

GAHC020004622021



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)
KOHIMA BENCH

WP(C)/220/2021

1. Shri Siekedo Yhoshu
Retired Functional Manager,
Department of Industries and
Commerce Nagaland, Kohima,
Resident of Sachu Zubza

Petitioner

-Versus-

1. The State of Nagaland
Through The Chief Secretary,
Government of Nagaland,
Nagaland – Kohima
2. The Commissioner and Secretary to the
Government of Nagaland
Department of Industries and Commerce
Nagaland Kohima
3. The Director
Department of Industries and Commerce
Nagaland- Kohima

Respondents

For Petitioner : Mr. Zasitsolie, Advocate
For Respondent(s) : Ms. V. Suokhrie, Additional Advocate General,
Nagaland
Date of judgment : 17.10.2023

**BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
JUDGMENT**

(Mridul Kumar Kalita, J)

- 1.** Heard Mr. Zasitsolie, learned counsel for the petitioner. Also heard Ms. V. Suokhrie, learned Additional Advocate General, Nagaland.
- 2.** This writ petition under Article 226 of Constitution of India has been filed by the petitioner, namely, Shri Siekedo Yhosu praying for issuance of directions to the respondent authorities for consideration of his representation dated 14.11.2008, whereby the petitioner prayed for granting him promotion to the post of Deputy Director/General Manager and for setting aside the letter No. I&C/NL/15/2019/7 dated 16.04.2021, whereby the prayer for holding review DPC 1992 in the light of judgment dated 27.08.2020 passed by Nagaland Lokayukta Case No. A-NLP-2/2019 was rejected on the ground that the Government does not find merit to forward proposal for review of DPC 1992 in respect of petitioner and for other connected reliefs.
- 3.** The petitioner's case, in brief is that before joining the Department of Industries and Commerce, Nagaland, Kohima, the present petitioner had served as an LDA (Lower Division Assistant) in the Department Office of the Inspector General of Police since 08.09.1972. Thereafter, the petitioner was appointed as LDA in the Nagaland Civil Secretariat on 08.10.1973 and again

by order dated 09.03.1981, he was appointed to the post of Extension Officer Class III, Non-Gazetted, under the Department of Industries and Commerce, Nagaland, Kohima and on 01.06.1993, he was promoted to the post of Functional Manager and was posted to the Office of General Manager, District Industries Centre Shazouba, Kohima and thereafter, no promotion was given to him and he retired from the said post on completion of thirty seven (37) years of his service on 13.10.2009.

4. Thereafter, by Notification No. ID/A(1)44/81 dated 25.03.1992 issued by the respondent No.2, four (4) numbers of Extension Officers including Shri O. Temsu Ao, who was junior to the present petitioner were promoted to the post of Functional Manager (Class-I, Gazetted). The said notification was kept in abeyance for sometime however, again on 26.05.1992 the notification issued on 25.03.1992 was modified and it was stated that the officiating promotion of Shri O. Temsu Ao will come into effect from the date of said modification order and his regularization in said officiating promotion shall be subject to the decision of departmental promotion committee in due course.

5. Thereafter, on 14.08.1992, the present petitioner wrote to the Advisor Industries to the Government of Nagaland for consideration to his promotion, however, the same was not considered and thereafter, it is only on 01.06.1993 by Notification No. ID/A/1/44/81 (Part) the present petitioner was promoted along with two others to the post of Functional Managers of the

Nagaland Industries Services (Class-I, Gazetted). However, the representation regarding his supersession by his junior, namely, Shri O. Temsu Ao was not considered. Thereafter, the petitioner made several representations for restoration of his seniority over Shri O. Temsu Ao, however, no heed was paid by the respondent authorities to the said representations.

6. That on 14.11.2008, the petitioner again submitted a representation to the respondent no. 2 for his promotion to the post of Deputy Director/General Manager/Deputy General Manager. The said representation was reported to be misplaced by the respondent authority, however, on 27.11.2008, the Additional Director of Industries and Commerce, Nagaland forwarded the proposal for promotion of the present petitioner to the post of Deputy Director/General Manager to the respondent No.2, i.e., the Commissioner and Secretary, Industries and Commerce Department, Kohima.

