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

+ **W.P.(C) 1392/2014**

HARI OM RUSTAGI

.....Petitioner

Through: Mr. R.K. Bali, Ms. Meghna Bali and
Ms. Tulsi, Advocates.

versus

CHAIRMAN PUNJAB NATIONAL BANK

.....Respondent

Through: Mr. Rajat Arora and Mr. Ravi Ranjan
Mishra, Advocates for Respondent.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

03.10.2024

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1. This writ petition has been preferred on behalf of the Petitioner under Articles 226/227 of the Constitution of India seeking grant of two increments for passing CAIIB-II examination and for grant of notional promotion to Scale-IV.
2. Facts to the extent necessary and averred in the writ petition are that Petitioner joined Hindustan Commercial Bank Ltd. ('HCBL') as Clerk-cum-Cashier on 27.04.1979. He passed the CAIIB Part-I examination on 01.07.1983 and received one increment on 01.07.1983. Petitioner was promoted as JMG-I on 01.10.1985 and Basic Pay of the Petitioner was fixed at Rs.780/- as against the Basic Pay of Rs.545/- drawn by the Petitioner in the Clerical Cadre.
3. On 18.12.1986, HCBL merged with Punjab National Bank (PNB)/Respondent. On 31.01.1987, Petitioner passed CAIIB Part-II



examination, for which he was granted one increment and his Basic Pay was revised from Rs.820/- to Rs.860/-. Post this, Circular No. 1156 was issued by PNB on 12.06.1989, whereunder an officer was entitled to benefit of two increments for passing CAIIB-II examination. Between 2005 to 2009, Petitioner worked as Senior Internal Auditor and thereafter as Senior Manager at New Delhi. On 14.02.2012, representation of the Petitioner seeking two increments was rejected by PNB on the ground that officers of HCBL were not eligible for re-fitment of salary in terms of Circular No. 1156 on account of passing CAIIB examination. Petitioner superannuated on 31.01.2012 and thereafter gave a legal notice dated 16.09.2013 to PNB stating that Petitioner had passed the CAIIB Part-II examination in January, 1987 and was therefore entitled to two increments like other officers of PNB. Failing to get a favourable response, Petitioner approached this Court.

4. Mr. Bali, learned counsel for the Petitioner argues that in terms of Circular No. 1156, an officer is entitled to two increments for passing CAIIB examination if he would have earned the same had he remained in the clerical cadre. In other words, an officer would have a chance for earning the increments only if on notional conversion to the clerical cadre, such officer reaches 18th stage or below after taking into account all the increments earned by him till the date of passing CAIIB-II examination and thus Petitioner is entitled to two increments as a matter of right on passing CAIIB-II examination on 31.01.1987.

5. It is further urged that under the Scheme of Amalgamation all employees of the transferor bank other than those specified in the Schedule were to continue in service and deemed to have been appointed by the transferee bank on the same remuneration and terms and conditions of



service as applicable to employees immediately before close of business on 24.05.1986. At the time of passing the CAIIB-II on 31.01.1987, Petitioner was an employee of PNB and should have been treated at par with promotee officers of PNB, who were granted two increments in January, 1987. However, the same benefits were denied to promotee officers of HCBL including the Petitioner, though as on January, 1987, Petitioner had not reached the 18th scale of clerical cadre in terms of the Circular and was eligible for two increments. On the aspect of notional promotion to Scale-IV, no arguments were addressed by the learned counsel for the Petitioner.

6. Mr. Rajat Arora, learned counsel appearing on behalf of PNB, at the outset, takes a preliminary objection to the maintainability of the writ petition on the ground of delay and laches. It is urged that Petitioner is seeking the benefit of passing CAIIB-II held in 1987 under a Circular issued on 12.06.1989 in the present petition, which was filed in 2014 and that too after the Petitioner superannuated on 31.01.2012. There is no explanation for the inordinate delay from 1987 to 2014 and assuming the Petitioner has a cause of action, he is not entitled to any relief as delay defeats equity and Courts should not help those who are not vigilant in prosecuting their rights.

