

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CWPOA No.403 of 2019
Decided on: 31.12.2025.

Nanak Chand Sharma ...Petitioner

Versus

State of H.P. & Others ...Respondents

Coram

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹*Whether approved for reporting?*

For the petitioner: Mr. Karan Singh Parmar,
Advocate.

For the respondents: Mr. Sumit Sharma, Deputy
Advocate General, for
respondents No.1 & 2-State.

Mr. P.P. Chauhan, Advocate,
for respondent No.3.

Ranjan Sharma, Judge [Oral]

Petitioner, Nand Chand Sharma, had initially filed an Original Application i.e. OA No 1299 of 2008, before Learned Himachal Pradesh State Administrative Tribunal and upon abolition of the Tribunal, the same was transferred to this Court as *CWPOA No.403 of 2019*, seeking the following relief(s):

“(i). That the order dated 21.11.2007
Annexure A may be quashed and set
aside.

(ii). That the order granting the senior to

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

respondent No.3 may be quashed and set aside and the respondents may be directed to redraw the seniority and in the alternative the applicant may be given all promotions to the post of Senior Assistant, Superintendent Grade-I and Superintendent Grade-II from the due date with all consequential benefits.”

FACTUAL MATRIX:

2. Case as set up by Learned Counsel for the petitioner is that the petitioner joined service as a Clerk in the Respondent-Department on 17.07.1972 and was promoted as Senior Assistant on 28.01.1989 and was thereafter promoted as Superintendent Grade-II on 01.02.2002. It is averred that on the other hand, Respondent No.3 [Nanak Singh Arora] joined service as Clerk on 21.12.1974, who was promoted as Senior Assistant on 07.07.1989.

2(i). It is averred that the respondents issued Seniority-List of Clerks in Department of Agriculture as on 30.11.1977 [*Annexure A-1*] and a tentative Seniority-List of Clerks was issued on 09.12.1987 [*Annexure A-2*] in which petitioner was shown as

senior to Respondent No.3 as aforesaid. It is averred that the Respondent-Department issued a *Tentative Seniority-List of Senior Assistants* showing the position as on 13.09.1995 [*Annexure A-3*], wherein, respondent No.3 was shown as senior to the petitioner in said Seniority-List. Petitioner has set up a case that though the Seniority-List of Senior Assistants was issued in 1995 vide *Annexure A-3*, showing the position of as on 13.09.1995, yet the petitioner came across a document in the year 2005, whereby, the petitioner came to know that Respondent No.3 was not eligible for benefit of approved Military Service of three years and three months for counting the said service towards seniority of re-employment which was erroneously given to him, due to which aforesaid Respondent No.3 was placed above in seniority list of Senior Assistants. Petitioner claims to have sought information under RTI in the year 2007 vide *Annexure A-5* and *Annexure A-6* and thereafter had made representation to competent authority. It is averred that based on the representation, the

Department Authorities referred the matter to Principal Secretary (Agriculture) for looking into the factum of assigning seniority to respondent No.3 but Principal Secretary (Secretary) rejected the case on 21.11.2007 [*Annexure A-9*], on the ground, that even if Respondent No.3 was not eligible and was not to be assigned seniority by giving the benefit of approved Military Service on re-employment, then also, once the Seniority-List of Clerks was issued on 30.09.1995 [*Annexure A-3*] the same cannot be permitted to be re-opened after a delay of more than 14 years. It is in this backdrop, the claim of the petitioner for rectification of his seniority as Senior Assistant was rejected and the prayer for withdrawing seniority of approved military service upon re-employment as Clerk to the Respondent No.3 was turned down.

STAND OF RESPONDENTS IN REPLY-AFFIDAVIT:

3. Pursuant to the issuance of notice on 14.05.2008, State Authorities have filed the Reply-Affidavit dated 05.07.2008 of Director of Agriculture, Himachal Pradesh.

