

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

% *Date of decision: August 05, 2015*

+ **LPA 518/2015**

ASHWANI KUMAR DUA Appellant
Represented by: Mr.Ritesh K.Choudhary and
Mr.Rahul Kumar, Advocates.
versus

DELHI STATE CIVIL SUPPLIES
CORPORATION LIMITED (DSCSC) Respondent
Represented by: None.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CM No.13992/2015 (Exemption)

Allowed, subject to all just exceptions.

CM No.13991/2015 (Delay)

1. For the reasons stated in the application delay of 33 days in filing the appeal is condoned.
2. Application is disposed of.

LPA 518/2015

1. Ashwani Kumar Dua the Appellant herein was appointed to the post of Junior Sales Assistant (AG-III) with the Respondent on March 15, 1982 and was regularised in the said service on July 01, 1985. On January 12, 1995 he was promoted from Assistant Grade-III to Assistant Grade-II and kept on probation for a period of one year which period of probation was found to be unsatisfactory and thus vide order dated June 27, 1995 he was

reverted back as Assistant Grade-III from Assistant Grade-II with immediate effect. Waiting for 20 long years with the plea that he had been repeatedly representing to the Respondent, Ashwani Kumar Dua filed a writ petition before this Court on October 09, 2014 which after repeated removal of objections came up before the Court for the first time on May 27, 2015. The prayers sought in the Writ Petition (C) No.5388/2015 inter alia were:

“i) A writ of Certiorari or any other appropriate writ, order or direction, directing the respondent to declare the entire selection procedure for Seniority list to be null and void as abinitio and to re-consider the entire process to set aside and quash the seniority list dated 31-07-2014 and pass an order or direction to the respondent, to provide correct determination of seniority and promotion to the petitioner, including all consequential benefits, arrears of pay and allowances, seniority etc., from the date they became applicable i.e. w.e.f 12-01-1995 the date when the petitioner first got promotion to the post of AG-II, in the interest of justice.

ii) A writ of Mandamus or any other appropriate writ, order or direction, directing the respondent to take appropriate action by reviewing the declared Seniority list (Annexure P-1), by putting the name of petitioner at appropriate place as per his seniority immediately within two weeks.

iii) A writ of Certiorari or any other appropriate writ, order or direction, directing the respondent to declare the order orders of reversion dated 27-06-1995(Annexure P-2), orders of reversion dated 27-06-1995 (Annexure P-2), as null and void, wrong, illegal, unjustifiably and have been passed without affording opportunity to the petitioner, in the interest of justice.

iv) A writ order or direction directing the respondent to pay

*a sum of Rs.5,00,000/- towards the damages to petitioners.
v) Cost of the petition is also awarded.”*

2. Though ostensibly Ashwani Kumar Dua sought quashing of the seniority list dated July 31, 2014 seeking his placement at the grade position however, the same was based on his first promotion w.e.f January 12, 1995 and he also sought declaration of the order of reversion dated June 27, 1995 as null and void.

3. The learned Single Judge vide the impugned order dated May 27, 2015 dismissed the writ petition on delay and laches. Referring to the decision reported in (2001) 3 SCC 436 State of Orissa & Anr.vs.Mamta Mohanty the learned Single Judge held that it is well settled that even if no period of limitation is prescribed for filing a writ petition however, the same is still to be filed within a reasonable period.

4. As noted above, in the present case the delay is of nearly 20 years. Learned counsel for the Appellant sought to explain the delay by saying that he had made repeated representation to the Respondent. Along with the writ petition copies of representations dated July 17, 1995, August 05, 1996, February 05, 1998, a mercy appeal sometime in June 2000 and representation dated January 31, 2001 addressed to the Managing Director of the Respondent have been placed on record whereafter the Appellant Ashwani Kumar Dua went into a deep slumber and made a representation ostensibly in December, 2009. Repeated representations without success cannot be the ground to entertain a writ petition after 20 years of the cause of action. The relief in a writ petition being equitable, the Court would be fully justified in declining to grant relief on the ground of delay and laches

specially if the same is unexplained and inordinate.

5. The Supreme Court in the decision reported as (1977) 3 SCC 396 State of Orissa vs. Pyarimohan Samantaray & others dealing with a petition of the Government servant challenging the seniority list belatedly held:

“6. It would thus appear that there is justification for the argument of the Solicitor General that even though a cause of action arose to the petitioner as far back as 1962, on the rejection of his representation on November 9, 1962, he allowed some eleven years to go by before filing the writ petition. There is no satisfactory explanation of the inordinate delay for, as has been held by this Court in Rabindra Nath Bose and Ors. v. Union of India and Ors. (1972) 2 SCR 697 the mailing of repeated representations, after the rejection of one representation, could not be held to be a satisfactory explanation of the delay. The fact therefore remains that the petitioner allowed some 11 years to go by before making a petition for the redress of his grievances. In the mean time a number of other appointments were also made to Indian Administrative Service by promotion from the State Civil Service, some of the officers received promotions to higher posts in that service and may even have retired. Those who continued to serve could justifiably think that as there was no challenge to their appointments within the period prescribed for a suit, they could look forward to further promotion and higher terminal benefits on retirement. The High Court therefore erred in rejecting the argument that the writ petition should be dismissed because of the inordinate and unexplained delay even though it was "strenuously" urged for its consideration on behalf of the Government of India.”

6. The Division Bench of this Court in the decision reported as 130 (2006) DLT 287 (DB) Savitri Sahni vs. Lt. Governor, NCT of Delhi & Ors. rejecting the plea that delay occurred on account of successive

representation held:

“11. Equally untenable is the contention urged by Mr.Datar that since the appellant had been making representations, the delay of nearly 8 years between the date when the appellant first had the cause of action to file the petition and the date when the petition was filed stood explained. Just because successive representations are made for years on end does not necessarily mean that the aggrieved person is acting diligently. The aggrieved person cannot keep hoping against hope and delay approaching the court indefinitely. A writ court is not bound to entertain a stale claim for adjudication. Due diligence on the part of the petitioner is a condition precedent for the exercise of the extra ordinary writ jurisdiction of the court. If the appellant indeed was wronged on account of refusal of salary for nearly 9 years during which she served the school, there was no reason why she should have waited for another 7 years thereafter before coming to the Court to seek redress. The learned Single Judge could have, in that view, passed no order other than the one passed by him in the present case. This appeal accordingly fails and is hereby dismissed but in the circumstances without any orders as to costs.”

7. Thus we find no reason to interfere in the impugned order. Appeal is consequently dismissed.

CM No.13990/2015 (Stay)

Application is dismissed as infructuous.

**(MUKTA GUPTA)
JUDGE**

**(PRADEEP NANDRAJOG)
JUDGE**

**AUGUST 05, 2015
'vn'**