7. Thereafter, by Memorandum dated 15.05.2009 a tentative seniority list of the Assistant Director/Functional Manager/Handloom Production Officer under the Department of Industries and Commerce as on 01.05.2009 was issued wherein the petitioner's seniority was placed below the name of Shri O. Temsu Ao. Thereafter, on 03.06.2009, the petitioner filed a representation for rectification of the seniority list, however, in the meanwhile during the pendency of the said representation the Nagaland Retirement from Public Employment (Second

Amendment) Act, 2009, aiming to the effect from 31.10.2009 and accordingly, the petitioner was released from service after completion of thirty seven (37) years with effect from 31.10.2009.

8. Mr. Zasitsolie, learned counsel for the petitioner has submitted that thereafter, on 02.02.2015, a news item was published in the "Nagaland Post" regarding a notification issued by Department of Personnel and Training (DoPT) by which the retired Government employees who missed out their promotion would now be able to avail post retirement benefit and by virtue of an Officer Memorandum dated 15.11.2018 of the Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training of the Government of India which was adopted by the Government of Nagaland by Officer Memorandum No. AR-1/8/88 dated 09.10.2019.

9. It is further submitted by the learned counsel for the petitioner that prior to that on 26.03.2015, the petitioner has made a representation to the respondent no.1 for consideration of his case to avail the benefits of missed promotions. However, as same was not responded by the respondent authorities. The petitioner on 14.06.2019 filed a complaint before the Up-Lokayukta, Nagaland for availing the benefits of his missed promotion. The Up-Lokayukta by its order dated 27.08.2020 passed in Case No. A-NLP-2/2019 disposed of the complaint with direction to the Department to consider the request of the petitioner if the rule permits. However, by the letter dated

16.04.2021 addressed to the present petitioner, the Under Secretary to the Government of Nagaland, Industries and Commerce Department informed the petitioner that the Government does not find merit in setting up the Departmental Committee to review the matter.

10. The learned counsel for the petitioner has submitted that though the Government has informed that in the year 1992 the promotion was denied to the present petitioner due to application of Nagaland Services (Discipline and Appeal) Rules, 1967, however, no departmental proceeding was pending in respect of the present petitioner, thereafter, the respondents were unjustified in withholding the promotion to the present petitioner and superceding him by one of his junior namely, Shri O. Temsu Ao.

11. It is also submitted by learned counsel for the petitioner that the petitioner who served in the post of Functional Manager for (sixteen) 16 long years was entitled to be considered for promotion to the next higher post, however, in-spite of the availability of the post in the next higher promotion grade, no meeting of the Departmental Promotion Committee (DPC) was held in between the years 2007-2009.

12. It is submitted by the learned counsel for the petitioner that as per Office Memorandum dated 10.04.1989 of the Department of Personnel, Public Grievance & Pension and Department of Personnel and Training, Government of India, the DPC should be

convened at regular interval to draw panel, which could be utilized for promotion against the vacancies occurring during the course of the year, however, despite the said mandate, the Government failed to convene the DPC during the years 2007-2009 and thereby deprived the petitioner the promotion which was due to him.

13. Learned counsel for the petitioner has cited a ruling of Hon'ble Supreme Court of India *in "Union of India and Others Vs. Anil Kumar Sarkar and Anothers"* [Judgment dated 15.03.2013 in Civil Appeal No. 2537/2013], wherein it was observed that promotion cannot be withheld merely because some disciplinary proceeding are pending against the employee. Learned counsel for the petitioner has submitted that in the instant case no departmental proceeding was drawn against the present petitioner. However, he was unjustly denied promotion in the year 1992 and his junior was promoted by superceding him.

14. Learned counsel for the petitioner has also cited another ruling in *"Coal India Limited and Others Vs. Saroj Kumar Mishra and Others"* [Judgment dated 17.04.2007 in Civil Appeal No. 1997/2007], wherein it was observed that a departmental proceeding is ordinarily said to be initiated only when charge sheet is issued and in the said cited case, it was held that the petitioner was entitled to promotion notionally with effect from the date when his immediate junior got promotion along with all service and financial benefits.

15. Learned counsel for the petitioner has also cited a ruling of "*Union of India etc. Vs. K. V. Janaki Raman etc.*", wherein it was observed that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying promotion due. When, therefore, at the end of such sufferings he comes out with clean bill, he has to be restored to all the benefits for which he was kept unjustly away.

16. The learned counsel for the petitioner has also placed before this Court a judgment dated 19.07.2019 passed by Central Administrative Tribunal, Jodhpur in "*R. K. Kawatra Vs. Ministry of Defence*" [*in OA No. 290/00524 of 2016*], wherein the petitioner was given benefit of notional promotion from back date as the department failed to hold departmental committee meeting in time.