3(i). Perusal of the Reply-Affidavit, indicates that Respondent-State had objected to the filing of instant petition, assailing Seniority-List of Senior Assistants dated 30.09.1995 [*Annexure A-3*] on the ground that the said seniority has been assailed after the delay of 14 years. It is further averred that the petitioner was due for retirement on 31.05.2008 and instant petition was filed on 09.05.2008, while working as Superintendent Grade-II i.e. above the Senior Assistant. Reply further refers to the judgment of the Hon'ble Supreme Court in the case of ***B.S. Bajwa versus State of Punjab, AIR 1999 S.C. 1510***, mandating that in service matters seniority should not be re-opened after the lapse of a reasonable time so as to unsettle the settled position. Para 3 of the Reply-Affidavit indicates that the petitioner submitted a representation only on 11.09.2006 which led to passing of the rejection orders on 21/23.11.2007 [*Annexure R-1/A-9*].

It is in this backdrop that the State Authorities have opposed the prayer and the

claim in the writ petition.

4. Heard, Mr. Karan Singh Parmar, Learned Counsel for the petitioner as well as Mr. Sumit Sharma, Learned Deputy Advocate General for respondents No.1 & 2 and have gone through the material available on record.

ANALYSIS:

5. Taking into account the entirety of the facts and circumstances, this Court is of the considered view that the rejection order dated 21/23.11.2007 [Annexure A-9], disallowing the claim for change in seniority of Senior Assistants issued in 1995 [Annexure A-3] being highly belated; does not suffer from any illegality or infirmity, *for the following reasons:*

5(i). Case of the petitioner is that the State Authorities have issued the Seniority-List of Senior Assistants showing the position as on 30.09.1995 [Annexure A-3], wherein, the petitioner who was senior to Respondent No.3 in the cadre of Clerks was wrongly downgraded and placed below aforesaid Respondent No.3 in the said list.

Material on record indicates that the Seniority-List of Senior Assistants dated 30.09.1995 [*Annexure A-3*] was duly circulated to the petitioner, which is borne out from the Instructions dated 10.11.2021 furnished to this Court by the Director of Agriculture. Even during the pendency of instant petition, the aforesaid fact is also borne out from the orders passed by the Co-ordinate Bench on 24.11.2021 that the Tentative Seniority-List of Senior Assistants issued by the State Authorities during the year 1995 was duly circulated to the petitioner. In this backdrop, once the Seniority-List of Senior Assistants was duly circulated to the petitioner and the petitioner in its wisdom chose not to assail the Seniority-List or to raise an objection to the said Tentative Seniority-List within a reasonable time; therefore, the claim laying a challenge to Tentative Seniority-List issued in 1995 by submitting the representation only on 11.09.2006 [Para No.3(a) & (b) of Reply-Affidavit] after about 10 years certainly cannot be permitted to be invoked by the petitioner. Acquiescence dis-entitles the

petitioner for laying a challenge to the Tentative Seniority-List issued by the State Authorities in 1995 [Annexure A-3] belatedly.

5(ii). Material on record indicates that the Seniority-List of Senior Assistants was issued by the State Authorities on 30.09.1995 [Annexure A-3]. In case, seniority list of 1995 was wrongly assigned to Respondent No.3 and the petitioner submitted a representation only on 11.09.2006, which was rejected on 21/23.11.2007 [Annexure A-9], then, the settled seniority cannot be permitted to be unsettled after a delay of 14-15 years by filing the petition on 09.05.2008. Moreover, the rejection order dated 21/23.11.2007 [Annexure A-9] was passed on the ground of delay does not suffer from any infirmity, as the seniority settled in 1995 cannot be unsettled by way of representation submitted after about 10 years in the year 2006 and therefore, rejection order of 21.11.2007 [Annexure A-9], need no interfere in this proceedings.

