

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 21<sup>st</sup> January, 2011

+ LPA 79/2011

JITENDER SINGH

..... Appellant

Through: Mr.Sudharshan Rajan, Mr.S.  
Ratan Khare, Advs.

versus

NDMC & ORS

..... Respondents

Through: Ms. Siddhi Arora, Adv.  
for NDMC  
Mr. K.C. Dubey, Adv. for  
Respondent No.2

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

- |                                                                          |     |
|--------------------------------------------------------------------------|-----|
| 1. Whether reporters of the local papers be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not?                                | Yes |
| 3. Whether the judgment should be reported in the Digest?                | Yes |

**DIPAK MISRA, CJ**

**+ CM No. 1338/2001**

This is an application under Section 5 of the Limitation Act, 1963 (for short 'the Act') for condonation of delay of 1794 days in preferring the present intra-Court appeal wherein the order dated 7.10.2005 passed by the learned Single Judge in W.P. No. 5280/2000 is assailed.

2. In the application, in paragraph 7, the chronological list of dates to

support the contentions has been given. We think it appropriate to reproduce the same:

- “07.10.2005: Judgment of the Ld. Single Judge (impugned herein)*
- 27.03.2006: Respondent No.2 appointed as regularized Section Officer Horticulture.*
- 27.10.2006: Seniority list wherein respondent no.2 is shown senior to the petitioner (This is the first time that the appellant came to know about the impugned order and was affected by virtue of the implementation of the impugned order).*
- Nov., 2006 Petitioner filed W.P. No. 17231 of 2006 before this Hon’ble Court challenging the above order.*
- Nil The Writ Petition filed by the appellant is transfer to the Ld. Central Administrative Tribunal, Principal Bench, New Delhi.*
- 6.9.2010 O.A. is dismissed as withdrawn with liberty to the appellant to approach appropriate forum as per law.*
- 5.10.2010 Appellant files LPA.”*

3. Presently we shall proceed to state the facts in detail to ascertain whether the application for condonation of delay is to be entertained and the delay should be condoned or not. The respondent No.2, Rais Ali, preferred CWP No.5280/2000 claiming regularization. The learned Single Judge, while dealing with his case along with other connected

matters, passed the following order:

*“18. The note prepared by the NDMC dated 12.11.1999 is self-explanatory, which reads as follows:*

*Shri Rais Ali was earlier working on regular muster roll post as Technical Supervisor. In NDMC there is no such post. Advise of the Director (Hort.) was sought. Director (Hort.) vide his note on page 2/n has stated that the post of Technical Supervisor is equivalent to Section Officer (Hort.) NDMC and it is a direct post. Pay scale of Section Officer is 4500-7000. He has been regularised on the post of Section Officer. Pay scale of Section Officer (Hort.) seems to be very high. At present there are two posts of Jr. Technical Assistant in the pay scale of Rs.3050-4590 which is a departmental post. One post of Jr. Technical Assistant is also lying vacant. In view of the above the case is submitted for orders whether Rais Ali earlier appointed as Section Officer (Hort.) may be appointed as Jr. Technical Assistant in the pay scale of Rs.3050-4590 on the same terms and conditions please.”*

*His downgrading is attributable only to the unsustainable view that his pay scale “seems to be very high”. Accordingly, the Order dated 16.11.1999 in his regard is quashed and he is directed to be regularized to the post of Section Officer as per Resolution No.8 dated 18.3.1999 with all consequential benefits.”*

4. After the said order came to be passed, the employer – NDMC, the respondent No.1 herein, prepared a seniority list on 27.10.2006. After the said seniority list was prepared, as has been indicated in the petition, the

present appellant preferred Writ Petition No.17231/2006 for issue of a writ of certiorari for quashment of the said seniority list as well as the order by which he was regularized. The learned Single Judge issued notice and thereafter when NDMC was covered by a notification issued under Section 14 of the Central Administrative Tribunals Act, 1985, the case stood transferred to the Central Administrative Tribunal. Before the tribunal, the petitioner withdrew the same with liberty to approach the appropriate forum as per law. Thereafter, the present appeal has been filed with the application for condonation of delay.

