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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No.919/2013 & conn.

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15th February, 2013

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W.P(C) 919/2013

SURESH GARG

..... Petitioner

Through: Mr. Vimal Wadhawan, Advocate.

VERSUS

NDPL & ANR.

..... Respondents.

Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Abhay Kumar, Mr. Vineek Kumar Singh, Mr. Upendra Pratap Singh and Ms. Niyati Mittal, Advocates for R-1.

Mr. V.C.Jha and Ms. Sonia Sharma,
Advocates for R-2(GNCTD).

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W.P(C) 922/2013

SH. RAJINDER SINGH YADAV

..... Petitioner

Through: Mr. Vimal Wadhawan, Advocate.

VERSUS

NDPL & ANR.

..... Respondents.

Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Abhay Kumar, Mr. Vineek Kumar Singh, Mr. Upendra Pratap Singh and Ms. Niyati Mittal, Advocates for R-1.

Mr. V.C.Jha and Ms. Sonia Sharma,
Advocates for R-2(GNCTD).

+ **W.P(C) 924/2013**

BANWARI LAL

..... Petitioner

Through: Mr. Vimal Wadhawan, Advocate.

VERSUS

NDPL & ANR.

..... Respondents.

Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Abhay Kumar, Mr. Vineek Kumar Singh, Mr. Upendra Pratap Singh and Ms. Niyati Mittal, Advocates for R-1.

Mr. V.C.Jha and Ms. Sonia Sharma,
Advocates for R-2(GNCTD).

+ **W.P(C) 926/2013**

CHANDER BHAN SHARMA

..... Petitioner

Through: Mr. Vimal Wadhawan, Advocate.

VERSUS

NDPL & ANR.

..... Respondents.

Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Abhay Kumar, Mr. Vineek Kumar Singh, Mr. Upendra Pratap Singh and Ms. Niyati Mittal, Advocates for R-1.

Mr. V.C.Jha and Ms. Sonia Sharma,
Advocates for R-2(GNCTD).

+ **W.P(C) 929/2013**

VIJENDER SINGH

..... Petitioner

Through: Mr. Vimal Wadhawan, Advocate.

VERSUS

NDPL & ANR.

..... Respondents.
Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr.
Abhay Kumar, Mr. Vineek Kumar Singh,
Mr. Upendra Pratap Singh and Ms. Niyati
Mittal, Advocates for R-1.

Mr. V.C.Jha and Ms. Sonia Sharma,
Advocates for R-2(GNCTD).

+ **W.P(C) 930/2013**

SADHU RAM VERMA

..... Petitioner
Through: Mr. Vimal Wadhawan, Advocate.

VERSUS

NDPL & ANR.

..... Respondents.
Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr.
Abhay Kumar, Mr. Vineek Kumar Singh,
Mr. Upendra Pratap Singh and Ms. Niyati
Mittal, Advocates for R-1.

Mr. Anas Tanvir, Adv. for Mr. Rajiv Nanda,
Advocate for R-2(GNCTD).

+ **W.P(C) 931/2013**

ANIL MOHAN

..... Petitioner
Through: Mr. Vimal Wadhawan, Advocate.

VERSUS

NDPL & ANR.

..... Respondents.

Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Abhay Kumar, Mr. Vineek Kumar Singh, Mr. Upendra Pratap Singh and Ms. Niyati Mittal, Advocates for R-1.

Mr. Anas Tanvir, Adv. for Mr. Rajiv Nanda, Advocate for R-2(GNCTD).

+ **W.P(C) 933/2013**

MAHENDER GUPTA

..... Petitioner

Through: Mr. Vimal Wadhawan, Advocate.

VERSUS

NDPL & ANR.

..... Respondents.

Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Abhay Kumar, Mr. Vineek Kumar Singh, Mr. Upendra Pratap Singh and Ms. Niyati Mittal, Advocates for R-1.

Mr. V.C.Jha and Ms. Sonia Sharma, Advocates for R-2(GNCTD).

+ **W.P(C) 934/2013**

BALJEET SINGH DAHIYA

..... Petitioner

Through: Mr. Vimal Wadhawan, Advocate.

VERSUS

NDPL & ANR.

..... Respondents.

Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Abhay Kumar, Mr. Vineek Kumar Singh, Mr. Upendra Pratap Singh and Ms. Niyati Mittal, Advocates for R-1.