5(iii). Plea of the petitioner that he came to know about incorrect seniority having been assigned

to Respondent No.3 only in the year 2005 is also misconceived, *for the reason*, that the petitioner joined as a Clerk and was promoted as Senior Assistant on 28.09.1989. On the other hand, the Respondent No.3 joined as a Clerk on 21.12.1974 and he was promoted as Senior Assistant on 07.07.1989. Tentative Seniority-List of Senior Assistant was issued on 30.09.1995 [*Annexure A-3*]. Based on the seniority list of Senior Assistant(s) the petitioner was thereafter promoted the post of Superintendent Grade-II on 01.02.2002. On the basis of *inter se* seniority-placement in feeder grade of Senior Assistants, therefore, after having been promoted to next level of Superintendent Grade-II on 01.02.2002 it does not lie in the mouth of the petitioner to assert that he came to know of the wrongful assigning of seniority to the private respondent as Senior Assistant in the year 2005 is just an afterthought, with the intent to escape the rigors of delay and laches. Even the inaction, negligence and lethargy of the petitioner dis-entitles him for any relief.

5(iv). Material on record further indicates that the challenge to Tentative Seniority-List of Senior Assistants issued in the year 1995 [Annexure A-3] has been laid by the petitioner by filing the instant petition on 09.05.2008. Reply-Affidavit indicates that the petitioner stood retired on attaining the age of superannuation on 31.05.2008. These facts indicate that the petitioner slept over the rights since the issuance of Seniority-List of Senior Assistants in 1995 till the end of his service career i.e. superannuation on 31.05.2008. Raising a belated challenge to the Seniority of 1995 [Annexure A-3] by filing the writ petition in May 2008, cannot sustain, in view of the mandate of the Hon'ble Supreme Court in ***Shiba Shankar Mohapatra and Others versus State of Orissa and Others, (2010) 12 Supreme Court Cases 471***, mandating that the Seniority-List issued by the State cannot be unsettled; and fence-sitters cannot be permitted to raise a dispute or challenge to the Seniority-List after 3 to 4 years in the following terms:

"19. This Court in **Ramchandra Shankar Deodhar** case also placed reliance upon its earlier judgment of the Constitution Bench in **Rabindranath Bose** v. Union of India, wherein it has been observed as under:

"33. It would be **unjust to deprive the respondents of the rights which have accrued to them.** Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be defeated after the number of years."

20. In **R.S. Makashi** v. I.M. Menon & Ors., this Court considered all aspects of limitation, **delay and laches in filing the writ petition in respect of inter se seniority of the employees.** The Court referred to its earlier judgment in State of Madhya Pradesh & Anr. v. Bhailal Bhai etc. etc., AIR 1964 SC 1006, wherein it has been observed **that the maximum period fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under Article 226** of the Constitution can be measured. The Court observed as under:-

"28. ... '33. We must administer justice in accordance with law and principle of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected

a long time ago would not be set-aside after the lapse of a number of years...'

30. The **petitioners have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the Court with the challenge against the seniority principles** laid down in the Government Resolution of 1968... We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 2, 1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition, in so far as it related to the prayer for quashing the said Government resolution, should have been dismissed."

21. The issue of **challenging the seniority list, which continued to be in existence for a long time**, was again considered by this Court in **K.R. Mudgal v. R.P. Singh & Ors.** The Court held as under:-

"2. A government servant who is appointed to any post ordinarily should at least after a period of 3-4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity

7. ... Satisfactory service conditions postulate that there shall be no sense of uncertainty amongst the Government servants created by writ petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him, should approach the Court as early as possible otherwise in addition to creation of sense of insecurity in the mind of Government servants, there

shall also be administrative complication and difficulties.... In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches."

22. While deciding K.R. Mudgal case, this Court placed reliance upon its earlier judgment in Malcom Lawrance Cecil D'Souza v. Union of India & Ors. wherein it had been observed as under:-

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

23. In **B.S. Bajwa** v. State of Punjab this Court while deciding the similar issue reiterated the same view, observing as under:-

"It is well settled that in service matters, the **question of seniority should not be re-opened in such**

situations after the lapse of reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition".

