

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.***

CWP No.14826 of 2016

Date of Decision: 29.08.2016

Sudha Bala

....Petitioner

Versus

State of Punjab and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Ms. Sonia G. Singh, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of *mandamus* directing the respondents to grant place of posting to the petitioner as after a period of seven years of her joining, she has not been granted the place of posting. A further prayer has also been made that the petitioner may be granted all consequential benefits of the post of Supervisor w.e.f 1996 as she had cleared the written test but her answer sheet had wrongly been checked .

Briefly, the facts of the case, as made out in the petition, are that the petitioner, being an *Anganwari worker*, appeared in the written test conducted on 25.08.1996 for promotion to the post of Supervisor. The petitioner was declared pass but the merit list was not properly prepared. She made a request to inspect her papers as the right answers were marked

as wrong. Even in inquiry, the petitioner was found higher in merit but she was not appointed. She filed **CWP No.2209 of 1997**, which was disposed of vide order dated 19.05.2005. In compliance of directions issued by this Court in the said petition, a committee was constituted to examine the merit list, wherein, the petitioner was again found to be in merit. An intimation was sent to her. The petitioner was asked to submit her medical and joining report within a period of 15 days. In pursuance of said intimation, the petitioner submitted her joining report as well as medical to respondent No.2 on 02.04.2008 but still no posting was given to her. Petitioner made various representations but no action was taken thereupon. Ultimately, a legal notice was also served upon the respondents on 15.02.2016 but to no avail.

Learned counsel for the petitioner submits that the petitioner was selected and her medical examination was also conducted but still she was not given the place of posting. In the inquiry conducted by the committee constituted in compliance of directions issued by this Court in **CWP No.2209 of 1997**, the petitioner was found in the merit list.

Heard the arguments of learned counsel for the petitioner and have also perused the documents available on the file.

Admittedly, the petitioner joined the Office of respondent as Anganwari Worker in the year 1983. Subsequently, as per Memo dated 16.10.1996, the instructions were issued for appointment of Supervisors. As per said instructions, 95% posts of Supervisors were to be filled up amongst Anganwari Workers. Out of these 95% posts, 50% posts were to be filled up from the graduate Anganwari workers, having three years experience as *Anganwari* workers, whereas, 50% posts were to be filled up from

Anganwari workers who were matriculate and were having eight years' experience as Anganwari worker. A written test of candidates who were graduates and matriculate, was conducted for promotion as Supervisor on 25.08.1996. As per case of the petitioner, she appeared in the test and qualified the same but was not appointed. After a long delay, the petitioner filed **CWP No.2209 of 1997**, which was disposed of on 19.05.2005. As per directions issued in the said petition, a Committee was constituted, which was headed by Shri Satish Chander, IAS to examine the merit list and she was found in merit. An intimation was also sent to the petitioner in this regard and she was asked to submit her medical and joining report within a period of 15 days. Accordingly, the petitioner submitted her joining report as well as medical on 02.04.2008 but no place of posting was given to her. She remained silent from 02.04.2008 till the date of her moving representation i.e 27.11.2014. Thereafter also, after a long delay, a legal notice was sent to the respondents on 15.02.2016. No explanation about delay has been given by learned counsel for the petitioner. The details regarding moving of an application to legal aid and action taken thereupon has been furnished by learned counsel appearing on behalf of the petitioner. On perusal of said details, it appears that petitioner Sudha Bala submitted two letters seeking legal aid on 27.11.2014. It has been mentioned therein that various letters were sent to the applicant to be present in the Office along with papers to discuss the matter with Retainer Lawyer. Ultimately, the present case was filed on 21.07.2016. The matter remained with the Legal Services Authority from 27.11.2014 to 21.07.2016. Not only the petitioner was inactive in pursuing her case but the Legal Services Authority also took sufficiently long time to take decision to file the present

petition. There is delay of years' together in pursuing the case but no reason, whatsoever, has been mentioned in the writ petition. It appears that the petitioner was reluctant in pursuing the case as in spite of asking her time and again, the documents were not supplied by her. Many changes might have occurred during this period as the test for the said post was conducted in August, 1996 and even the petition filed by the petitioner was disposed of with a direction on 19.05.2005. After submitting the joining report and medical on 02.04.2008, no efforts were made by the petitioner to knock the doors of the Court. Even it is not clear as to what is the status of the post as well as of the petitioner as on today. It has not been pointed out by learned counsel for the petitioner as to for how much period, the promotion list remained valid.

The issue of delay was raised in judgment of this Court in case ***Vironika vs State of Punjab and others 2016(2) SCT 814***. In that case, the process of selection was initiated in mid-2011 and the petitioner approached this Court in the year 2015. It was held by this Court that no fresh cause of action had arisen and petition suffers from delay and laches and the same was dismissed on the ground of delay. The relevant observations of Hon'ble Bench in para Nos.6 to 9, are as under :-

“6. One man's mistake becomes another person's right. As is said the law abhors a vacuum and is never seen on hold while buying tickets for the show. The queue of job seekers whilst it builds up online accepts no intrusions as they are all third parties qua claimant in the backward class category queue whose rights online stand accrued by a software programme designed not to be lightly unsettled.