Mr. Anas Tanvir, Adv. for Mr. Rajiv Nanda,
Advocate for R-2(GNCTD).

+ **W.P(C) 935/2013**

DEEPAK KUMAR GUGLANI Petitioner
Through: Mr. Vimal Wadhawan, Advocate.

VERSUS

NDPL & ANR. Respondents.
Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr.
Abhay Kumar, Mr. Vineek Kumar Singh,
Mr. Upendra Pratap Singh and Ms. Niyati
Mittal, Advocates for R-1.

Mr. V.C.Jha and Ms. Sonia Sharma,
Advocates for R-2(GNCTD).

+ **W.P(C) 936/2013**

SURESH KUMAR KAMRA Petitioner
Through: Mr. Vimal Wadhawan, Advocate.

VERSUS

NDPL & ANR. Respondents.
Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr.
Abhay Kumar, Mr. Vineek Kumar Singh,
Mr. Upendra Pratap Singh and Ms. Niyati
Mittal, Advocates for R-1.

Mr. V.C.Jha and Ms. Sonia Sharma,
Advocates for R-2(GNCTD).

+ **W.P(C) 943/2013**

RAJENDER KUMAR SHARMA Petitioner
Through: Mr. Vimal Wadhawan, Advocate.

VERSUS

NDPL & ANR. Respondents.
Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr.
Abhay Kumar, Mr. Vineek Kumar Singh,
Mr. Upendra Pratap Singh and Ms. Niyati
Mittal, Advocates for R-1.

Mr. V.C.Jha and Ms. Sonia Sharma,
Advocates for R-2(GNCTD).

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. The facts in all the aforesaid writ petitions are more or less similar and for the sake of convenience reference is made to the facts of W.P(C) 919/2013.
2. These are writ petitions filed by the petitioners who were erstwhile employees of Delhi Electric Supply Undertaking (DESU) and which thereafter became Delhi Vidhut Board (DVB). After unbundling of DVB, the services of the employees of DVB were transferred to various electricity distribution companies (DISCOMS). The petitioners' services were also transferred to DISCOMS and in

terms of the agreement between the DVB and the DISCOMS, the service conditions of the employees were not to be adversely affected, and they would continue to remain the same as were the service conditions of these petitioners with the erstwhile DVB. I may also note, and this would in a way be relevant for disposal of these petitions, that each of the petitioners have taken voluntary retirement many years back. The voluntary retirements were taken by the petitioners in around the year 2003-2004.

3. The main relief which is claimed in the present writ petition is the claim of the petitioner to the Time Bound Promotion Scale scheme which was brought into force by the DVB way back on 23.7.1997 i.e about 15 years before. As per the Time Bound Promotion Scale scheme, every employee who was covered by the scheme dated 23.7.1997, was entitled to two time bound promotional scales. The first was after 10 years of regular service and the second was after another 8 years of service. The office order of the DVB dated 23.7.1997 was clarified by the office order of DVB dated 21.12.1999 whereby the entitlement of a third time bound promotional scale was to be given to persons employed below the level of Asst. Engineer in a total period of 26 years from the date of entering into the service at the base level on regular basis. The effect of this, clarification dated 21.12.1999 would be to bring about in a way retrospective

operation of the time bound promotional scheme granted by the order dated 23.7.1997 in that the total period is to be counted for grant of time bound promotional scales not from the intermediate date of promotion but from the original date of entering into the service. Learned counsel for the petitioner has argued that this issue is now fully covered in favour of the petitioners by the judgment dated 28.7.2008 passed by a learned Single Judge of this Court in W.P.(C) No. 2237/2002 titled as *M.K.Saini Vs. DVB*, and in which judgment, benefit of the 1997 circular has been granted with a retrospective operation in the sense that if the 18 years expires even one day after passing of the office order dated 23.7.1997, even then in such case, the benefit of the enhanced pay-scale of 18 years would be granted as long as the 18 years is complete taking the period of 18 years from the date of entering into service at the base level. Paras 4 to 13 of this judgment are relevant and which read as under:-