24. In **Dayaram A. Gursahani v. State of Maharashtra**, while re-iterating the similar view this Court held that **in absence of satisfactory explanation for inordinate delay of 8-9 years** in questioning under Article 226 of the Constitution, the validity of the seniority and promotion assigned to other employee could not be entertained.
25. In **P.S. Sadasivaswamy v. State of Tamil Nadu**, this Court considered the case where **the petition was filed after lapse of 14 years challenging the promotion**. However, this Court held that aggrieved person must approach the Court expeditiously for relief and it is not permissible to put forward stale claim. The Court observed as under :-

"2. A person aggrieved by an order promoting a junior over his head should approach the Court at least within 6 months or at the most a year of such promotion."

The Court further observed that it was not that there was any period of limitation for the Courts to exercise their powers under Article 226 nor was it that there could never be a case where the Courts cannot

interfere in a matter after certain length of time. **It would be a sound and wise exercise of jurisdiction for the Courts to refuse to exercise their extra ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who standby and allow things to happen and then approach the Court to put forward stale claim and try to unsettle settled matters.**

26. A similar view has been re-iterated by this Court in **Sudama Devi** v. Commr.; State of U.P. v. Raj Bahadur Singh and Northern Indian Glass Industries v. Jaswant Singh.
27. In **Dinkar Anna Patil & Anr.** v. State of Maharashtra, this Court held that **delay and laches in challenging the seniority is always fatal**, but in case the party satisfies the Court regarding delay, the case may be considered.
28. In **K.S. Abdul Majeed** v. State of Kerala, this Court held that seniority assigned to any employee could not be challenged after a lapse of seven years on the ground that his initial appointment had been irregular, though even on merit it was found that seniority of the petitioner therein had correctly been fixed.
29. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as

a matter of right as one of the grounds for refusing relief is that the person approaching the Court is guilty of delay and the laches. The Court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum. (**vide Aflatoon & Ors. vs. Lt. Governor, Delhi & Ors.; State of Mysore vs. V.K. Kangan & Ors.; Municipal Council, Ahmednagar & Anr. vs Shah Hyder Beig & Ors.; Inder Jit Gupta vs. Union of India & Ors.; Shiv Dass vs. Union of India & Ors.; Regional Manager, A.P.SRTC vs. N. Satyanarayana & Ors.; and City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla**).

30. Thus, in view of the above, the settled legal proposition that emerges is that **once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained**. In K.R. Mudgal (supra), this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by

furnishing satisfactory explanation.

31. The Tribunal ought to have dismissed the case of **Parsuram Sahu** (*supra*) only on the ground of delay and the laches, as the applicant approached the Tribunal at the verge of his retirement and after getting two promotions while the other parties have got three promotions. In the said case, the private respondents have not considered it proper to contest the case because both of them were likely to superannuate just thereafter on attaining the age of retirement. Undoubtedly, the said judgment and order has not been challenged by anybody and it attained finality but that remained the judgment in personam. More so, there is nothing on record to show as to whether the said applicant Parsuram Sahu could ever get any relief from the State Government.”

DELAY AND LACHES:

5(v). While dealing with the issue as to whether mere filing of representation will not give rise to fresh cause of action and the restriction of limitation or delay and laches cannot be obliterated in service matters as outlined by the Hon’ble Supreme Court in **Union of India and others versus C. Girija and others, (2019) 15 SCC 633**, in the following terms:

“17. This Court again in the case of Union of India and Others Vs. M.K. Sarkar, (2010) 2 SCC 59 on belated representation laid down following, which is extracted below:-

“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 cannot 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.”

20. On the preposition as noticed above, it is clear that the **claim of the applicant for inclusion of her name in the panel, which was issued on 09.01.2001 and for the first time was raked up by her, by filing representation on 25.09.2007, i.e., after more than 06 and half years. The claim of inclusion in the panel had become stale by that time and filing of representation will not give any fresh cause of action. Thus, mere fact that representation was replied by Railways on 27.12.2007, a stale claim shall not become a live claim.** Both Tribunal and High Court did not advert to this important aspect of the matter. It is further to be noted from the material on record that after declaration of panel on 09.01.2001, there were further selection under 30% promotion by LDCE quota, in which

the applicant participated. In selection held in 2005 she participated and was declared unsuccessful. With regard to her non-inclusion in panel in 2005 selection, she also filed O.A. No. 629 of 2006 before the Tribunal, which was dismissed. After participating in subsequent selections under 30% quota and being declared unsuccessful, **by mere filing representation on 27.09.2007 with regard to selection made in 2001, the delay and laches shall not be wiped out.**

