

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.3998 of 2012
Date of Decision: 23.01.2015**

Anita Rani

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K. Arora, Advocate,
for the petitioner.

Mr. Rajiv Prashad, Addl. AG, Punjab.

Mr. Shekhar Verma, Advocate,
for respondent No.3.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J.(Oral)

This petition raises common questions of law and fact with the one decided today i.e. CWP No.8189 of 2011 which has been allowed. In this case, the petitioner had earlier approached this court in 2011 and received a direction on the petition that the representation submitted by the petitioner to the respondent department should be decided within a time bound period. The representation was decided against her interest. She took about a year to return to the Court in the present writ petition claiming the same relief as was in CWP No.8189 of 2011 assailing the impugned office

order passed in compliance of the directions of this Court.

Mr. Shekhar Verma submits that in the present case, the question of delay and laches may have to be considered as a relevant factor in denying relief since the petitioner took one year to approach Court again in a matter of appointments to posts advertised in the Sarva Siksha Abhiyan education scheme which has been discontinued and stands closed down.

The bar of limitation, delay and laches deactivating the extra ordinary writ jurisdiction is not a rule of law. It is a self-imposed restriction imposed by the Court upon itself in refusing to entertain stale claims and especially when limitations against the cause of action have run out in availing remedies before the civil court by instituting suits. If the suit is barred, the Court would not entertain the petition under Article 226 of the Constitution in view of the decision in **State of M.P. vs. Bhailal Bhai**, AIR 1964 SC 1006.

However, in this case, the limitations for bringing a civil suit have not run out and the period of one year, is more likely than not, not a negating factor in entertaining the writ petition for the relief sought which is based on parity and equal treatment by applying equitable principles in giving similar treatment to those who are found similarly situated. It is often not easy for parties to approach the High Court in the prohibitive costs involved and especially in a case of aspirants for teaching posts, who may not be expected to possess spare money to support the luxury of litigation which is foisted upon them by right deprivation by the officers of government. But rights are rights and if they are not asserted within reasonable time, the complaining party may get nothing even though she has

a preserved right but is left un-litigated for want of means to do so. The words of the Supreme Court in **Inder Pal Yadav and Others vs. Union of India and Others**, (1985) 2 SCC 648 are trenchant and draw a clear picture which the Supreme Court generously and practically recognized as sufficient reason in understanding damage done by delay in approaching court to seek judicial relief. There may be some delay in this case but it may never amount to laches. The Court observed in para.5 of the judgment as follows:-

"5...There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to knock at the door of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. Therefore, those who could not come to the Court need not be at comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court."

It could not have been put better or more realistically.

All said and done, the petitioner has approached this court in equity without unreasonable delay. But as the maxim goes: Equity will not suffer an injustice. Laches is the residue of long delay in asserting rights. The statute of limitations fixes boundaries beyond which the right to sue irrevocably expires with no discretion left in court. The Court cannot grant exemption from limitation on an equitable consideration or on the ground of

hardship. However, in the case of laches it is left for the court to determine whether a person has waited too long to seek relief and that is how and when understanding the measurement of delay and laches in a case comes into play. This would depend largely on traditional court reactions based on customary legal principles applied and examined on a case to case basis and the rights which are invaded by the adverse party causing prejudice to plaintiff. Most of this; of delay and laches, would lie in the domain of the special facts presented, case to case, where sauce for the goose may not be sauce for the gander. I do not think there is any self-defeating delay of the inordinate kind on the part of the petitioner in the present case to be sufficient to non-suit her and deny relief which is apparently and eminently grantable. There is neither inexcusable delay nor laches in this case of a kind which lays a "legal ambush" on the respondents who were expected to act fairly and reasonably. The decisions taken by the Government are collective and institutional decisions and do not share the characteristics of decision of private individuals and it does not behove the State to take defensive pleas of bar of limitation, delay and laches and acquiescence especially when fundamental rights of equality are pressed in a case then the petition may not be dismissed or relief refused on the "jejune" grounds of delay and laches.

For these reasons, this petition is also accepted for the reasons already recorded in the companion case decided today. Consequently, the impugned order dated March 28, 2011 (P-12) is set aside because it suffers from the same infirmities as are found in the main case. Relief is granted in the same terms as in the connected CWP No.8189 of 2011 and the

directions there will form part of this order.

Disposed of accordingly.

(RAJIV NARAIN RAINA)
JUDGE

23.01.2015

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