7. Without prejudice to the preliminary objection, it is argued on merit that Petitioner had joined erstwhile HCBL on 27.04.1979 as a Clerk-cum-Cashier and on passing the CAIIB-I on 01.07.1983, he was given one increment for the same. During his tenure with HCBL, he was promoted as JMG-I on 01.10.1985 and his Basic Pay was fixed at Rs.780/-. HCBL amalgamated with PNB in terms of Government Notification dated 18.12.1986 after which the Petitioner passed CAIIB-II in January, 1987 for which one increment was sanctioned to him and his Basic Pay was fixed at



Rs.860/-. Guidelines pertaining to fitment formula for CAIIB increments on promotion from clerk to officer cadre were circulated vide Circular No. 1156 dated 12.06.1989, which provided that the guidelines will cover all promotee officers promoted on or after 01.07.1979 who had passed CAIIB-II in JMG-I. Petitioner was treated as an appointee officer and the Circular did not cover employees such as the Petitioner who joined PNB after amalgamation. This position was clarified by Circular No. 55/1989 dated 10.11.1989. Petitioner superannuated on 31.01.2012 as Senior Manager and made representations for two increments for passing CAIIB-II examination. He was informed that Circular No. 1156 was not applicable to him and he had been granted one increment each on passing CAIIB-I and CAIIB-II examinations. It is argued that benefit of the Circular to the extent of removing the anomaly between the promotee from clerical cadre and officers who got appointed has been redressed inasmuch as on promotion as JMG-I, Petitioner was granted Basic Pay of Rs.780/- instead of Rs.545/- post amalgamation. The next increment granted to the Petitioner for clearing CAIIB-II examination placed the Petitioner in the Basic Pay of Rs.860/-, which is what the Petitioner claims and therefore, the grievance of the Petitioner is without any basis.

8. Heard learned counsels for the parties and examined their respective contentions.

9. Insofar as the preliminary objection raised by PNB is concerned, there is merit that the petition is barred by delay and laches. Petitioner seeks the benefit of a Circular dated 12.06.1989 by filing a writ petition in 2014 and that too after his retirement on 31.01.2012. During the said period, Petitioner had only made a representation and that too in 2012, which was rejected on



14.02.2012. Petitioner had passed the CAIIB-II in January, 1987 and therefore the cause of action, if any, arose soon after the Circular was issued in 1989, when he was granted one increment and allegedly deprived of the second. There is no explanation for the inordinate delay in approaching the Court after nearly 14 years.

10. Law on the application of doctrine of delay and laches is no longer *res integra*. It is trite that delay defeats justice. Doctrine of laches in Courts of equity is neither an arbitrary or an abstract or a technical doctrine and the Supreme Court has repeatedly held that delay or laches is one of the factors which is to be borne in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. I may in this context refer to the observations of the Supreme Court in ***Karnataka Power Corpn. Ltd. through its Chairman & Managing Director and Another v. K. Thangappan and Another***, (2006) 4 SCC 322, as under:

“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. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in *Durga Prasad v. Chief Controller of Imports and Exports* [(1969) 1 SCC 185 : AIR 1970 SC 769] . Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd* [(1874) 5 PC 221 : 22 WR 492] (PC at p. 239) was approved by this Court in *Moon Mills Ltd. v. M.R. Meher* [AIR 1967 SC 1450] and *Maharashtra SRTC v. Shri Balwant Regular Motor Service* [(1969) 1 SCR 808 : AIR 1969 SC 329] . Sir Barnes had stated:

“Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a



remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy."

8. *It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in Rabindranath Bose v. Union of India [(1970) 1 SCC 84 : AIR 1970 SC 470] that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.*

9. *It was stated in State of M.P. v. Nandlal Jaiswal [(1986) 4 SCC 566 : AIR 1987 SC 251] that 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."*

11. In ***Shiv Dass v. Union of India and Others***, (2007) 9 SCC 274, the Supreme Court held as under:-



“6. Normally, in the case of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India. 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. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad v. Chief Controller of Imports and Exports [(1969) 1 SCC 185 : AIR 1970 SC 769] . Of course, the discretion has to be exercised judicially and reasonably.”