5(vi). While dealing with a similar eventuality the challenge to the seniority after a delay of 3-4 years when delay was not explained has been negated in ***Ajay Kumar Shukla and Others versus Arvind Rai and Others (2022) 12 SCC 579***, in the following terms:

“27. Once it is established that the seniority list was prepared in contravention to the statutory provisions laid down in Rules 1991, the seniority list could be interfered with. The Appointing Authority would be bound by the statutory rules and any violation or disregard to the statutory rules would vitiate the seniority list. The same would be arbitrary, de hors the rules and in conflict with Articles 14 and 16 of the Constitution. ***The only exception to the above would be where there is unreasonable delay which is unexplained.***

28. In the present case, if we accept the submission of the appellants then the delay

at best could be a few months or a year however, if we accept the contentions of the private respondents **then the delay could be of five years.** In the first contingency, no explanation would be required. However, in the second contingency, if the appellants are successful in satisfactorily explaining the delay, then even this hurdle could be overcome. In the facts of the present case what we find from the final seniority list of 05.09.2006 is that it nowhere mentioned that there were three separate lists of separate streams and that they were received on different dates. On the contrary, there was a recital therein and specific averment to the effect that the list had been prepared on the basis of merit. Thus, it cannot be said that the appellants were aware of the three separate select lists dispatched by the Commission on three different dates at the time of publication of final list dated 05.09.2006.

54. Further, the Division Bench in paragraphs 51, 52, 53 proceeded to deal with the delay stating it to be 11 years, the basis for calculation of 11 years was that the **seniority list of 2006 was challenged by way of amendment by the appellants in the year 2017 and therefore there was a delay of 11 years.** This discussion by Division Bench also cannot be sustained. The first seniority list was prepared in 2006. It was not disclosed as to how the seniority list has been prepared by treating

the three separate lists independently on their merits but not as a result of combined merit of the three lists. It was only in 2010 that the appellants came to know of the fallacy and soon thereafter they challenged the seniority list of 2010. Even if, they did not challenge the seniority list of 2006, 2010 seniority list could always be revisited, reviewed and prepared afresh, if the same was quashed. The appellants could not have been at any loss even if they had not challenged the 2006 seniority list.”

5(vii). Belated service related claim where a remedy is sought by way of writ petition and in a case where remedy is sought by way of an application under the Administrative Tribunals Act is liable to be rejected, on the ground of delay- laches or limitation [as the case may be] where a claim had become stale *and* in case of tacit or passive acceptance/consent to an act is borne out and where a right though was not exercised by a long time, leaving it to become non-existent; *and* where inaction or negligence of a person had abandoned his right either expressly or by implication from his conduct; virtually destroys the right of a person in terms of

the mandate of the as mandated by the Hon'ble Supreme Court, in **Bichitrananda Behera versus State of Orissa and others, (2023) 18 SCC 420**, in the following terms:-

“26. On an overall circumspection, thus, in the present case the **Respondent No.5 should have been non-suited on the ground of delay and laches, which especially in service matters, has been held consistently to be vital, juxtaposed with the sign of acquiescence.** To the mix, we add that the State has supported the factual circumstances concerning the appointment of the appellant, his continuance in service as also the Respondent No.5 having worked during the said period in another school viz. the Sri Thakur Nigamananda High School, Terundia. Notably, the Respondent No.5 does not, from the record before us, appear to have approached the authorities in the interregnum.