17. Learned counsel for the petitioner has submitted that the petitioner was unduly denied promotion in the year 1992 and he was also deprived of the benefit of Office Memorandum dated 15.11.2018 of the Government of India which was adopted by Nagaland Government and, therefore, he is entitled to the reliefs as prayed for in this writ petition.

18. Learned counsel for the petitioner has also submitted that he did not approached this Court earlier while he was in service, as he was scared that by approaching the Court against the authorities, he would enrage the authorities and he would be victimized thereafter.

19. On the other hand, Ms. V. Suokhrie, Additional Advocate General has submitted that there is huge unexplained delay and laches on the part of the petitioner in approaching this Court for invoking writ jurisdiction after twenty nine (29) years when he was denied promotion in the year 1992 and after twelve (12) years of his retiring from the service in the year 2009.

20. Ms. V. Suokhrie, learned Additional Advocate General has submitted that the writ petition filed by the petitioner in the instant case is misconceived as it has wrongly clubbed two different issues i.e., prayer for review DPC of the year 1992 and prayer for giving benefit of Government Office Memorandum dated 15.11.2018 to the petitioner, whereas both the issues are two separate and distinct issues.

21. Learned Additional Advocate General has submitted that the promotion to the Shri O. Temsu Ao was given in the year 1992 only on officiating basis and no departmental committee was held at that point of time and, therefore, the question of convening a review DPC as prayed for by the present petitioner does not arise.

22. It is also submitted by learned Additional Advocate General that the present petitioner was not found fit to be promoted to next higher post, as his ACRs for the year 1989 and 1990 were very bad. Regarding non furnishing of the adverse copies of the ACRs to the petitioner for the said years, it is submitted by learned Additional Advocate General that if some administrative lapses had occasioned on the part of the respondent authorities in

the year 1992, the same cannot be challenged now, after twenty nine (29) years, by the present petitioner without any valid justification for not approaching the Court for all these years and hence, his case is barred by delay and laches.

23. Learned Additional Advocate General has also submitted that as the petitioner was superceded in the year 1992 which was not put to challenge in any Court of law in due time. She also submitted that the Clause 3 (ii) of the Office Memorandum No. 11 APA/1/66 dated 09.06.1966 clearly provides that a person who is considered not fit for promotion and subsequently promoted shall not take seniority in higher grade over his junior who had superceded him.

24. Learned Additional Advocate General has further submitted that the petitioner has not suffered any pecuniary loss as he was granted time bound scale in the scale of pay of Deputy Director as per revision of pay (ROP) 1999, as per notification No. IDA/E(5)113/98 dated 25.03.2008 and after his retirement his pension has also been adjusted according to the said scale.

25. Learned Additional Advocate General has also submitted that the tentative seniority list published on 15.05.2009 has not been assailed by the present petitioner which only leads to an inference that the same has been accepted by the present petitioner.

26. Learned Additional Advocate General has also submitted that as regards applicability of Office Memorandum dated 15.11.2018 of the Central Government in case of the present petitioner, the

same is not applicable to him, as the incumbent who was immediate junior to the present petitioner, namely, Shri D. Longtok Phom was not promoted to the post of next higher grade i.e., Deputy Director on or before the date of superannuation of the present petitioner as prescribed in Clause 2 (i) of the Office Memorandum 15.11.2018. It is submitted that Shri D. Longtok Phom was promoted to the next higher post only after retirement of the present petitioner.

27. It is further submitted by learned Additional Advocate General that the Office Memorandum dated 15.11.2018 envisages a situation where a Government servant was not recommended in the first instance by the DPC but was later recommended by a review DPC and the Government servant had retired by the time the review DPC had made its recommendation. However, in the instant case, there was no recommendation of DPC in case of the present petitioner, rather the DPC could not be held and therefore, the condition prescribed in the Office Memorandum dated 15.11.2018 are not satisfied in case of present petitioner.

28. Learned Additional Advocate General has also submitted that though Up-Lokayukta had recommended consideration of the representation of the petitioner by the respondent authorities, however, it is submitted that the Up-Lokayukta does not have the jurisdiction to entertain matter relating to service condition of public servant as provided in Clause (d) of the 2nd Schedule of the Nagaland Lokayukta Act, 2017, and it was further submitted that

the direction of Up-Lokayukta was to consider the representation of the petitioner, if it is permissible within rules, whereas Office Memorandum dated 15.11.2018 does not covers the case of the present petitioner, hence, it is submitted that the representation of the petitioner was rightly rejected by the respondent authorities. Learned Additional Advocate General has, thus, prayed for dismissal of the writ petition filed by the present petitioner as he has failed to justify the invoking of writ jurisdiction by this Court in his case.

