IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2009

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THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.NO.32795 OF 2006

P.Bangarusamy .. Petitioner

Vs.

1.The District Elementary
Educational Officer,
Villupuram.
2.The District Adi Dravida Welfare
Officer,
Villupuram,
Villupuram District.
3.The Director,
Adidravida Welfare,
Chennai .. Respondents

This writ petition has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records relating to the order of the first respondent dated. 13.2.1997 issued in Na.Ka.No.803/A3/97 and to quash the same and to direct the respondents to sanction and give retirement and pension benefits to the applicant with effect from 1.1.1982.

For Petitioner : Mr.Muthukannu

For Respondents: Mr.P.Gurunathan, GA

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ORDER

The petitioner was employed as a Primary School Headmaster in a School run by the Adi Dravidar Welfare Department. He joined service in the year 1962. Thereafter, he resigned the post on 1.1.1982 for the purpose of contesting election for the post of Chairman of Panchayat Union. His nomination was not accepted because of the stay order granted by the court. Thereafter, the petitioner did not do anything about the said resignation.

2.During the year 1996, he started sending representation after a period of 14 years that he should be paid pension. The petitioner also sent a representation to the Chief Minister Grievance Cell, which was in turn forwarded to the first

respondent. The first respondent, by a letter, dated 13.2.1997, stated that since he wanted to contest in the election and resigned the post on his own volition and was also relieved from the said post, there is no scope for getting pension, since the Rule do not provide for granting of pension on the ground of resignation.

3.It is thereafter, the petitioner moved the Tribunal with O.A.No.1122 of 1998, seeking to challenge the said order. The contention of the petitioner was that there was no proof that his resignation was accepted.

4.On notice from the Tribunal, the respondents have filed a reply affidavit, dated 11.3.1998. In the reply affidavit, it was stated that there is no provision for granting of pension for the petitioner, who already resigned.

5.In view of the abolition of the Tribunal, the matter stood transferred to this court and was renumbered as W.P.No.32795 of 2006. Even assuming for argument sake that the petitioner had not resigned during January, 1982, he cannot raise the contention after 15 years from the said cause of action and by sending a representation, he cannot revive the belated cause of action. In a judgment in C.JACOB VS. DIRECTOR OF GEOLOGY & MINING & ANR. reported in 2008 AIR SCW 7233, the Supreme Court has held as follows:

> "6.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. 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.

7.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.

8.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."

6.In the light of the above, there is no case made out by the petitioner. Accordingly, this writ petition stands dismissed. No costs.

vvk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

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2.The District Adi Dravida Welfare
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Villupuram District.

3.The Director,
Adidravida Welfare,
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BB(CO)
SR/8.6.2009 W.P.NO.32795 OF 2006