

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No.1936 of 2012**

Govind Maskhare S/o Shri Mohan Lal Maskhare, aged about 41 years, R/o Janta Colony, Gudiyari, Raipur (CG).

---- Petitioner

**Versus**

1. State of Chhattisgarh through the Secretary, Department of Public Relations, DKS Bhwan, Mantralaya, Raipur (CG).
2. Director, Directorate Public Instructions, Jansampark Chowk, Raipur (CG)
3. Commissioner Public Relations, Directorate Public Relations, Jansampark Chowk, Raipur (CG).

---- Respondents

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For Petitioner                      Shri Jitendra Pali, Advocate.

For Respondent/State      Shri Raj Kumar Gupta, Deputy Advocate General.

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**Hon'ble Shri Justice P. Sam Koshy****CAV JUDGMENT****Delivered on 21/06/2016**

1. The present writ petition has been preferred by the petitioner questioning the advertisement dated 05.02.2009 (Annexure P/1) for not granting him age relaxation equivalent of the number of years which he had served with the respondents on contractual basis. In addition, the petitioner also sought for a relief similar to one which has been granted by the Division Bench of this court in Writ Petition (S) No. 2711 of 2009, decided on 29.03.2012.
2. A bare perusal of this petition forces this court to dismiss the present writ petition only on the ground of delay and laches. Admittedly, the

claim put forth by the petitioner is in respect of an advertisement that was published on 05.02.2009 for the post of Date Entry Operator. The petitioner also applied for the said post, however his candidature could not be considered due to over age. The present petition was filed by the petitioner on 05.05.2012 i.e. after more than three years from the date of publication of advertisement.

3. A perusal of advertisement dated 05.02.2009 (Annexure P/1) clearly reflects that it had very categorically fixed the conditions of eligibility also in respect of age relaxation. In the said advertisement it was clearly mentioned that candidates would be entitled for all such relaxations of age which are otherwise provided by the State Government as per the government rules, instructions and orders.
4. The petitioner very well knew that on the date of advertisement itself he did not fulfill the eligibility criteria for applying on the said post of Data Entry Operator. Knowing fully well, he did not agitate the same. With the prevalent set of rules, instructions and orders so far as age relaxation, he also took a chance and applied for the said post and it is only after three years the petitioner has now put forth his claim seeking for relaxation of age by relaxing the age to the extent of the period that he served with the respondents as a contractual employee.
5. Since the advertisement itself had fixed the upper age limit of 35 years and taking into consideration the fact that he was a contractual employee with the respondents, under the prevailing instructions he would have got an advantage of 3 years over and above the upper age limit of 35 years, however, on the date of advertisement and the cut-off

date fixed in the advertisement, the petitioner had infact crossed the upper age limit of 38 years after availing the age relaxation. Thus, he was not entitled for any further relaxation as has been claimed. The petitioner neither agitated the same at the first instance, nor challenged it within a reasonable period. At the same time, he took a chance of participating in the recruitment process knowing fully well that he was not eligible. Now after a period of three years from the date of advertisement he has approached to this court only because his candidature has not been accepted by the respondents and he was not called for interview, which cannot be entertained at this belated stage as delay may have impact on others' ripened rights and may unnecessarily drag others into litigation.

6. The question of delay and laches came to be considered very recently by the Supreme Court in case of **State of Uttaranchal and Another v. Shiv Charan Singh Bhandari and Others**<sup>1</sup> in which the court has declined to exercise extraordinary jurisdiction in case the petitioner invokes jurisdiction of court with inordinate delay, and held as under :

"[In State of T.N. v. Seshachalam](#)[8], this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: -

...filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant."

7. In case of **Chennai Metropolitan Water Supply and Sewerage**

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<sup>1</sup> 2013 (12) SCC 179

**Board and Others v. T.T. Murali Babu**<sup>2</sup>, the Supreme Court has clearly held that delay may have impact on others' ripened rights and may unnecessarily drag others into litigation, and expressed their opinion as under-

“..... Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons – who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.”

8. The petitioner took the role of fence seater without being aggrieved at the first instance, nor challenged the advertisement immediately and only because there was a judgment passed by this court in Writ Petition No.2711 of 2009, decided on 29.03.2012, that too in respect of a entirely different recruitment process where the challenge also was on different criteria and different parameters, has prayed for a similar relief which, in the opinion of this court, is not permissible.
9. In case of **Rup Diamonds Vs. Union of India**<sup>3</sup> it has been observed that those people who were sitting on the fence till somebody else took up the matter to the court for refund of duty, cannot be given the benefit.
10. For the reasons mentioned hereinabove, the petition fails and is accordingly dismissed. No order as to costs.

Sd/-  
(P. Sam Koshy)  
**JUDGE**

inder

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<sup>2</sup> 2014 (4) SCC 108

<sup>3</sup> 1989 (2) SCC 356