

B. Vijayalakshmi Vs The Regional Director and Additional Commissioner Employees State Insurance Corporation (ESIC)

Court: Madras High Court

Date of Decision: Dec. 16, 2014

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

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner preferred an Original Application being O.A. No. 1511 of 2013 before the Madras Bench of the Central Administrative Tribunal

("the Tribunal" for short), seeking to quash the Office Order No. 15(E) of 1997 conveyed under the first respondent's letter No. TNR/AO-8(12)

96- Reg. dated 10.01.1997, conveying therein, the date of her regularisation in the cadre of LDC as 14.08.1996 and for a direction to regularise

her services with effect from 01.02.1991. In the said Original Application, the petitioner further sought the relief of quashing the subsequent order

dated 25.02.2005, whereby, her regularisation in the cadre of Stenographer with effect from 15.08.1999 was conveyed and also, a direction to

regularise her services in the cadre of Stenographer with effect from 09.11.1993, as granted to one Shamim Ahmed Hussain. The petitioner, in the

said Original Application, had also sought a direction to the second respondent to promote her to the cadre of Personal Assistant on account of

automatic promotion of all regular Stenographers in service upto 24.12.1996 and thereafter, to the cadre of Personal Assistant granted vide Office

Order dated 19.01.2001 by again placing her much below one Shamim Ahmed Hussain at Serial No. 23. Lastly, in the said Original Application,

the petitioner had also sought a direction to place her at the appropriate place in the Draft All India Seniority List of Personal Assistants as on

31.03.2011, issued vide Memorandum No. 24-/14/7/2009-Estt.II dated 30.06.2011 by revising the same.

2. The aforesaid Original Application was filed in February 2012. The Tribunal, having adverted to all the points raised on merit as well as on

consideration of delay and laches, dismissed the application for condonation of delay of 15 years, as not maintainable. Consequently, the Original

Application, which, at the stage of Diary No. 1372 of 2012 was also dismissed. Feeling aggrieved, the petitioner has preferred the instant writ

petition, seeking the afore-stated reliefs, by quashing the impugned order dated 25.10.2013 passed by the Tribunal.

3. The case of the petitioner before this Court is that she was appointed on compassionate basis in the cadre of Lower Division Clerk (L.D.C.)

vide order dated 10.12.1989 with effect from 01.02.1989. Thereafter, she was entitled to regularisation in the cadre of L.D.C. with effect from

01.02.1991 on passing the Type Test. However, she was regularised vide DPC proceedings dated 06.01.1997 with effect from 14.08.1996. The

further case of the petitioner is that she had qualified in the Departmental Test for the post of Stenographer on 25.09.1993 along with one Shamim

Ahmed Hussain, who was promoted as Stenographer with effect from 09.11.1993. However, she was denied promotion to the post of

Stenographer. It is the further case of the petitioner that vide Office Order dated 19.01.2001, all regular Stenographers upto 24.12.1996 were

automatically promoted to the cadre of Personal Assistant, however, she was denied the said promotion as well. The petitioner was promoted in

the cadre of Personal Assistant on regular basis with effect from 31.12.2000 and as such, her seniority position in the All India list of Personal

Assistants as on 31.03.2011 was prejudicially affected. The petitioner further submits that she has made a number of representations from 1994 to

March 2011 to the respondents 1 and 2. However, none of her representations was settled. The petitioner, thereafter, obtained information under

the provisions of the Right to Information Act, 2005, wherein, it was stated that it was difficult to inform her about the availability of vacancies in

the cadre of L.D.C. Thus, the period of limitation ought to have been reckoned only from 22.03.2011.

4. The Tribunal, after hearing both sides and relying on the decisions of the Supreme Court in (i) B.S. Bajwa and Another Vs. State of Punjab and

Others, , (ii) P.S. Sadasivaswamy Vs. State of Tamil Nadu, and (iii) Dwarka Nath Sharma Vs. Union of India (UOI) and Others, , recorded the

finding that the petitioner had failed to explain the inordinate delay of more than 15 years and as such, the application for condonation of delay was

rejected. Consequently, the Original Application was also dismissed.

5. The contention of the learned counsel for the petitioner that the petitioner has been making representations continuously from February 1994 till

March 2011 and as such, the period of limitation would commence only after March 2011 is noted to be rejected on the simple ground that it is a

well settled principle of law that if a representation is not decided within a reasonable time, may be three to six months, the petitioner cannot

continue making representations and as such, the continuous representations cannot arrest the period of limitation.
[See S.S. Rathore Vs. State of

Madhya Pradesh, .

6. The Supreme Court has categorically held in a catena of decisions that after the lapse of a reasonable period, settled position cannot be

disturbed. In P.S. Sadasiva Swamy (supra), it was observed that where a Government servant slept over the promotions of his juniors over his

head for fourteen years and then approached the High Court with writ petition challenging the relaxation of relevant rules in favour of his juniors,

the writ petition was held as liable to be dismissed in limine. In Dwarka Nath Sharma (supra), the very same dictum was reiterated.

7. The law on question of laches and delay came up for consideration subsequently as well. In Chairman, U.P. Jal Nigam and Another Vs. Jaswant

Singh and Another, , the Supreme Court approved the legal position holding as under:

13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the

retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the

matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ

petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into

consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is

granted. X x x x x x x x

8. Again, in Vijay Kumar Kaul and Others Vs. Union of India (UOI) and Others, , the Supreme Court observed as under:

35. In the case at hand it is evident that the appellants had slept over their rights as they perceived waiting for the judgment of the Punjab and

Haryana High Court would arrest time and thereafter further consumed time submitting representations and eventually approached the Tribunal

after quite a span of time. In the meantime, the beneficiaries of the Punjab and Haryana High Court, as we have been apprised, have been

promoted to the higher posts. To put the clock back at this stage and disturb the seniority position would be extremely inequitable and hence, the

Tribunal and the High Court have correctly declined to exercise their jurisdiction.

9. Another aspect in such a case is the principle of acquiescence. The petitioner has acquiesced to the decision of promotion and grant of

regularisation, subsequently, for a long time and as such, after a period of 15 years, she cannot be permitted to agitate the stale issue questioning

her regularisation and asking for regularisation with effect from 1991 when she was regularised on the post of L.D.C. with effect from 14.08.1996.

10. On the law of acquiescence, it is beneficial to refer the observation of Lord Campbell in *Cairncross v. Lorimer*, (1843-60) All ER Rep 174, as

under:

x x x x x x generally speaking if a party having an interest to prevent an act being done had full notice of its being done, and acquiesces it, so as

to induce a reasonable belief that he consents to it and the position of the others is altered by their giving credit to his sincerity, he has no more right

to challenge the act to their prejudice than he would have had if it had been done by his previous licence.

11. In view of the foregoing and on analysing the legal provisions applying to the facts of the case, we are of the considered opinion that the

Tribunal was correct in dismissing the application for condonation of delay and subsequently, the Original Application.

As a sequel, the writ petition is dismissed. No costs. Connected Miscellaneous Petition is closed.