

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

+ W.P.(C) No.3575/2015 & CM.No.6367/2015

% **18th May, 2015**

SMT. NIRMALA DEVI Petitioner
Through: Mr.Dinesh Singh Chaudhary, Advocate.

versus

DIRECTORATE OF EDUCATION & ORS. Respondents
Through: Ms.Nikhita Khetrapal, Advocate for R-
1.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India petitioner seeks appointment with the respondent no.2/School as a Water Woman in terms of the selection process conducted in the year 2008. Be it noted that the writ petition is filed after about seven years in April, 2015.

2. Petitioner's case is that a fraud has been played upon her because she had applied for and was selected to the post of Water Woman in the OBC category pursuant to the advertisement issued on 09.3.2008, but instead of the petitioner being given the appointment, the respondent no.3 was given appointment by forging a letter (Annexure-7 to the writ petition) under the

signatures of the petitioner, as per which the petitioner gave up her job. It is stated that the petitioner came to know about a fraud being played on her in December, 2013 when the Principal of the respondent no.2/School approached the petitioner to enquire into her status as a Water Woman with the respondent no.2/School. Petitioner claims to have filed an application under the Right to Information Act, 2005 on 03.6.2014, and whereafter she claims that she got information that she was selected, but was wrongly denied appointment by appointing respondent no.3.

3. The respondent no.2/School is an aided school i.e aid is given by the Government of NCT, Delhi through the Directorate of Education. The Directorate of Education/respondent no.1 has filed its counter affidavit raising three principle objections. The first objection is that the petition is hopelessly time barred and hit by the doctrine of delay and *laches* as the petition has been filed seven years after the selection process. The second objection which is raised is that the petitioner herself by issuing the undated letter (Annexure-7 to the writ petition) stated that she did not want a job and her signatures appearing in this letter are same as the signatures which appear in other documents signed by the petitioner, and thus there is no fraud as claimed by the petitioner. The third objection which is raised is that the post of Water

Woman in the respondent no.2/School has been abolished w.e.f 2014-2015, and therefore the petitioner cannot be given employment.

4. When the writ petition was filed, a *prima facie* view was taken by the Court with respect to a fraud being played upon the petitioner, but the counter affidavit filed by the respondent no.1 shows that, in fact, the petition is wholly misconceived and an abuse of the process of the law. The reasons for the same are given hereinafter.

5. Admittedly, the selection process was of the year 2008, and which came to an end in around June, 2008, when the respondent no.3 was given appointment. Respondent no.3's services were however terminated subsequently on 20.8.2014 as documents being given by the respondent no.3 at the time of appointment were found to be fake and fabricated. Cause of action therefore accrued to the petitioner in the year 2008 or definitely in the year 2009 at least, inasmuch as, no person can claim a right to go to sleep and claim that she is entitled to wake up from the *kumbhkarna* slumber after many many years, allegedly on the ground that the Principal of the respondent no.2/School contacted her. Obviously no proof has been filed, and nor could have been, that a person no less than a Principal of the School contacted the petitioner. The petitioner cannot contend that she did not know of the fraud or her non-

selection in a reasonable period by the years 2008-2009, because, persons who appear in a selection process are bound to pursue for the results of the selection process and cannot claim that for many many years, they need not pursue to know the result of the selection process. If the stand of the petitioner is accepted that she woke up in the year 2013-2014, then there is no reason why persons such as the petitioner cannot come to the court even thereafter i.e much after seven years. This is however not the law because the principles of Limitation Act, 1963, though strictly do not apply in the writ proceedings but the principles of Limitation Act do apply to writ petitions and so held by the Supreme Court in the judgment in the case of *State of Orissa & Anr. Vs. Mamata Mohanty*, (2011) 3 SCC 436, and paras 52 to 54 of which read as under:-

“Delay/Laches

52. In the very first appeal, the respondent filed Writ Petition on 11-11-2005 claiming relief under the Notification dated 6-10-1989 w.e.f. 1-1-1986 without furnishing any explanation for such inordinate delay and on laches on her part. Section 3 of the Limitation Act, 1963, makes it obligatory on the part of the court to dismiss the Suit or appeal if made after the prescribed period even though the limitation is not set up as a defence and there is no plea to raise the issue of limitation even at appellate stage because in some of the cases it may go to the root of the matter. (See *Lachhmi Sewak Sahu v. Ram Rup Sahu: AIR 1994 PC 24* and *Kamlesh Babu v. Lajpat Rai Sharma: (2008) 12 SCC 577.*)

53. Needless to say that Limitation Act, 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public

policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the Respondent claimed the relief from 1-1-1986 by filing a petition on 11-11-2005 but the High Court for some unexplained reason granted the relief w.e.f. 1-6-1984, though even the Notification dated 6-10-1989 makes it applicable w.e.f. 1-1-1986.

54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time. (See *Rup Diamonds v. Union of India*: (1989) 2 SCC 356, *State of Karnataka v. S.M. Kotrayya*: (1996) 6 SCC 267 and *Jagdish Lal v. State of Haryana*: (1997) 6 SCC 538.)”

(underlining added)

6. Clearly therefore the writ petition is barred on the principle of limitation and the doctrine of delay and *laches*, because the petitioner was bound to pursue the result of the selection process, and is therefore deemed to know of her alleged rejection in the year 2008 or at the very maximum in the year 2009, and therefore the writ petition had necessarily to be filed within a period of three years i.e by the year 2012, but this writ petition is filed, as already stated above, in April, 2015, and hence is clearly barred by the doctrine of delay and *laches*, and is liable to be dismissed on this short ground alone.

7. The second reason for dismissing of this writ petition is that, it is found that the petitioner is not *bonafidely* coming to this Court with clean hands to disentitle exercise of discretionary jurisdiction under Article 226 of the Constitution of India because petitioner's signatures are indeed found in Annexure-7 to the writ petition. Also this Court cannot decide the disputed questions of fact as to whether the petitioner's signatures are/are not contained in the letter filed as Annexure-7 to the writ petition, and therefore, I put it to the counsel for the petitioner that, if the petitioner wants to exercise her rights by filing a civil suit to get her case decided, but, counsel for the petitioner insists that this Court must pass a judgment in this matter. Clearly therefore the writ petition is not maintainable, inasmuch as, this Court cannot decide the disputed questions of fact as to whether the signatures of the petitioner do appear or do not appear in Annexure-7 to the writ petition. Of course, I may note that on a first impression, signatures of the petitioner at Annexure-7 to the writ petition are quite nearly the same as the signatures appearing of the petitioner on other documents filed by the respondent no.1.

8. The third reason for dismissing of the writ petition is that the post of Water Woman in the respondent no.2/School has been abolished by the respondent no.1 w.e.f 2014-2015, and therefore there is no longer any post to which the petitioner

can claim her appointment. The petitioner, therefore cannot claim appointment to a post which is non-existent.

9. In view of the above, the writ petition clearly is hopelessly misconceived and without any merit. Dismissed.

MAY 18, 2015
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VALMIKI J. MEHTA, J.