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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5179/2016 CM APPL. 21549/2016

ATUL ARORA & ORS

..... Petitioners

Through

Dr. Surat Singh, Advocate

versus

UNION OF INDIA

..... Respondent

Through

Mr. Ripu Daman Bhardwaj, CGSC
with Mr. Arun Kumar and Mr. T.P.
Singh, Advocates**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****ORDER**

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30.05.2016

Present writ petition has been filed seeking a direction to the respondent to pay the settled claim along with 12% interest as had been ordered by the Settlement Commissioner vide its order dated 27th February, 1965.

Learned counsel for petitioners states that the mother of the petitioners had half share in claim bearing Index No. P/ML-8/3146-A under the Displaced Persons (Compensation and Rehabilitation) Act, 1954.

Learned counsel for petitioners also states that the claim came to the notice of the petitioners only in September, 2012. He states that petitioner has been regularly following up with the respondents, however, no claim amount has been received till date.

It is settled law that one of the several rules of self-imposed restraint evolved by the superior courts is that High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled rights of the third parties. It has also been held by the Apex Court that if the writ petition is filed beyond the period of limitation prescribed for filing a civil suit, the High Court will normally treat the delay as unreasonable and decline to entertain the grievance of the petitioner on merits. In the opinion of this Court, the test to be applied is whether laches on the part of the petitioner is such as to hold that the petitioner by its act and conduct has given a go-by to his/her rights or with the passage of time the record is untraceable.

In the present case the petitioners have approached the Court after over 50 years of the order dated 27th February, 1965 having been passed. The Supreme Court with regard to delay and laches in ***State of Madhya Pradesh and another vs. Bhailal Bhai & Anr., AIR 1964 SC 1006*** has held, “.....Learned Counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art.226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable.....”

Moreover, the Supreme Court in ***Banda Development Authority, Banda Vs. Moti Lal Agarwal & Ors., (2011) 5 SCC 394*** has held “*It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self-imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallised rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.*”

Furthermore, the Supreme Court in ***State of Uttaranchal and Anr. vs. Sri Shiv Charan Singh Bhandari and Ors., 2013 (11) SCALE 56*** has held as under:-

“15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In Karnataka Power Corporation Ltd. through its Chairman and Managing Director v. K. Thangappan and Anr. (2006) 4 SCC 322, the Court took note of the factual position and laid down that when nearly for two decades the Respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

16. In State of Orissa v. Pyarimohan Samantaray (1977) 3 SCC 396 it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in State of Orissa v. Arun Kumar Patnaik (1976) 3 SCC 579.

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18. In State of T.N. v. Seshachalam (2007) 10 SCC 137, 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.

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22. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the Respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of

pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned Counsel for the Respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time.

(emphasis supplied)

Consequently, this Court is of the view that present writ petition is barred by laches and repeated representations by the petitioners would not extend the period for filing the writ petition.

MANMOHAN, J

MAY 30, 2016

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