. 9849 of

2014] vide judgment dated 17.10.2014, considered the issue as to the grant of

relief to identically situated persons and after analysing all judgments rendered earlier, held as under :

The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike

by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This

principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates

that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated

persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who

did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their

counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the

judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays,

and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give

benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the

authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision

touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand,

if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an

intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the

benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

9. In the case on hand, the orders passed by the Tribunal as well as this Court, which was relied on by the learned Single Judge was in rem with an

intention to give relaxation to only those candidates, who approached the court. Thus, the same benefit cannot be granted to other similarly situated

persons and the respondent herein is not entitled to the relief on the ground of laches and delay as well as acquiescence, which is writ large in this

case. The respondent herein/ writ petitioner had approached the court for the relief after the order was passed by the Tribunal in 1993, i.e., after

the period of 20 years and as such, the respondent herein is not entitled to regularisation with effect from the date of initial appointment after

granting relaxation in the requisite qualification.

10. Looking from the other angle, the respondent was regularised with effect from 10.12.1975 on the basis of obtaining heavy vehicle license. At

that relevant point of time, the respondent did not question the date of regularization and had accepted the same till filing of the writ petition, after a

period of 20 years. In that event also, the case of the respondent suffers from unexplained, inordinate laches and delay or acquiescence.

11. We are unable to accept the findings recorded by the learned Single Judge, which was passed purely on the basis of the order passed by the

Tribunal. It appears that the order was passed in W.P.No. 2396 of 2007 dated 02.11.2009, on the basis of the initial order dated 8.9.1993

passed by the Tribunal in O.A.No. 2549 of 1993. Thus, we are of the view that the order sought to be impugned is unsustainable.

12. We accordingly set aside the order dated 19.6.2013 and hold that the regularising the services of the petitioner with effect from 10.12.1975 on

the basis of obtaining the heavy vehicle license on 23.08.1975 was just and proper, warranting no interference. The writ appeal is, accordingly,

allowed. No costs. Consequently connected miscellaneous petition is closed.