27. Profitably, we may reproduce relevant passages from certain decisions of this Court:

28. Union of India v **Tarsem Singh**, (2008) 8 SCC 648:

7. “To summarise, normally, **a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal).** One of the exceptions to the said rule is

cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. **But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied.** Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

(emphasis supplied)

39. Before proceeding further, it is important to clarify distinction between “acquiescence” and “delay and laches”. **Doctrine of acquiescence is an**

equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. [Prabhakar v. Sericulture Deptt., (2015) 15 SCC 1 : (2016). Also, see Gobinda Ramanuj Das Mohanta v. Ram Charan Das, 1925 SCC OnLine Cal 30 : AIR 1925 Cal 1107] In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, [See Vidyavathi Kapoor Trust v. CIT, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. [See Krishan Dev v. Ram Piari, 1964 SCC OnLine HP 5 : AIR 1964 HP 34] Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. [See “Introduction”, U.N. Mitra, Tagore Law Lectures — Law of Limitation and Prescription, Vol. I, 14th Edn., 2016.] However, acquiescence will not apply if lapse of time is of no importance or consequence.

40. Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon

equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person. [See Vidyavathi Kapoor Trust v. CIT, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] Given the aforesaid legal position, inactive acquiescence on the part of the respondent can be inferred till the filing of the appeal, and not for the period post filing of the appeal. Nevertheless, this acquiescence being in the nature of estoppel bars the respondent from claiming violation of the right of fair representation.”

(emphasis supplied)”

5(viii). In service matters a claim cannot be entertained ignoring the plea of limitation, negligence or inaction in availing legal remedies, in view of the mandate of the Hon’ble Supreme Court in **State of Madhya Pradesh versus Ramkumar Choudhary, 2024 SCC OnLine SC 3612** in the following terms:

“5. The legal position is that where a case has been presented in the **Court**

beyond limitation, the petitioner has to explain the Court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the Court within limitation. In *Majji Sannemma v. Reddy Sridevi* , it was held by this Court that even though limitation may harshly affect the rights of a party, it has to be applied with all its rigour when prescribed by statute. A reference was also made to the decision of this Court in *Ajay Dabra v. Pyare Ram* wherein, it was held as follows:

"13. This Court in the case of *Basawaraj v. Special Land Acquisition Officer* [(2013) 14 SCC 81] while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay

without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

14. Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant.”

Thus, it is crystal clear that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and that, **the expression 'sufficient cause' cannot be liberally interpreted, if negligence, inaction or lack of bona fides is attributed to the party.**

5.1. In *Union of India v. Jahangir Byramji Jeejeebhoy (D) through his legal heir*, wherein, one **of** us (J.B. Pardiwala, J) was a member, after referring to various decisions on the issue, it was in unequivocal terms observed by this Court **that delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party.** The relevant passage of the same is profitably extracted below:

“24. In the aforesaid circumstances, we made it very clear that we are not going to look into the merits of the matter as long as we are not convinced that sufficient cause has been made out for condonation of such a long and inordinate delay.

*25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. **If the litigant chooses to approach the court long***

after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned. This litigation between the parties started sometime in 1981. We are in 2024. Almost 43 years have elapsed. However, till date the respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the respondent to undergo the rigmarole of the legal proceedings.

26. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. **It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.**

27. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the

principles of sound public policy and principles of equity. We should not keep the 'Sword of Damocles' hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants.....

34. In view of the aforesaid, we have reached to the conclusion that the High Court committed no error much less any error of law in passing the impugned order. Even otherwise, the High Court was exercising its supervisory jurisdiction under Article 227 of the Constitution of India.

35. In a plethora of decisions of this Court, it has been said that ***delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party.*** The appellants have failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.

36. For all the foregoing reasons, this appeal fails and is hereby dismissed. There shall be no order as to costs."

Applying the above legal proposition to the facts of the present case, we are of the opinion that the High Court correctly refused to condone the delay and dismissed the appeal by observing that ***such inordinate delay was not explained satisfactorily, no sufficient cause was shown for the same, and no plausible reason was put forth by the State.*** Therefore, we are inclined to reject this petition at the threshold.