29. I have considered the submissions made by learned counsel for both the sides and have gone through the materials available on record.

30. Admittedly, the main grievance of the petitioner in this case is that he was superceded by one of his junior, namely, Shri O. Temsu Ao in the year 1992. The notification by virtue of which the said junior was promoted by superceding the present petitioner was issued on 25.03.1992 and same was modified later on 26.05.1992, however, apart from filing representations to the respondent authority, intermittently, at his own leisurely will, the petitioner waited for twenty nine (29) long years to invoke the jurisdiction of this Court by filing the instant writ petition.

31. Though, it is submitted by the learned counsel for the petitioner that it is only when that the petitioner came to know through a news item which was published in the newspaper "Nagaland Page", on 16.10.2019, with captions that "*Government*

notifies promotion after retirement”, wherein it was reported that by virtue of Office Memorandum of the Government of India dated 15.11.2018 which was adopted by the Office Memorandum dated 09.10.2019 by the Government of Nagaland, the benefit of notional promotion was given to those employees who missed their promotion while in service, the present petitioner again became hopeful of getting benefit of notional promotion which was denied to him while he was in service, however, on perusal of the said Office Memorandum dated 15.11.2018, it appears that, under the facts and circumstances of the present case as narrated above, the same is not applicable to the present petitioner.

32. On perusal of the Office Memorandum dated 15.11.2018 of Government of India which was adopted by the Government of Nagaland by Office Memorandum No. AR-1/8/88 dated 09.10.2009, it appears that it is applicable only to a Government servant who is not recommended in the panel by the original/supplementary DPC but later on is recommended in the panel by a review DPC but has since retired may be given the benefit of notional promotion w.e.f. the date of promotion of his immediate junior in the reviewed panel and fixation of notional pay subject to the fulfillment of the following conditions:

- (i) That the officer who is immediate junior to the retired Government servant assumed charge of the higher post on or before the date of superannuation of the retired Government servant.

- (ii)** That the said retired Government servant was clear from vigilance angle on the date of promotion of his immediate junior.
- (iii)** A retired Government servant who is considered for notional promotion from the date of promotion of his immediate junior on the recommendation of a review DPC would also be entitled to fixation of pension on the basis of such notional pay.
- (iv)** The notional promotion, notional pay fixation and revision of pension shall be further subject to extant rules on promotion, pay fixation and CCS (Pension) Rules, 1972. Actual increase in pension shall be given only from the date of approval of reviewed panel by the competent authority. No arrears shall be paid.

33. Thus, unless the government servant is recommended by a review DPC after his case was not considered in the first instant by the DPC. The Office Memorandum dated 15.11.2018 is not applicable to a retired government servant. The condition precedent for applicability of the aforesaid Office Memorandum is that he must have been considered by DPC at the first instant and then not recommended for the panel and thereafter, at the second instant the review DPC must recommend his name for promotion, however, in the meanwhile if he gets retired he may claim notional promotion from the date on which his immediate junior assumed charge to the higher post. However, again there is

a condition that his immediate junior must have assumed charge to such higher post before the date of superannuation of the government servant, however, in the instant case the immediate junior to the present petitioner in the seniority list, namely, Shri D. Longtok Phom was granted promotion to the higher post only after the date of retirement of the present petitioner and therefore, in view of the bar mentioned in Clause 2 (ii) of the Office Memorandum dated 15.11.2018, the said Office Memorandum is not applicable in the case of present petitioner.

34. As regards, the grievance of the present petitioner that the meeting of Departmental Promotion Committee (DPC) was not held annually as mandated during the years 2007-2009, this Court is of the considered opinion that the petitioner has raised this grievance in this writ petition before this Court after about twelve (12) years and the grievance regarding his supersession by his junior namely, Shri O. Temsu Ao in the year 1992 has been raised after about twenty nine (29) years which in the considered opinion of this Court is a considerable long period of delay.

35. As regards delay and laches, Hon'ble Supreme Court of India has observed in the case of "***State of J&K v. R.K. Zalpuri***", reported in **(2015) 15 SCC 602** as follows:

"20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla [City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla, (2009) 1 SCC 168] , wherein this Court while dwelling upon

jurisdiction under Article 226 of the Constitution, has expressed thus: (SCC p. 175, para 30)

"30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors."