4. Consequent upon the above merger, the petitioner who was at that time Superintendent (Tech.) and his subordinates who were working as Inspector (Electrical) were overnight re-designated as JEs. The question then arose about the implementation of the Time Bound Promotional Scheme ('TBPS') by which a JE with 10 years' experience was to be given the scale of an Assistant Engineer (AE) (i.e. the first TBPS) and an AE with 8 years' experience would be granted the scale of an EE (the second TBPS). It was realized that if those JEs who had already put in some years of service were to be equated with those recently re-designated for the purpose of grant of the second TBPS, it might cause heart burn. Therefore an Office Order dated 19th October 2000 was issued by DVB which was later modified by another Office Order dated 1st November 2000 the relevant portion of which read as under:

“In continuation and in partial modification of the office order No. F.5(11)/AandG/ PRC/89 dated 19.10.2000 Delhi Vidyut Board vide Resolution No.37.00/565-A dated 25.10.2000 has approved as under:-

a) The eligibility for the second time ? bound promotional scale after the date of merger, to the scale of Executive Engineer will be considered for the Junior Engineers (Degree/Diploma) on completion of total 18 years qualifying service or more as on 24.8.1999 and prescribed condition as stipulated in para (b) below is satisfied. The scale of Executive Engineer to those who would be eligible before eight years from 24.8.1999 would be given as personal to them till completion of eight years service from 24.8.1999. No arrear will be paid to the past period before 24.8.1999 in the case of grant of time-bound promotional scale of AE/XEN as a result of merger of the cadre of Inspector/Superintendent.

b) The eligibility for the time bound promotional scale to the scale of XEN as on 24.8.1999 will be only for those Junior Engineers who are already in the pay scale of AE prior to the date of merger and provided they fulfill the eligibility condition for promotion to the net time-scale of Executive Engineer.”

5. The petitioner was not granted the second TBPS to the post of EE on the ground that as on 24th August 1999 he had not completed 18 years of service. When his representations were to no avail, he filed the present petition seeking a mandamus to the DVB to grant him the second TBPS promotional scale of EE with effect from 16th November 1999.

6. During the pendency of this writ petition, the DVB was privatized and in its place Indraprastha Power Generation Company Limited has been substituted as Respondent. On 28th March 2002 the petitioner was granted the

pay sale of AE with effect from 24th August 1999. Taking note of the above development, this Court passed the following order on 18th August 2004:

“WP(C) 2237/2002

By this writ petition, petitioner seeks a mandamus for being promoted to promotional scale of Executive Engineer w.e.f. 16.11.1999 instead of the scale of Assistant Engineer given to him. Petitioner had been working initially as Inspector (Electrical) and thereafter Superintendent (Electrical). These two posts were merged. Petitioner had been granted first time bound promotion scale on 24.8.1999 in the scale of Junior Engineer. Petitioner's contention is that he is entitled to have the scale of Assistant Engineer. Further, that within 18 years from initial appointment, petitioner is entitled to have second time bound promotion.

The matter requires consideration.

Rule.

At this stage, learned counsel for the petitioner submits that respondents have issued Office Order dated 28.3.2002, which relates to the grievance of the petitioner and petitioner would be satisfied, if the same is implemented for the petitioner, as he is covered by the said Office Order. Copy of the said Office Order has been handed over to counsel for the respondent, who would obtain instructions regarding implementation of the same. Let a responsible officer of the respondent be present with instructions regarding implementation of this Office Order.”

7. Learned counsel for the petitioner submits that as noted in the above order, the dispute has got narrowed to the issue of grant of scale of EE to the petitioner with effect from 16th November 1999. According to him, with the merger of the posts of Inspector (E) and Superintendent (Tech) with that of JE,

the re-designation of the post of Superintendent (Tech.) had to be effective, as in the case of the petitioner, from the date when he was appointed as Inspector (E), i.e. 16th November 1981. On that basis the petitioner completed 18 years' service on 16th November 1999. Thus he would as on that date be eligible for the scale of EE. Also, the petitioner satisfies the requirement of being placed in the pay scale of AE on the date of the merger i.e. 24th August 1999.

8. Ms.Monica Garg, learned counsel for the respondent on the other hand submitted that the petitioner did not complete 18 years' service as on the date of the merger i.e. 24th August 1999 and therefore he cannot be considered eligible for the second TBPS to the scale of EE. She further points out the second condition to be fulfilled as per the Office Order dated 1st November 2000 was that only a JE who was already drawing the pay scale of AE "prior to the date of the merger", i.e. 24th August 1999 would be entitled to the TBPS to the scale of EE. Since in terms of the Office Order dated 28th March 2002 the petitioner was granted the pay scale of AE only with effect from 24th August 1999 and not prior thereto, he could not be granted the second TBPS.