7. If posts remain unfilled in the claimed category they will not be lost to backward classes and would be

put in carry forward mode and in this respect no direction can be issued by the Writ Court to fill vacancies except under due authority of law or for breach of fundamental rights, which is not the case urged or set up in the petition. The petitioner cannot be seen profiting from a fatal mistake she made. If she failed to apply in the BC category (Christian) she took her chances till her result was declared. She cannot cry over spilled milk. Moreover, ignorance of the law is no excuse. I would therefore find no cogent or valid reason to intervene in the matter and grant relief to the petitioner as claimed by her while she is at fault in not meeting a procedural deadline set before the game started. The procedural rule in condition 9 confers substantive rights in third parties competing for the advertised posts in their respective quotas of reservation.

8. Leaving aside the above, it appears too late to revisit a selection process initiated in mid 2011 to grant any effective relief. The approach to this Court in 2015 does not create a fresh cause of action. Accordingly, the petition suffers from delay and laches and deserves to be rejected on this court as well.

9. For the foregoing reason, the petition is found lacking in merit and maintainability and is thus liable to be dismissed in limine and it is accordingly so ordered. File is closed to be sent to the record room.”

Same issue was there before the Division Bench of this Court in case ***Yash Paul Raheja vs Union of India and others 2016(2) SCT 821***, wherein, it was held that there was no limitation for pension as the same is a continuing cause of action and petition should not have been dismissed on the ground of delay as limitation alone is not the ground for dismissal of the writ petition. It was also observed that it was purely a question of calculation of the pension which cannot be raked after a delay of 20 years of

retirement and due to long delay and laches on the part of the petitioner, he was not allowed to raise this plea at that stage. The principle of delay and laches was applied and the review petition was dismissed on the ground of delay.

Similarly, in another judgment of Division Bench of this Court in case ***H.S. Gill vs Union of India and others 2016(2) SCT 477***, the petitioner moved a representation for the first time after nine years and his claim was rejected on the ground of delay. It was held that the petitioner was not entitled to any relief on account of principle of delay and laches.

In a decision of this Court in ***Rupinder Singh vs. State of Haryana and others, 2016(1) SCT 565***, the candidates approached the Court after a long delay and legal notice was served upon the respondents after a period of seven years. It was held that the appointment cannot be claimed as a matter of right as not only delay was there but reasons for approaching the Court after a long delay was not explained.

Similarly in ***Mahender Singh Malik vs. State of Haryana and others, 2016(2) SCT 40***, the claim of the petitioner was dismissed on the ground of delay by holding that the petitioner has slept over his rights and woke up only when orders were passed in other cases. It was held that the petitioner cannot be allowed to ride piggyback on other employees, who were vigilant about their rights and approached the Court well within time for the vindication of their grievances.

Hon'ble the Supreme Court in ***Chandigarh Administration vs. Jagjit Singh, (1995) 1 SCC 745*** held as under: -

“In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular

*action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world.” Though the case in Jagjit Singh is a property matter, the principle applied to most fields of law including in service law. Nearer home in service law the equality doctrine in Article 14 cannot be invoked to perpetuate an illegality, cf. by way of illustration the authority in **Bihar Public Service Commission & Ors. v. Kamini & Ors. (2007) 5 SCC 519.**”*

On the issue of rejection of stale claims, Hon'ble the Apex Court in the case of **Chennai Metropolitan Water Supply and Sewerage Board and others vs. T. T. Murali Babu** reported as **2014 (2) S.C.T. 193** has held as under :-

*“13. First, we shall deal with the facet of delay. In **Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others [AIR 1969 SC 329]** the Court referred to the principle that has been stated by Sir Barnes Peacock in **Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp [1874 (5) PC 221]**, which is as follows :-*

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence

must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

In ***State of Maharashtra v. Digambar, 1995 (4) SCC 683***, while dealing with exercise of power of the High Court under Article 226 of the Constitution, Hon'ble the Apex Court observed that power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.

In ***State of M.P. and others etc. etc. v. Nandlal Jaiswal and others etc. etc., AIR 1987 SC 251***, Hon'ble the Apex Court observed that it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. It has been further stated therein that if there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. Emphasis was laid on the principle of delay and laches stating that resort to the

extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years’ delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not

foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. 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.