7. There is one another aspect of the matter which we must not ignore or overlook. Over a period of time, we have noticed that whenever there is a plea for condonation of delay be it at the instance of a private litigant or State the

delay is sought to be explained right from the time, the limitation starts and if there is a delay of say 2 years or 3 years or 4 years till the end of the same. For example if the period of limitation is 90 days then the party seeking condonation has to explain why it was unable to institute the proceedings within that period of limitation. What events occurred after the 91st day till the last is of no consequence. The court is required to consider what came in the way of the party that it was unable to file it between the 1st day and the 90th day. It is true that a party is entitled to wait until the last day of limitation for filing an appeal. **But when it allows the limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before the limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause.** There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. (See: ***Ajit Singh Thakur Singh and Another v. State of Gujarat***, AIR 1981 SC 733)."

5(ix). While negating the claim relating to service benefits, which accrued in the year 2008, against which, the remedy was invoked in the year 2017, the Hon'ble Supreme Court in **Chief Executive Officer and others versus S. Lalitha and others, 2025 SCC OnLine SC 916**, held that unexplained delay in service disputes and inaction and negligence of a person in not ventilating his grievance within the limitation of limitation disentitles the person-employee for relief, in the following terms:-

“21. One of us (Rajesh Bindal, J.), speaking for the coordinate Bench in State of Orissa v. Laxmi Narayan Das, **had the occasion to consider the effect that unexplained delay and laches would have in availing remedies. The Court in that case was concerned with a challenge to finally published record of rights. Taking note of multiple precedents in the field on the subject of delay or laches disentitling a party to relief, it was held that a writ petition filed 46 (forty-six) years after final publication was grossly belated and that no relief could**

have been made available to the respondents/ writ petitioners.

24. The self-imposed restrictions in the exercise of writ jurisdiction under Article 226 of the Constitution, which have evolved from judicial precedents of this Court, need not be restated here. **Suffice to say, unexplained delay or laches is considered one of the factors which could assume significance in denying relief when the discretionary writ remedy is invoked. In an appropriate case, a writ court may refuse to invoke its extraordinary powers if the applicant's negligence or omission to assert his right combined with undue delay or laches and prejudice to the other party warrants such refusal.**
36. On such premise as explained above, the respondent should have, if she felt aggrieved by the action of the appellants of granting her benefits of financial upgradation under the MACP Scheme instead of the ACP Scheme, availed the remedy before the **Tribunal immediately after her rights were affected. She ought not to have waited for so long for ventilating her grievance through a belated representation. Filing of such belated representation, which was rejected in no time, did not have the effect of postponing the cause of action and stretching the**

period of limitation so as to render the O.A. as filed within time.”

5(x). While negating the belated claim in service matters, the Hon’ble Supreme Court has held in **H. Guruswamy & Ors. Versus A. Krishnaiah Since deceased by LRs, 2025 SCC OnLine SC 54,** in the following terms:

“16.**The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not.** From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. **Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay** and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. **The court owes a duty**

to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. **The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time."**

5(xi). While dealing with a similar fact-situation, a belated challenge to Seniority-List was negated by the Division Bench of this Court, in ***Yashwant Mandhotra versus Hon'ble High Court of HP and others*** [CWP No.4241 of 2023], decided on 06.06.2025.

Based on the principles outlined by the Hon'ble Supreme Court in the case of ***Shiba Shankar Mohapatra, C. Girija, Ajay Kumar Shukla, Bich, Bichitrananda Behera, Ramkumar***

Choudhary, S. Lalitha and H. Guruswamy (*supra*)

this Court, in fact-situation of instant case does not accept the prayer of the petitioner, *for the reason* that the Seniority-List of Senior Assistants as on 13.09.1995 was issued in the year 1995 [Annexure A-3] and this seniority was duly circulated to the petitioner as discussed hereinabove. Despite having knowledge of the Seniority-List issued in 1995, the petitioner slept over his rights-remedies till he submitted a representation after 10 years on 11.09.2006 and the belated claim was rejected on 21.11.2007 [Annexure A-9]. Even petitioner has not given any cogent and convincing explanation as to why petitioner slept over the matter in not laying a challenge to the Seniority-List issued in 1995 [Annexure R-3] till he made a representation after 10 years on 11.09.2006, which led to passing of rejection orders on 21/23.11.2007 [Annexure A-9]. The plea set up by the petitioner that he acquired knowledge about wrongful assigning of seniority to Respondent No.3 only in the year