9. The narration of the facts shows that the Office Order dated 30th August 1999 brought about a substantial change inasmuch as the promotional post of JE was merged with two posts subordinate to it i.e. Superintendent (T) and Inspector (E). In other words those, like the petitioner, who were promoted as Superintendent (T) after serving 11 years in the post of Inspector (E) had to share the same designation of JE with those who were at least 10 years junior to them. It was little consolation that in the combined seniority lists of all JEs the petitioner may have figured higher than that some of those Inspectors who were designated as JEs very shortly after being appointed as Inspectors (E) or Superintendent (Tech.) If one strictly went by the Office Order dated 1st November 2000 all of them would become eligible for the second TBPS to the scale of EE after completing eight years' service as AE. The long years of service put in by a person at the intermediate level [like Superintendent (Tech)] prior to the date of the merger would get wiped out. In other words a person who had served for more than 15 years as on the date of the merger would suddenly be equated with the person who had not even completed two years' of service as on that date.

10. The Office Order dated 1st November 2000 was no doubt intended to deal with the problem of stagnation and grant of time bound promotional scale at the next levels. The Office Order dated 30th August 1999 nevertheless made it clear that “the present incumbents against the posts of Superintendent be allowed to retain their existing scale as personal to them till they vacate the posts.” And further that “the benefits/allowance wherever attached with the posts of Superintendent/Inspector be attached with the post of Junior Engineer too.” Thus the intention was not to wipe out the long years of service put in by, say, the Superintendent (Tech) and particularly the benefits attaching to that post prior to the date of merger of the promotion.

11. It appears that the re-designation had to be effective from the date when the person so appointed as Inspector (E) and the number of years of service that he had to complete for being granted the second TBPS scale, counted from that date. That is the only way in which the benefits attaching to the post, either of Inspector (E) or Superintendent (T), prior to the date of the merger would be able to be preserved. To this Court it appears that this is the way in which the Office Orders dated 30th August 1999 and 1st November 2000 can be reconciled so that their combined working is not rendered arbitrary or unreasonable. If so rationalized, the petitioner would have been eligible for the pay scale of AE under the first TBPS on completion of 10 years as JE, which would be 16th November 1991, a date much prior to 24th August 1999, the date of the merger. The petitioner has been granted the pay scale of AE on 24th August 1999 although he was eligible to draw that pay scale earlier to that date i.e. with effect from 16th November 1991. Therefore, for all practical purposes, he should be taken to have satisfied the second condition contained in the Office Order dated 1st November 2000, viz., that he was drawing the scale of AE prior to 24th August 1999. However, this would not entitle the petitioner to claim any arrears of the pay-scale of AE from 16th November 1991 till 24th August 1999.

12. As far as the condition regarding completion of 18 years’ service as JE is concerned, if it is counted in the petitioner’s case from the effective date of his re-designation as JE i.e. 1st November 1981 then he satisfies this condition on 16th November 1999. Therefore, he should be eligible for grant of pay scale of EE with effect from that date.

13. Accordingly, the writ petition is allowed. The respondent is directed to grant the petitioner the pay scale of EE with effect from 16th November 1999. The consequential benefits will be worked out and the arrears of pay will be paid to the petitioner by the respondent within eight weeks from today

4. As per the facts of this case the petitioner ordinarily would be entitled to the benefits in view of the aforesaid judgment dated 28.7.2008, which holds that as far as the condition regarding completion of 18 years of service as Junior Engineer (JE) is concerned, it is to be counted from the effective date of petitioner's re-designation as JE and which was 1.11.1981 in the facts of that case. In the facts of that case 18 years therefore came to an end on 16.11.1999 and it was held that from 16.11.1999, the petitioner in that case was to be eligible for grant of pay scale of Executive Engineer (E.E) with effect from that date of completion of 18 years.