5. As is manifest, the learned Single Judge had passed the order of regularization with all consequential benefits. Thereafter, the employer NDMC regularized him and brought out a gradation list on 27.10.2006 and extended the benefit of promotion. The regularization and conferment of the benefit of promotion are fundamentally the sequitur of the said decision. Hence, unless the delay that is enormous is not condoned, the said submissions cannot be adverted to. It is not in dispute that in the W.P. No. 17231/2006, there was reference to the order passed in W.P. No. 5280/2000. It is trite law that unless the order passed in the case of Rais Ali was recalled or set aside, NDMC was bound to give effect to the same. That is the warrant and command of the law. As far as

the exercise of jurisdiction under Article 226 of the Constitution of India is concerned, this Court is required to be guided by the doctrine of delay and laches. The hub of the matter is whether in a case of this nature, this Court should ignore the principle of delay and laches and entertain the appeal and put the clock back. The principle underlying under Section 14 of the Act may be attracted in a given case to the writ petition or an appeal before this Court arising from a writ court, but the basic concept is that the party is required to be diligent in pursuing its remedy. The diligence and good faith have to be understood in a proper perspective. The present case expositis a tell tale situation where one could perceive without any magnifying glass or a detailed x-ray of facts that unless the judgment was assailed, no relief could be granted. It is not a case when one initially raises a lis before a Court of first instance. It is also not a case where an appeal is preferred before a wrong forum and thereafter it is withdrawn to file before the appropriate forum. To give an example in a given case taking note of pecuniary jurisdiction, an appeal is preferred before the District Judge whereas the appeal should have been preferred before the High Court. Indubitably in such cases, the time consumed in the said forum is to be excluded but when no appeal is preferred, and instead a writ petition is filed knowing fully well that there is an order in favour of a person. It is worth noting that Mr.Sudarshan Rajan, learned counsel

appearing for the appellant, submitted that the order passed by the learned Single Judge, which is the subject matter of challenge in this appeal, is absolutely illegal and unsustainable inasmuch as the writ petitioner therein could not have claimed regularization on the basis of resolution No.8 dated 18.3.1999. It is further urged by Mr.Sudarshan Rajan that after coming to know about the determination of seniority and publication of the gradation list, the appellant preferred a writ petition which would show that he had taken prompt action and, in fact, he was bona fide in good faith prosecuting the legal forum for mitigation of his grievances. The learned counsel would submit that the period consumed should be treated to be the period consumed under the Act and, therefore, the appeal should not be thrown overboard at the very threshold.

6. Ms.Siddhi Arora and Mr.K.C. Dubey, learned counsel who have entered appearance on behalf of the respondent Nos. 1 and 2 respectively, submitted that such enormous delay does not deserve to be condoned inasmuch as in the meantime, the second respondent has been promoted to the post of Assistant Director (Horticulture) on 22.8.2007. They have also submitted that the explanation offered by the appellant is gloriously vague and does not merit consideration.

7. In this regard, we may fruitfully refer to a three-Judge bench

decision in *Naib Subedar Lachhman Dass v. Union of India & Ors.*, AIR **1977 SC 1979** wherein the Apex Court has opined that the High Court was justified in dismissing a writ petition under Article 226 of the Constitution of India in limine when the writ petitioner had taken recourse to various ill conceived remedies. We have referred to the said decision as we are convinced that the writ petition, which was filed seeking independent relief despite knowing the fact that there is a decision staring at the petitioner, cannot but be an ill conceived remedy. It cannot be brushed aside that equity favours a vigilant but does not give any indulgence to an indolent or a recalcitrant. Lethargy or lackadaisical attitude is no excuse.

8. The appellant, in the obtaining factual matrix, could not have harboured the idea that he would get all the benefits of the writ petition on the face of a judgment against him. When the appellant is totally careless as he had preferred a writ petition claiming the relief afresh despite the previous judgment, he will not get the benefit as the same would not come within the ambit and sweep of bona fide mistake. It cannot be regarded as an honest belief.