12. It is settled that delay and laches in espousing a cause can come in the way of a litigant who is not vigilant, even if he has a good case on merits and Courts should be reluctant in entertaining stale claims of persons, who without any reasonable explanation approach the Court with an inordinate and gross delay. Courts in their discretionary power do not ordinarily assist the indolent or lethargic persons who sleepover their rights. If a litigant fails to satisfy the Court on the inordinate delay in approaching the Court, the Court will be well justified in rejecting the claim on delay and laches. It would be useful to allude to the observations of the Supreme Court in ***Chennai Metropolitan Water Supply and Sewerage Board and Others v. T.T. Murali Babu, (2014) 4 SCC 108***, which are as follows:

“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.

17. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinise whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons — who compete with “Kumbhakarna” or for that matter “Rip Van Winkle”. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.”

13. In view of the aforesaid judgments, the writ petition being barred by delay and laches cannot be entertained. Even on merits, Petitioner has no case. Broadly understood, Petitioner claims benefit of two increments on passing CAIIB-II in terms of Circular No. 1156. Petitioner joined HCBL as Clerk-cum-Cashier on 27.04.1979 and on passing CAIIB-I on 01.07.1983, he was granted one increment. He was promoted in HCBL on 01.10.1985 to JMG-I grade and his Basic Pay was fixed at Rs.780/-. Post amalgamation, PNB issued a Circular dated 28.03.1987 regarding the service conditions of employees of HCBL i.e. both the workmen and the officers cadre. Petitioner cleared CAIIB-II in January, 1987 and one more increment was sanctioned and his Basic Pay was fixed at Rs.860/- which is what the Petitioner seeks. Another Circular No. 1156 dated 12.06.1989 was issued by PNB



formulating guidelines pertaining to fitment formula for CAIIB increments on promotion of clerks to officer cadre. Petitioner was treated as an appointee officer and therefore the Circular did not apply to him and this position was clarified by the subsequent Circular dated 10.11.1989. Relevant clause of the Circular No. 1156 reads as follows:-

“(B) References have been received from promotee officers that those who passed CAIIB - Part II examination prior to their promotion as Officers are fitted higher than the officers who have completed part - II of CAIIB examination as Officer. Thus, they are getting premium for passing Part - II of CAIIB examination in the clerical cadre.

(i) IBA has clarified that if at any time the basic pay of an Officer is lower than the basic pay corresponding to his basic pay in the clerical scale on account of increments he would have got in the clerical scale on passing CAIIB, appropriate adjustments will be made in the officers' basic pay as per the fitment table. In view of the above, the officer is entitled for benefit of two increments for passing CAIIB Part - II examination only if he would have earned the same had he remained in the clerical cadre. In other words, the officer would have scope for earning two increments only if at notional conversion to the clerical cadre, such officer reaches 18th stage or below after taking into account all the increments earned by him till the date of passing of Part - II of CAIIB examination.”

14. From a reading of the aforesaid clause, it is clear that the Circular was meant to apply only to promotee officers as the very genesis of the Circular was the grievance raised by the promotee officers that those who passed CAIIB-II prior to their promotion as officers were fitted higher and were getting premium for passing CAIIB-II in the clerical cadre. In this backdrop, IBA clarified that if at any time Basic Pay of an officer is lower than the Basic Pay corresponding to his Basic Pay in the clerical scale on account of increments, he would have got in the clerical scale on passing CAIIB, appropriate adjustments will be made in the officers' Basic Pay as per the fitment table. Therefore, an officer was entitled for two increments for



passing CAIIB-II only if he would have earned the same had he remained in the clerical cadre.

15. Therefore clearly, Petitioner is not covered by the aforesaid Circular and the benefit cannot be granted to him. Petitioner has been granted the second increment on clearing CAIIB-II and has no right under the Circular for grant of two increments for passing CAIIB-II. Moreover, it needs to be noted that during the entire argument, learned counsel for the Petitioner has sought to urge that Petitioner is entitled to Basic Pay of Rs.860/-, which has been denied to him. This position is incorrect from the record and the two affidavits filed by PNB, clearly asseverating that Petitioner was placed in the Basic Pay of Rs.860/- on grant of increment for passing CAIIB-II.

16. Writ petition has no merit and is accordingly dismissed.

JYOTI SINGH, J

OCTOBER 03, 2024

B.S. Rohella