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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 2368/2014

19th January , 2015

SMT. THANKAM NAIR

.....Petitioner

Through: Mr. C.N.Sreekumar, Advocate.

VERSUS

THE DEPUTY DIRECTOR OF EDUCATION & ANR. Respondents

Through: Ms. Nikita Khetrapal, Adv. for Ms.
Nidhi Raman, Adv. for R-1.

Mr. Rajiv Talwar, Directorate of
Edu./GNCTD.

Ms. Malini Poduval and Ms. Babita Sant,
Adv. for R-2.

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 on 2.4.2014. Petitioner, the erstwhile employee of the respondent no.2-Kerala Education Society Senior Secondary School by this writ petition impugns the order passed by the respondent no.1-Deputy Director of Education dated 2.1.2001 i.e issued more than 13 years prior to filing of the writ petition. The impugned order rejects the request of the petitioner seeking voluntary retirement from the respondent no.2-school.

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2. At the time of issuing of notice in this writ petition, it is specifically noted by a learned Single Judge of this Court that notice is issued subject to the petitioner satisfying this Court on the aspect of delay and *laches*.

3. Petitioner claims that she donated one of her kidneys to her son Mr. Binoy Nair in 1999 and thereafter sought voluntary retirement. Petitioner was granted voluntary retirement by the school, but subsequently the Deputy Director of Education by the impugned order held that petitioner was not entitled to voluntary retirement.

4. The issue in the present case is not of merits or of entitlement of the petitioner to claim voluntary retirement, but the issue is whether a writ petition can be filed in April 2014 with respect to a cause of action which accrued on 2.1.2001, when the impugned order was passed by the respondent no.1 rejecting the request of the petitioner for voluntary retirement.

5. Howsoever good a case and cause, and howsoever justified the entitlement to relief on a cause of action, limitation destroys rights if the same are not enforced within the period of limitation. If what cannot be done by means of filing of a suit, the same ordinarily cannot also be done by filing of a writ petition because even if there is no limitation for filing of a writ petition, courts have applied the doctrine of delay and *laches* for rejecting stale claims. It cannot be

argued that because there is no limitation for filing a petition under Article 226 of the Constitution of India, a petitioner can approach this Court at any time.

6. In the present case, petitioner has failed to show any reason from 2001 to 2014, and which prevented the petitioner from filing a writ petition in this Court to impugn the order of the respondent no.1 dated 2.1.2001. Merely sending of representations in the year 2013, or the alleged ill health of the petitioner which is not substantiated for this entire period from 2001 to 2014 that she was completely confined to bed, are no grounds on which this Court should look astray on the aspect of delay and *laches* in approaching this Court. Any and every reason is not a sufficient reason, and unless the statements of facts with respect to the delay and *laches* are such that they completely prevented or effectively prevented the petitioner from approaching the Court, the period of delay and *laches* cannot be easily explained away.

7. Clearly therefore the writ petition is barred by delay and *laches* and liable to be rejected and is accordingly rejected.

8. The writ petition is also liable to be dismissed because powers which are exercised under Article 226 of the Constitution of India are discretionary powers. Discretionary powers cannot be exercised in favour of a person such as the petitioner who simply stops attending the school after her request for voluntary retirement is rejected. If recalcitrant and undisciplined employees are permitted,

schools will not be able to function because such employees at their own convenience will stop attending the school and after many many years claim rights against the school. In fact, once the petitioner failed to attend the services of respondent no.2-school, it is the deemed abandonment of services in view of the recent judgment of the Supreme Court in the case of ***Vijay S. Sathaye Vs. Indian Airlines Limited & Ors. (2013) 10 SCC 253*** and petitioner thus now in 2014 cannot rake up issues as if the petitioner remains an employee ie only if the petitioner had remained an employee, the issue of voluntary retirement would arise.

9. Counsel for the petitioner did seek to argue that there is no question of delay and *laches* because pension is a continuous cause of action, however, I note that in the present case it is not as if the petitioner is being paid pension and figure of which is to be varied, and actually the issue is whether petitioner could get voluntary retirement and which was denied by the alleged illegal order dated 2.1.2001. Therefore, once the issue is the claim of the petitioner to voluntary retirement by seeking quashing of the order dated 2.1.2001 of the respondent no.1 rejecting such a request, there does arise the issue of delay and *laches* and there is no continuous cause of action/recurring cause of action with respect to quashing of the letter dated 2.1.2001 which rejected the request of the petitioner for voluntary retirement.

10. In view of these above reasons, this Court is not persuaded to exercise its discretionary jurisdiction under Article 226 of the Constitution of India in favour of the petitioner who simply stopped attending her duties with the respondent no.2-school from the year 2000.

11. Dismissed.

JANUARY 19, 2015
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VALMIKI J. MEHTA, J.