2005 is also an afterthought, for the reason, it was on the basis of seniority list of Senior Assistants issued in 1995 [*Annexure AR-3*] that the petitioner was promoted as Superintendent Grade-II on 01.02.2002. Even after promotion as Superintendent Grade-II in 2002 the petitioner slept over till September 2006. Thus, once the seniority as Senior Assistant was made the basis for promotion as Superintendent Grade-II, then, the plea of the petitioner that he acquired knowledge of incorrect assigning of seniority to Respondent No.3 in 2005 cannot be permitted to unsettle the settled rights-seniority. Permitting the petitioner to unsettle and reopen the settled seniority issued in 1995 shall tantamount to unsettling the settled rights. Further, petitioner retired from service on 31.05.2008, *whereas* the instant petition was filed on 09.05.2008 i.e. about 15-20 days prior to his retirement. Having acquiesced in the rights and remedies and being fence-sitter, the petitioner does not have any locus nor any substantive right to seek unsettling of settled

seniority. In these circumstances, this Court is unable to accede to the prayer of the petitioner and the same is without merit.

7. At this stage, Learned Counsel for the petitioner submits that the Respondent No.3 was wrongly assigned seniority as Clerk by taking into account approved military service of three years and three months, whereas the seniority for approved military service on civil re-employment was admissible, in case, a military personnel had rendered a minimum of five years of approved service.

Though the above plea of Learned Counsel for the petitioner appears to be attractive, but on scanning the material on record, this Court is of the considered view, that such a right was to be asserted by seeking appropriate remedy at the time, when the Seniority-List of Senior Assistants was first issued in 1995 [*Annexure A-3*]. Having failed to assert a right within a reasonable period disentitles the petitioner to re-open and unsettle the settled seniority even

qua the private respondent. Further, the petitioner has not laid a challenge to the orders issued by official Respondents in granting benefit of approved military service towards seniority on re-employment to Respondent No.3 [Nanak Singh Arora]. Even, an Instructions issued in 1983, [Annexure R-II with reply] cannot be made the basis for depriving the Respondent No.3 [Nanak Singh Arora] of the approved military service on re-employment on civil post, *for the reason*, that the rights for benefit of approved military service for pay fixation and seniority admissible under Rule 5 of The Himachal Pradesh Demobilized Armed Forces Personnel (Reservation of Vacancies in the Himachal State Non-Technical Services) Rules, 1972 cannot be negated/restricted/denied by way of Instructions issued on 1983 [Annexure R-II]. Even, the Instructions cannot apply retrospectively so as defeat the rights including-seniority, which had been conferred as per Himachal Pradesh Demobilized Armed Forces Personnel (Reservation of Vacancies in the Himachal State Non-Technical Services) Rules,

1972, on re-employment as Clerk on 22.12.1974 and moreover, when, the orders granting benefit of military service for seniority as Clerk hold the field and same have not been withdrawn/annulled by the Respondents as yet.

DIRECTIONS:

8. In view of above discussion and for the reasons recorded hereinabove, the instant petition is ***dismissed***, in the following terms:

- (i). Rejection orders dated 21.11.2007 [Annexure R-1/A-9] are upheld;
- (ii). Challenge to the seniority of Senior Assistant in 1995 [Annexure A-3] by making representation for the first time in 2006 leading to rejection on the ground of delay on 21.11.2007 [Annexure R-1/A-9] on the ground of delay cannot be accepted just to unsettle the settled rights; and
- (iii). Parties to bear respective costs.

In the aforesaid terms, the instant petition along with pending miscellaneous application(s), if any, disposed of.

(Ranjan Sharma)
Judge

December 31, 2025
[Shivender]