21. In this regard reference to a passage from Karnataka Power Corpn. Ltd. v. K. Thangappan [Karnataka Power Corpn. Ltd. v. K. Thangappan, (2006) 4 SCC 322 : 2006 SCC (L&S) 791] would be apposite: (SCC p. 325, para 6)

"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and

other circumstances, causes prejudice to the opposite party."

After so stating the Court after referring to the authority in State of M.P. v. Nandlal Jaiswal [State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566] restated the principle articulated in earlier pronouncements, which is to the following effect: (SCC p. 326, para 9)

"9. ... the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

22. In State of Maharashtra v. Digambar [State of Maharashtra v. Digambar, (1995) 4 SCC 683]

a three-Judge Bench laid down that: (SCC p. 692, para 19)

"19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct."

23. Recently in Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu [Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu, (2014) 4 SCC 108 : (2014) 1 SCC (L&S) 38], it has been ruled thus: (SCC p. 117, para 16)

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own

leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant—a litigant who has forgotten the basic norms, namely, 'procrastination is the greatest thief of time' and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."

24. At this juncture, we are obliged to state that the question of delay and laches in all kinds of cases would not curb or curtail the power of the writ court to exercise the discretion. In Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn. [Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn., (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] it has been ruled that: (SCC pp. 359-60, para 12)

"12. ... Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause of

action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience."

And again: (SCC p. 360, para 14)

"14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide Durga Prashad v. Controller of Imports and Exports [Durga Prashad v. Controller

of Imports and Exports, (1969) 1 SCC 185], Collector (LA) v. Katiji [Collector (LA) v. Katiji, (1987) 2 SCC 107 : 1989 SCC (Tax) 172], Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur [Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur, (1992) 2 SCC 598], Dayal Singh v. Union of India [Dayal Singh v. Union of India, (2003) 2 SCC 593] and Shankara Coop. Housing Society Ltd. v. M. Prabhakar [Shankara Coop. Housing Society Ltd. v. M. Prabhakar, (2011) 5 SCC 607 : (2011) 3 SCC (Civ) 56].)”

25. Be it stated, in the said case the appellants were deprived of the legitimate dues for decades and the Maharashtra Industrial Development Corporation had handed over the possession of the property belonging to the appellant to the City Industrial Development Corporation of Maharashtra without any kind of acquisition and grant of compensation. This Court granted relief reversing the decision of the High Court which had dismissed [Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn., 2011 SCC OnLine Bom 1789] the writ petition on the ground of delay and non-availability of certain documents. Therefore, it is clear that the principle of delay and laches would not affect the grant of relief in all types of cases.

26. In the case at hand, the employee was dismissed from service in the year 1999, but he chose not to avail any departmental remedy. He woke up from his slumber to knock at the doors of the High Court after a lapse of five years. The staleness of the claim remained

stale and it could not have been allowed to rise like a phoenix by the writ court.

27. The grievance agitated by the respondent did not deserve to be addressed on merits, for doctrine of delay and laches had already visited his claim like the chill of death which does not spare anyone even the one who fosters the idea and nurtures the attitude that he can sleep to avoid death and eventually proclaim "deo gratias"—"thanks to God".

36. The submission of learned counsel for the petitioner that the petitioner was scared to approach this Court and pursue the judicial remedy while he was in service as it would have enraged the respondent authorities does not appear to be a reasonable justification for the petitioner to have waited for almost twenty nine (29) years to approach this Court. We have seen herein before, in the above cited ruling of Hon'ble Supreme Court of India, that the High Court in exercise of its extra ordinary and equitable jurisdiction does not ordinarily assist the tardy and indolent or the acquiescent or lethargic. Though, there may be cases where there may be some mitigating factors like continuity of cause of action or other sufficient reasons where the doctrine of laches and acquiescence may be overlooked, however, in the instant case the petitioner has failed to show any plausible cause or any just mitigating factor for such a long delay of twenty nine (29) years in approaching this Court. This Court is of considered opinion that the delay and laches committed by the present

petitioner in approaching this Court has not been sufficiently explained and same comes in the way of exercising equitable jurisdiction by this Court.

37. The reasons for non-applicability of Office Memorandum dated 15.11.2018 of the Government of India in case of the present petitioner has already been discussed hereinbefore.

38. Further, this Court also takes note of the fact that the petitioner has already been granted time bound scale in the scale of pay of Deputy Director as per revision of pay (ROP) 1999 and his pension have also been adjusted accordingly in that scale.

39. For the aforementioned reasons, the instant writ petition filed by the above named petitioner is hereby dismissed.

JUDGE

Comparing Assistant