

Court No. - 7**Case :-** WRIT - A No. - 8141 of 2023**Petitioner :-** Alok Mishra**Respondent :-** State Of U.P. Thru. Prin. Secy., Additional Energy Research Deptt.,
And 2 Others**Counsel for Petitioner :-** Devendra Kumar, Ashok Misra**Counsel for Respondent :-** C.S.C., Nishant Shukla**Hon'ble Abdul Moin, J.**

1. Heard learned counsel for the petitioner, learned Standing Counsel for the respondent no.1 and Sri Nishant Shukla, learned counsel for the respondents no. 2 and 3.

2. Under challenge is the order dated 02.12.2005 passed by the respondent no. 2, a copy of which is annexure 1 to the petition. Further prayer is for a writ of mandamus commanding the respondents to regularise the service of the petitioner on the post of Assistant Accountant since 02.11.1991 when juniors to petitioner were regularised and pay him all consequential service benefit.

3. A preliminary objection has been taken by Shri Nishant Shukla, learned counsel for the respondents no. 2 & 3 that the writ petition deserves to be dismissed on the ground of laches and delay in as much as the order impugned is dated 02.12.2005 which is now sought to be challenged after a period of almost 18 years and after the petitioner has retired on attaining the age of superannuation on 30.09.2022.

4. As regard the preliminary objection raised by Shri Nishant Shukla, learned counsel for the respondents no. 2 and 3 what the Court find is that earlier the petitioner had approached this Court by filing Writ Petition No. 7754 (SS) of 1991 in re: Alok Mishra and another vs Non-Conventional Energy Development Agency and another praying for regularisation. The Writ Court vide the order dated 13.09.2005, a copy of which is annexure 4 to the petition, disposed of the petition with a

direction to the respondents to consider the case of the petitioner for regularisation in accordance with law and to pass appropriate orders.

5. When the order was not complied with, the petitioner was constrained to file Contempt No. 1259 of 2006 in re: Alok Mishra and another vs Sri Maahesh Trivedi and another. In the contempt proceedings learned counsel appearing for the petitioner stated that during the pendency of the contempt itself the respondents have passed the order dated 02.12.2005 wherein the application of the petitioner (for regularisation) has been rejected. Considering this the contempt court vide order dated 12.09.2012, a copy of which is annexure 6 to the petition, was of the view that substantial compliance of the order of the Writ Court has been carried out and for the grievance of the petitioner he is at liberty to raise the same within a period of two months before the appropriate forum.

6. The petitioner being aggrieved with the said order filed a Special Appeal (Defective) No. 817 of 2012 in re: Alok Mishra and another vs State of U.P. and others challenging the order impugned passed in the contempt petition wherein the contempt petition had been disposed of. A division bench of this Court vide the order dated 17.09.2015, a copy of which is annexure 7 to the petition, held that the Special Appeal was not maintainable and dismissed the special appeal without prejudice to the right of the appellant (petitioner herein) to avail the remedy available to him under law as provided in the impugned order.

7. Subsequent thereto, admittedly the petitioner retired on attaining the age of superannuation on 30.09.2022.

8. After a period of almost 18 years from the order impugned and 8 years from the liberty as granted by the division bench of this Court, the instant writ petition has been filed.

9. On a pointed query being put to learned counsel for the petitioner as to how he seeks to explain the laches and delay, the contention of learned counsel for the petitioner is that as the petitioner was repeatedly

representing to the respondents, consequently the petition would be maintainable.

10. Sending of repeated representations on a dead claim has been considered by this Court threadbare in the case of **Mahendra Pal vs. State of U.P. and others** passed in **Writ-A No.5351 of 2023** decided on **28.07.2023**. For the sake of convenience the relevant observations of the aforesaid judgement are reproduced below:

"19. So far as the judgment as cited on behalf of the respondents are concerned namely in the case of Arabinda Chakraborty (supra) Hon'ble Apex Court has held as under:

*"15. In our opinion, the suit was hopelessly barred by law of limitation. **Simply by making a representation, when there is no statutory provision or there is no statutory appeal provided, the period of limitation would not get extended. The law does not permit extension of period of limitation by mere filing of a representation. A person may go on making representations for years and in such an event the period of limitation would not commence from the date on which the last representation is decided.** In the instant case, it is a fact that the respondent was given a fresh appointment order on 22.11.1967, which is on record. The said appointment order gave a fresh appointment to the respondent and therefore, there could not have been any question with regard to continuity of service with effect from the first employment of the respondent.*

*18. It is a settled legal position that the period of limitation would commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the respondent and if the respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision with regard to any statutory appeal. The respondent kept on making representations one after another and all the representations had been rejected. **Submission of the respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be***

accepted. If accepted, it would be nothing but travesty of the law of limitation. One can go on making representations for 25 years and in that event one cannot say that the period of limitation would commence when the last representation was decided. On this legal issue, we feel that the courts below committed an error by considering the date of rejection of the last representation as the date on which the cause of action had arisen. This could not have been done."

(emphasis by Court)

21. Similarly Hon'ble Apex Court in the case of **M. K. Sarkar (supra)** has held as under:

"14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob vs Director of Geology and Mining & Anr - 2009 (10) SCC 115 :

"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."

15. When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches."

(emphasis by Court)

22. Likewise Hon'ble Apex court in the case of **Rajmati Singh (supra)** has held under:

"19. Close to the facts of this case, in "C. Jacob versus Director of Geology and Mining And Other" (2008) 10 SCC 115, this Court, having found that the employee suddenly brought up a challenge to the order of termination of his services after 20 years and claimed all consequential benefits, held that the relief sought for was inadmissible. The legal position in this regard was laid out in the following terms:

"10. Every representation of the Government for relief, may not be applied 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.

11. When a decision 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 so 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 “acknowledgement of a jural relationship” to give rise to a fresh cause of action.”

11. Considering the aforesaid, it is apparent that the instant petition has been filed after a period of 18 year from the order impugned and 8 years from the liberty as granted by the division bench of this Court to challenge the order impugned. Admittedly the petitioner has also retired from service. Accordingly, the Court finds that there is gross delay and laches on the part of the petitioner.

12. Accordingly, the preliminary objection is upheld. The writ petition is **dismissed**.

Order Date :- 18.10.2023

J.K. Dinkar