The above view of the Apex Court was followed in a recent judgment rendered by this Court in ***Suraj Mal vs. State of Haryana*** reported as ***2015 (1) SCT 31***, wherein it has been held as under :-

“9. In view of the above authoritative enunciation of law by Hon'ble the Supreme Court and this Court, the present writ petition filed by the petitioner nearly after 9 years of his retirement to claim certain benefits, which may be due to him while in service, certainly deserves to be dismissed on account of delay and laches as there is no satisfactory explanation available for delay.”

The benefits of a decision rendered in the case of similarly placed persons cannot straightway be given to a person, who himself approaches the Court belatedly. For getting relief from the Court, he is required to satisfactorily explain the delay on his part in approaching the Court.

In this regard, it would be useful to refer to the following observations made by the Apex Court in the case of ***Chairman, U. P. Jal Nigam and another vs. Jaswant Singh and another*** reported as ***2006 (11)***

SCC 464 :-

“6. The question of delay and laches has been examined by this Court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that about 9 writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 30.6.2005 and 31.7.2005. Two writ petitions were filed wherein no relief of interim order was passed. They were granted interim order. Thereafter a spate of writ petitions followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 & 2006 much after their retirement. Whether such person should be granted the same relief or not?

*7. Learned senior counsel for the appellants has invited our attention to various decisions to impress upon that persons who are guilty of such laches and acquiesced with the situation should not be granted any relief because it is going to cost the Nigam a heavy financial burden to the tune of Rs. 17,80,43,108/-. Therefore, relief should be confined to those persons who were continuing in service and filed their writ petitions in time but not to all and sundry who woke up to file the writ petitions much after their retirement. In this connection, our attention was invited to a decision of this Court in the case of **M/s. Rup Diamonds & Ors. v. Union of India & Ors., reported in (1989) 2 SCC 356**, wherein their Lordships 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. In that context, their Lordships held as follows :*

"Petitioners are re-agitating claims which they had not pursued for several years. Petitioners were' not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so

declared void. There is also an unexplained, inordinate delay in preferring the present writ petition which is brought after a year after the first rejection. As observed by the Court in *Durga Prashad* case, the exchange position of this country and the policy of the government regarding international trade varies from year to year. In these matters it is essential that persons who are aggrieved by orders of the government should approach the High Court after exhausting the remedies provided by law, rule or order with utmost expedition. Therefore, these delays are sufficient to persuade the Court to decline to interfere. If a right of appeal is available, this order rejecting the writ petition shall not prejudice petitioners' case in any such appeal. "

8. Our attention was also invited to a decision of this Court in the case of ***State of Karnataka & Ors. v. S.M. Kotrayya & Ors.***, reported in 1997(1) SCT 359 (SC) : (1996) 6 SCC 267. In that case the respondents woke up to claim the relief which was granted to their colleagues by the Tribunal with an application to condone the delay. The Tribunal condoned the delay. Therefore, the State approached this Court and this Court after considering the matter observed as under: "Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-section (1) or (2) of Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under subsection (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay."

9. Similarly, in the case of ***Jagdish Lal & Ors. v. State of Harvana & ors.***, reported in 1998(1) SCT 26 (SC) : (1997) 6 SCC 538, this Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the Court, then such person cannot stand to benefit. In that case it was observed as follows :

"The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and

woke up when they had the impetus from Vir Pal Singh Chauhan case. The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage."

10. In the case of **Union of India & Ors. v. C. K. Dharagupta & Ors., reported in 1997(2) SCT 117 (SC) : (1997) 3 SCC 395**, it was observed as follows:

"We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P. Joshi gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit of Joshi case. In view of our finding that the benefit of the judgment of the Tribunal dated 17-3-1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief."

11. In the case of **Government of W.B. v. Tarun K. Roy & Ors., reported in 2004(1) SCT 78 (SC) : (2004) 1 SCC 347**, their Lordships considered delay as serious factor and have not granted relief.

Therein it was observed as follows :

"The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in Debdas Kumar. The plea of delay, which Mr. Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents.

Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others there from who may be found to be entitled thereto by a court of law."

12. The statement of law has also been summarized in Halsbury's Laws of England, Para 911, pg. 395 as follows: "In determining whether there has been such delay as to amount to laches, the chief points to be considered are :

- (i) acquiescence on the claimant's part; and
- (ii) any change of position that has occurred on the defendant's part. Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been

completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

13. In view of the statement of law as summarized above, the respondents are guilty since the respondents has acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter.

Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussion on the financial management of the Nigam. Why the Court should come to the rescue of such persons when they themselves are guilty of waiver and acquiescence."[Emphasis supplied by me].

In the present case also, the claim of the petitioner is hopelessly time barred as she has been sleeping over the matter for years together. The written test was conducted on 25.08.1996 and the petitioner has submitted her joining and medical report to respondent No.2 on 02.04.2008. No explanation whatsoever has been given as to how the delay has occurred.

In view of the facts and law position as explained above, I find no justification to interfere in the matter. Accordingly, the present petition,

being devoid of any merit, is hereby dismissed.

29.08.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes