

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

+ **W.P.(C) No.162/2013**

% **7th January, 2015**

S.P. YADAV AND ORS.Petitioners
Through: Mr. K. Venkatraman, Advocate.

VERSUS

LOK SABHA & Anr. Respondents
Through: Ms. Maninder Acharya, Senior
Advocate with Mr. Yashish Chandra,
Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition under Article 226 of the Constitution of India is filed by four petitioners seeking relief that they ought to have been appointed as Security Assistants Grade-I (SAG-I) employees with the respondent no.1 and not as Security Assistant Grade-II (SAG-II). This writ petition was filed in the year 2013 and reliefs which are sought are of notional appointment to the posts of SAG-I in terms of a selection process which admittedly took place way back in the year 2002. Not only the writ petition is filed after about 11 years,

petitioners have in fact worked at the posts of SAG-II from the year 2002 when they were appointed in the post of SAG-II in the selfsame selection process.

2. The following are the relief clauses of the writ petition:-

- “ (a) issue a writ of certiorari or any other appropriate writ for setting aside the decision of the respondents regarding non fulfilment of the eligibility criteria for appointment to the grade of Security Assistant Grade-I (Tech.) communicated through RTI dt. 14.11.2012 (Annexure P-1) in respect of the petitioners as illegal discretionary and arbitrary;
- (b) issue of writ of mandamus or any other writ directing the respondents to consider/grant notional appointment of SAG-I (Tech.) to the petitioners w.e.f. December 2002 with notional consequential benefits;
- (c) Pass such other and further orders, as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”

3. Whatever may be the wording of the relief clauses, essentially what the petitioners contend is that in the selection process of the year 2002, the petitioners should have been appointed at the posts of SAG-I and not SAG-II in which they were actually appointed. The petitioners rely upon a reply to an RTI query raised in the year 2012 to argue that petitioners actually have got such marks in the 2002 selection process whereby they had to be appointed to the posts of SAG-I and not SAG-II.

4. In my opinion, getting of a reply to an RTI query in the year 2012 cannot change arising of the cause of action which would be of the year 2002 when as per the petitioners they were wrongly appointed to the posts of SAG-II and not SAG-I.

5. Also, filing of repeated representations cannot take away the effect of delay and *laches* because no doubt there is no prescribed period of limitation for filing of a writ petition, however, Courts have taken the limitation period for filing of a suit claiming similar reliefs as a guide to determine the aspects of delay and *laches* inasmuch as otherwise persons whose rights to reliefs are barred on account of the Limitation Act, 1963 by filing of suits, such persons can seek to overcome the law by seeking the same reliefs in a writ petition merely because the respondents are State or authorities of the State.

6. Learned counsel for the petitioners tried to argue that petitioners qualified the requirements of appointment to the posts of SAG-I and they were wrongly appointed to the posts of SAG-II and to which learned senior counsel appearing for the respondents argued that as per those very Rules of the year 2002, the selection committee made a particular interpretation of the Rules and accordingly appointed different persons at posts of SAG-I and SAG-II and essentially therefore if there is any illegality in the action of the selection committee in interpreting the extant rules for appointment to the posts of SAG-I and SAG-II such a writ petition ought to have been filed within a reasonable period of completion of selection process in the year 2002, and the present writ petition filed after 11 years is thus argued to be clearly barred by delay and

laches. I may note that this writ petition came up for admission on 11.1.2013 when the following order was passed:-

“CM No.331/2013(for exemption)

Allowed, subject to just exceptions.
CM stands disposed of.

WP(C) No.162/2013

1. This writ petition under Article 226 actually seeks benefit with effect from 2002, but is filed in the year 2013. Though *prima facie* there may be delay and *laches*, I am inclined to issue notice for a limited purpose because the counsel for the petitioners states that there was no specific recruitment rule requiring specific qualifications for the post to which the petitioners were entitled to in the year 2002 viz. Security Assistant Grade-I. Therefore, it has to be seen as to whether there are specific recruitment rules requiring specific qualifications for the post and if that be so, possibly, subject to further arguments, this writ petition may be barred by delay and *laches*.

2. Notice.
3. Counsel for the respondents accepts notice.
4. Counter affidavit be filed within a period of 4 weeks from today.
5. Rejoinder thereto be filed within 4 weeks thereafter.
6. List on 15th May, 2013.”

7. The aforesaid order shows that a representation was made on behalf of the petitioners that in the year 2002 there were no specific notified rules for the post of SAG-I and therefore in spite of the aspect of delay and *laches* with respect to appointments made way back in the year 2002, notice was issued in this writ petition only on the ground that there were no rules which were said to exist for appointment to the post of SAG-I. Today, counsel

for the petitioners, however, concedes that in fact there were necessary rules for appointment to the posts of SAG-II, SAG-I and Senior Security Assistants and the petitioners themselves had filed these rules as Annexure P-6 to the writ petition. Therefore, the effect is that there were in fact rules pursuant to which appointments were made of different persons including the petitioners to the posts of SAG-I and SAG-II with the respondent no. 1, and if as per the case of the petitioners they were wrongly appointed to the posts of SAG-II instead of SAG-I, then, petitioners should have challenged that alleged illegal action of the respondents of the year 2002 in around the year of period of limitation for filing the appropriate judicial proceedings. It is also not the case of the petitioners that they had filed the petition so late because they were assured by the respondents that respondent will re-look the appointments made of the petitioners at the post of SAG-II and will favourably consider the grant to the petitioners of the SAG-I posts. Therefore, giving of repeated representations, in my opinion, cannot take away the effect of delay and *laches*.

8. Legal rights, however strong have to be exercised in accordance with law. If legal rights are not enforced within time in the Court of law, such rights lapse, and merely on the ground of equity, courts cannot interfere by setting aside the principles of limitation and the principles of delay and *laches* so far as filing a writ petition is concerned.

9. To complete the narration I must state that petitioners around the year 2009 have been promoted to the posts of SAG-I, and therefore this petition is essentially only for monetary emoluments for the posts of SAG-I from 2002 to 2009, and therefore the reliefs claimed are also in the facts of this case barred by the principle of ‘no work no pay’.

10. In view of the above, since there were in fact extant rules in the year 2002 for appointment to the posts of SAG-I and SAG-II, petitioners participated in the selection process and were appointed to the posts of SAG-II and in which posts they have worked thereafter, and the fact that no judicial proceedings were initiated to challenge the alleged illegal appointments of the petitioners to the posts of SAG-II in around the period of limitation and taken with the fact that there is no assurance given by the respondents to the petitioners of their cases being favourably considered to the posts of SAG-I, this writ petition suffers from delay and *laches* and is accordingly dismissed. Parties are left to bear their own costs.

JANUARY 07, 2015
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VALMIKI J. MEHTA, J