9. In this context, we may fruitfully refer to a two-Judge Bench decision of the Apex Court in *Ram Bhawan Singh & Ors. v. Jagdish &*

**Ors., (1990) 4 SCC 309** wherein it has been held as follows:

*“7. The first question that we have to decide is that of limitation. The delay of 1198 days according to the appellants had occurred unwillingly and the appellants had been prosecuting with due diligence the earlier proceedings before the appellate and the revisional authorities and on the basis of the advice given by their counsel. There is no proper affidavit of either the appellants or the counsel in support of the application for condonation of delay. There is also no other material to indicate that the appellants had exercised due diligence in working out their remedies and sought proper advice in the matter. When the party had no right of appeal, the proceedings instituted before the High Court challenging the judgment in the writ petition cannot be considered to be one in good faith. The subsequent proceedings are also not legal or valid. When the decision of the High Court in the writ petition was one quashing the orders of the appellate and the revisional authorities, the party could not proceed on the basis that the matter was restored to the lower authorities for fresh decision. We are therefore not satisfied that there is any merit in the ground urged by the appellants for getting over the bar of limitation. The appeals are liable to be dismissed as time barred.”*

[Emphasis added]

10. We have referred to the above decision as the present factual matrix would show, the appellant became aware of the decision of the writ Court but chose to file another writ seeking independent relief. Thus, by no stretch of imagination, it can be said that he was prosecuting a litigation by exercise of due diligence. Though he had no right to file a writ

petition, yet he took resort to the said path. Therefore, the plea canvassed by the learned counsel for the appellant that the period spent in prosecuting the writ petition should be excluded is sans substance and accordingly, we repel the same.

11. The controversy can be looked from another angle. As is manifest, the order impugned has got fructified and benefits have accrued in favour of the beneficiary. Matters relating to seniority and promotion are not to be disturbed at the instance of the persons who do not come to Court early. True it is, the said proposition has been applied to a case when a person comes for the first time agitating a stale claim or a claim which he harbours to be still alive, but we see no reason why the said principle should not be applied to a case of the present nature where the fall out of the judgment has been concretized, seniority has been fixed and promotion has been conferred. In this context, we may profitably reproduce a passage from *P.S. Sadasivaswamy v. State of Tamil Nadu*,

**AIR 1974 SC 2271:**

*“2. ....A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it*

would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle matters.”

[Emphasis supplied]

12. In **Malcom Lawrence Ceil D’souza Vs. Union of India (UOI) and Ors., AIR 1975 SC 1269**, the Apex Court has held as under:-

“9. Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one’s position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.”

[Emphasis added]

13. In **K.R. Mudgal and Ors. Vs. R.P. Singh and Ors., AIR 1986 SC 2086**, the Apex Court has opined thus:-

“7.....Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the

*government servants created by the writ petitions filed after several years as in this case. It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the government servants there would also be administrative complications and difficulties.....”*

14. Similar view has been reiterated by their Lordships in ***State of West Bengal Vs. Tarun K. Roy & Ors., (2004) 1 SCC 347.***

15. We have referred to the said authorities solely for the reason that delay, as regards the challenge to seniority and promotion, has to be made with at the earliest. Mr.Sudarshan Rajan, learned counsel appearing for the appellant, would contend that an equitable approach should be adopted. The principle of equity does not operate in a total vacuum. It is neither governed by whim nor fancy. To claim equity, one has to be diligent. Alertness and vigil are to be the pillars for the foundation of such a claim. In ***S.S. Balu & Anr. v. State of Kerala & Ors., (2009) 2 SCC 479***, their Lordships have opined that it is a well settled principle of law that delay defeats equity. In the case at hand, it was expected on the part of the appellant to realize the basic fact that the order passed by the learned Single Judge had already been given effect to and before that he never chose to get the order recalled or challenge the same. He was

taking his chances by filing a writ petition as if it is an independent relief knowing fully well that it could not have been so.

16. In view of the aforesaid analysis, we are of the considered opinion that the delay in filing the appeal does not deserve to be condoned and accordingly, the application for condonation of delay stands rejected and as a logical corollary, the appeal paves the path of dismissal.

**CHIEF JUSTICE**

JANUARY 21, 2011  
pk

**SANJIV KHANNA, J**