5. Learned senior counsel appearing for the respondent no.1/private DISCOMS, however objected to the grant of the reliefs claimed and argued that no doubt period of limitation does not apply to a writ petition, however, Courts have been applying the principle of delay and laches so as to not entertain a writ petition once substantial time had expired from the date the petitioner ought to have filed the petition. It is argued on behalf of the respondent no.1 that if on the basis of a judgment in one case, various other persons are granted the same relief, although,

they do not approach the Court in a reasonable period of time after issuance of the circular of 1997 or 1999, grave and irreparable prejudice will be caused to the respondent no.1 inasmuch as, huge monetary liability will be fastened to the respondent no.1, and which really is neither envisaged in law nor under the scheme of unbundling of DVB. It is argued that if this petition is allowed in spite of gross delay and laches floodgates will be thrown open to innumerable number of persons for approaching this Court causing immense financial repercussions to the respondent no.1. It is argued that persons if they want to seek the reliefs, which they are entitled to, must be vigilant and, must approach the Court without undue delay and the only exception is that if representations have been made and which are not dismissed, then in such a case, Courts can be liberal, however, in the present case, the petitioners have not made any representations till the filing of the petition, thus disentitling them to the grant of reliefs as claimed in the present petition.

6. In response, counsel for the petitioner has relied upon a Division Bench of the Gujarat High Court in the case of ***Ramanlal Keshavlal Soni & ors Vs. State of Gujarat and ors AIR 1977 Gujarat 76*** to argue the proposition that the rule of delay and laches is not a rule of law but of practice, and once persons are found to be agitating their cases since a long period of time, such persons in

equity should not be denied the relief of grant of delay and laches. Paras 39 and 40 of the said judgment are relied upon, and which read as under:-

39. In *R. S. Deodhar v. State of Maharashtra*, AIR 1974 SC 259 = (1974 Lab IC 165) the question as to what were the relevant considerations in determining whether delay or laches could defeat a petition under Article [32](#) fell for consideration of the Supreme Court. It was there pointed out that the relevant considerations which should be borne in mind were, (1) that the rule which says that a Court may not inquire into belated or stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition and that each case must depend on its own facts; (2) that when the challenge based on violation of the equal opportunity clause is not directed against a thing of the past, but is a vital issue still affecting the petitioners, it is but desirable that the challenge should be examined and adjudged when the matter has come before the Court at the instance of the parties properly aggrieved; (3) that the principle on which the Court proceeds in refusing relief to the petitioner on the ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay, for, the action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court; and (4) that the claim for enforcement of the fundamental right of equal opportunity is itself a fundamental right and that in such a case, the Court cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like.

40. If the preliminary objection advanced in this case on the ground of delay, laches and the like is examined bearing in mind the aforesaid principles which are equally applicable to a petition under Article [226](#) and in the context of the facts and circumstances of the present case, it would appear that there is no substance in the same. In the first place, there is really no delay or acquiescence. The chronology of events set out above shows that the petitioners or a section of them have been agitating their cause ever since they were brought into the main stream of the Panchayat Service and that at no stage they could be accused of having allowed time to lapse in such a manner as to defeat their legitimate claim. It cannot be said therefore that their claim is belated or stale and, in any event, it would not be a legitimate and proper exercise of discretion, in the facts and circumstances of the present case, to throw out the petition on the ground of delay and the like. In the second place, the challenge of the petitioners is not

directed against a transitory thing of the past. The question of the initial fixation and revision of their pay scales is as much vital today as it was at the material point of time, for, the denial of the revision of pay scales in the past will undoubtedly project itself into any future revision of pay scales and, quite apart from this, it affects their monthly emoluments received by them even today. In the third place, this is not a case where on account of the delay, if any, rights which have accrued to others will be disturbed and innocent parties will be harmed, if relief is granted to the petitioners. To accept this argument urged by the first and second respondents would be to put a premium on the default of the said respondents to give just relief to the petitioners in time and to penalize the petitioners, even though they are ultimately found to have been done wrong and for the redress of which wrong they have been knocking the doors of the concerned respondents. In the last place, the claim in the present petition is founded on the enforcement of the fundamental right of equal opportunity under Article [16](#) and we cannot allow ourselves to be easily persuaded to refuse relief on the ground of laches, etc. when we find, as ultimately we are inclined to do, that the claim is well-founded. In our opinion, having regard to the circumstances aforesaid, this is not a fit and proper case in which we should exercise our discretion to throw out the petition on the ground of delay and laches.

7. I have thought long and hard on this issue. On one hand is the entitlement of the petitioner on the basis of a judgment dated 28.7.2008 in W.P.(C) No. 2237/2002, and on the other hand is the issue that does passing of a judgment give cause of action or really it is the issuance of circulars of 1997 and 1999 that did give a cause of action for filing of a petition. The aforesaid aspect is also to be taken with the fact that at no point of time the petitioners who have taken voluntary retirement in the years 2003-2004, before seeking such retirement, ever asked for the reliefs which are now been claimed in the present petition. Also is the issue of unknown number of persons approaching the Court now and later causing fastening of huge monetary liability on the respondent no.1.

8. In my opinion, the arguments as urged on behalf of the respondent no.1 should succeed because otherwise the result would be that people can sleep for many many years, may be for over a decade or more, and thereafter approach the Court only on the ground that one case of one employee is decided in his favour and therefore all other similar situated employees are also automatically entitled to the benefit. I am indeed hesitant to accept the arguments as urged on behalf of the petitioners because there will result fastening of a huge monetary liability at a late stage against the respondent no.1 and in favour of a person who has not chosen neither to make a representation or file a case in the Court. If the argument of petitioners is accepted that a judgment may be theoretically passed in favour of one employee after even 20-30-40 years, then, simply on the basis of a judgment in favour of one employee, all other employees similarly situated after expiry of 20-30-40 years can come to the Court and claim monetary benefits on the ground on which a particular person was granted the benefit. It is in public interest that there should be certainty as to liability after a period of time, and which is one of the objects of the Limitation Act and situations cannot be permitted to remain in a fluid state for unknown number of years.

9. I am unable to agree with the arguments as urged on behalf of the petitioners because it cannot be disputed that the scale of pay which is claimed by

the petitioners is admittedly on the basis of the office order dated 23.7.1997 when the cause of action arose. Surely, there was no hindrance or obstacle to the petitioners to claim benefit of the circular dated 23.7.1997 on the said circular having come into force and effect. This circular having come into force in 1997 surely within a few months or few years, in and around theoretically a period of limitation, the petitioners ought to have approached the Court to seek enforcement of their rights on the basis of the circular which gave them monetary benefits. In effect allowing of the present petitions would be to pass a money decree against the respondent/employer, and a money decree with respect to monetary amount can be passed only if a suit for claiming of monetary reliefs is filed within a period of three years when the monetary relief entitlement became due to the petitioners. Of course, I must hasten to add, and as already stated above, that limitation is not a ground taken in a defence to a petition filed under Article 226 of the Constitution of India, but it is undoubtedly a guiding factor because the principle which is really applied is the rule of delay and laches and not of limitation. Additionally, the only exception which can be available to entitle petitioners to come to the Court with delay would be when a representation or representations is/are filed by the petitioners with the employer organization to claim benefit of the circular dated 23.7.1997, and such representation is pending or not rejected, or there is a written assurance to give the benefit and in which circumstances, Courts would not be

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strict in applying the doctrine of delay and laches. In the facts of the present case, it is however clear by a reference to the list of dates as also the averments in the writ petitions (as also the documents filed at the initial stage) that no representation was at all filed by these petitioners in the year 1997 or thereabouts or within a year or so thereafter to take benefit of the circular and claim monetary benefits on the basis of such circular dated 23.7.1997. Also, there is no assurance in writing from the employer organization in the record of the writ petitions of the petitioners being promised the monetary benefits in terms of the circular dated 23.7.1997. Also, nothing on record seems to suggest that the petitioners made representations within a few years of passing of the circular, and hence they accordingly did not approach the Court because their representation or representations was/were pending.

10. During the course of hearing, counsel for the petitioner has filed in Court various documents from pages 4 to 13 to argue that the petitioners had made representations. Ordinarily, I would not have allowed the petitioners to file and rely on such documents during the course of hearing, inasmuch as, neither is there any averment in the writ petition and nor are the representations made by the petitioners individually, however, to ensure that all the aspects are duly considered for passing of the judgment, and so that interest of justice does not suffer, I have

allowed the counsel for the petitioners to refer to the documents from pages 4 to 13 given in Court.

11. A reading of the documents which have been filed in Court shows that most of the documents pertain to some individual correspondence of some employees, who are admittedly not the petitioners in this case. In my opinion, with respect to those persons who were vigilant and who had made representations, such persons, of course, would be entitled to seek benefit of the circular dated 23.7.1997, and therefore, the benefit was given in the judgment dated 28.7.2008 in W.P.(C) 2237/2002 inasmuch as para 5 of the said judgment refers to representations which were made by the petitioner in that case. Also, I may note that writ petition which was decided in favour of the petitioner Sh. M.K.Saini by the judgment dated 28.7.2008 is a writ petition which was filed in the year 2002 and i.e about 5 years from the circular dated 23.7.1997 having been issued. There was therefore no defence/issue which was urged on behalf of the employer organization in that case of delay and laches. Of course, there would not have been an issue of delay and laches in that case because of filing of a petition in 2002 cannot be said to be barred by delay and laches when the said petition sought to seek enforcement of a circular dated 23.7.1997 and with respect to which a representation was made.

12. It was also argued on behalf of the petitioner that even if we do not take into account the representations of certain persons who are not parties before this Court however general representations were made on behalf of the organization of the employees such as the petitioners, and reference is made to certain representations which have been filed in the Court today. If we refer to the representations, then, we find that the only representations which would be relevant in this regard are the representations dated 6.7.2009 and 19.7.2012. Therefore, the earliest representation which is filed on behalf of the organization to which the petitioners claim to be members, is as many as 12 years after issuance of the circular in 1997 and inasmuch as, the representation of the erstwhile DVB SVRS-2003 Employees Welfare Forum (Regd.) is dated 6.7.2009. Therefore, even if, I consider this representation, delay and laches of 12 years is such which does not persuade me to grant reliefs to the petitioners in the present cases.

13. Finally, counsel for the petitioner argued that in fact, one of the DISCOMS namely M/s BSES Rajdhani Power Co. Ltd. had given an assurance on 1.6.2012 that the petitioners will be granted the reliefs as claimed in the present petition, and therefore, the issue of delay and laches should not be held against the petitioners. In order to appreciate this argument, reference is required to be made to this letter dated 1.6.2012 and which reads as under:-

“ No.HR/2012-13/937

Dated: 1st June,2012

Sh. S.P.Chawla
D-9-E, DDA Flats
Munirka
New Delhi-110067

Sub: Time Bound Promotional Scale

Sir,

With reference to your representation dated 16.05.2012 on the subject cited above, you are informed that as per existing orders for grant of time bound promotional scale your request is not tenable. Further, BRPL is not bound to implement the decision taken by other entities on the basis of judgment in which BRPL was not a party. It is also informed that the specific issue is still subjudiced as some of BRPL employees have approached the High Court of Delhi.

Therefore, your request for grant of TBPS on the analogy of DTL decision can not be considered at this stage when the matter is subjudiced.

AMIT SRIVASTAVA
(SR. MANAGER (HR))”

14. Three things become clear when we refer to this letter dated 1.6.2012. Firstly, this letter is itself given in 2012 pursuant to representation dated 16.5.2012 i.e representation was given about 14-15 years after the circular was issued in July, 1997. Secondly, the language of the aforesaid letter does seem to refer to the issue being *subjudice*, however, there is no categorical assurance in this letter that the said Sh. S.P.Chawla will be paid the monetary benefits if the writ petition which is pending in the Court will succeed. Thirdly and finally, the letter dated 1.6.2012 is not of any association of persons to which the petitioners are parties, but is addressed to an individual person one Sh. S.P.Chawla. Accordingly, I am of the

opinion for all the aforesaid reasons, existence of the letter dated 1.6.2012 will not give any benefit to the petitioners so that they can avoid the bar to the petition on the doctrine of delay and laches.

15. I have already stated above, that the judgment of learned Single Judge of this Court dated 28.7.2008 was passed in a writ petition which was of the year 2002. The present petitions are filed in the year 2013. For the aforesaid detailed reasons, I am not inclined to fasten a huge monetary liability upon an organization merely on the ground that one employee of an organization has succeeded in his writ petition, inasmuch as, vigilant persons who approach the Court without delay and seek enforcement of their rights can get their legal entitlement however, merely on the basis of a judgment being passed in favour of one of the employees, the entire fasciculus of employees cannot get the benefits which is granted to one vigilant employee when he succeeds before the Court in his case. Also as stated above if these petitions are allowed, then, floodgates will be thrown open for a large number of persons to seek same monetary reliefs.

16. In view of the above, the writ petitions are dismissed, leaving the parties to bear their own costs.

FEBRUARY 15, 2013

VALMIKI J. MEHTA, J.

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