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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 11697/2016

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22nd December, 2016

SHRI DEVI DAYAL MANJHI

..... Petitioner

Through: Mr. Kabir Dixit and Mr. Waheb
Hussaini, Advs.

versus

**NATIONAL BANK FOR AGRICULTURAL AND RURAL
DEVELOPMENT & ANR.**

..... Respondents

Through:

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 under Article 226 of the Constitution of India, the petitioner/Sh. Devi Dayal Manjhi impugns the appointment of respondent no.2/Sh.Manjit Siwan as a Driver in the respondent no.1/National Bank for Agricultural and Rural Development (NABARD) on 30.12.2005.

2. Petitioner pleads and argues that respondent no.2 could not have been appointed as a Driver of the respondent no.1 inasmuch as the qualifications required for appointment as a Driver in the respondent no.1 was to be maximum ninth class pass only but the respondent no.2 had

passed Senior Secondary School Examination, and which examination the respondent no.2 only passed in the year 2001 and hence was over qualified. It is also pleaded by the petitioner that the respondent no.2 did not have five years driving experience. Petitioner with respect to educational qualification of respondent no.2 places reliance upon the letter dated 24.3.2008 issued by the National Institute of Open Schooling showing that the respondent no.2 passed the Senior Secondary School Examination in the year 2001, and which letter reads as under:-

“Phone:95120-4089800, 2402890, 2402893
NATIONAL INSTITUTE OF OPEN SCHOOLING
(Formerly National Open School - NOS)
M.H.R.D., Government of India
A-24-25, Institutional Area, N.H.24, Sector-62, Noida,
district Gautam Budh Nagar (U.P.)

No.NIO/PIO-II/RTI/2008/1386

Dated:24.03.2008

Sh. Devi Dayal Manjhi
E-8/3, Siddharth Nagar
Jangpura
New Delhi-110014

Sub: Information of details of passing year of Secondary and Sr. Secondary result of Sh. Manjit Siwan S/o Sh. Suresh Bhan under Right to Information Act.

Sir

This has reference to your letter dated Nil received by this office on 05.03.2008 on the subject cited above. In this regard, the information is as under:

The details for Secondary-Sh. Manjit Sewan bearing Enrolment No.055302219 had passed in April' 2001 Examination and result status is "PASS".

The details for Sr. Secondary-Sh. Manjit Sewan bearing Enrolment No.055323146 had appeared in June, 2004 Examination and result status is "Fail".

You are requested please to contact M & M Unit, National Institute of Open Schooling, A-24/25, Institutional Area, Sector-62, Gautam Budh Nagar, Noida for all details.

Two IPO Nos. 59 E 103946 of Rs.10/- and 59 E 103947 of Rs.10/- are enclosed as extra amount. Sh. D.S.Bist, Secretary, NIOS is the Appellate Authority in NIOS.

I hope, the above information would satisfy your query.

Thanking you.

Encl: As above

Yours faithfully
Sd/- (Illegible)
(S.K.Prasad)
PIO-II"

3. Admittedly, the cause of action to claim the reliefs in this petition arose on 24.3.2008 when the petitioner came to know of disqualification of the respondent no.2 for not being appointed as a Driver of respondent no.1. In law, though Limitation Act directly does not apply to proceedings in a writ petition under Article 226 of the Constitution of India, the principles of limitation contained in the Limitation Act have been held to be applicable by applying the doctrine of delay and *laches*. The reason for this is simple because if a suit is time barred it cannot be the law that a writ petition can be filed to enforce the same claim which is time barred by seeking passing of orders under Article 226 of the Constitution of India. This Court under Article 226 of the Constitution of India enforces the laws of this country and does not breach the laws including the Limitation Act. Therefore, the Limitation Act cannot be breached by this Court once filing of a suit by the petitioner would be time barred on the same cause of action. This is so categorically held by the Supreme Court in the recent judgment in the case of *State of Orissa and Another Vs. Mamta Mohanty, (2011) 3*

SCC 436. Paras 52 to 54 of the judgment in the case of **Mamta Mohanty**

(*supra*) are relevant and these paras read as under:-

“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.

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.”

4. The relevant observations of the paras 52 to 54 squarely apply to the present case and this writ petition therefore by applying the principles of limitation is liable to be and accordingly dismissed being barred by delay and *laches*.

5. Learned counsel for the petitioner has sought to argue that delay and *laches* itself should not defeat the writ petition and for which

purpose reliance was placed upon the following judgments of the Supreme Court:-

- (i) ***Haryana State Electricity Board Vs. State of Punjab & Others (1974) 3 SCC 91;***
- (ii) ***G.P.Doval and Others Vs. Chief Secretary, Government of U.P. and Others (1984) 4 SCC 329;***
- (iii) ***U.P.Jal Nigam and Another Vs. Jaswant Singh and Another (2006) 11 SCC 464;***
- (iv) ***Tarn Taran Co-Operative Sugar Mills Ltd. Vs. Smt. Balwant Kaur;***
- (v) ***P.B.Roy Vs. Union of India (1972) 3 SCC 432;***
- (vi) ***Hearst Communication Vs. Dinesh Varyari (2009) SCC Online Del 1138.***

6. There is no quarrel to the proposition of law as argued on behalf of the petitioner by placing reliance on the cited judgments with respect to the doctrine of delay and *laches* being not an absolute bar inasmuch as what is delay and *laches* depends upon the facts of each case because if facts show that any representation constitute being considered, then possibly cause of action may not have arisen because it is only on refusal order being passed on the representation which is found to be pending consideration that arising of a cause of action can be said to be deferred. On the other hand it has also been consistently held by the Supreme Court that merely by filing repeated representations over many

years will not extend the period of limitation and will bar the Court from applying the doctrine of delay and *laches*. In the facts of this case it is not found that it can be argued by the petitioner that there is an express or implied representation by respondent no.1 that the representations of the petitioner are pending consideration and that a decision will be taken. There therefore is no ground to claim extension of limitation in favor of the petitioner. Therefore, application of doctrine of delay and *laches* with the principles of Limitation Act are facts specific and in the present case considering that the post in question is only for a Driver of the respondent no.1, the issue was only of over qualification of having a Senior Secondary School certificate by the respondent no.2 as on the date of appointment, the petitioner knowing with respect to the ineligibility of appointment of respondent no.2 way back in the year 2008 i.e more than 8 years prior to filing of the writ petition, and therefore, in the facts of the present case, the doctrine of delay and *laches* have to be necessarily applied against the petitioner and consequently, this writ petition is dismissed on the ground of delay and *laches* containing the underlying principle of limitation provided under the Limitation Act.

7. The writ petition is accordingly dismissed with the aforesaid observations.

DECEMBER 22 ,2016/ ib

VALMIKI J. MEHTA, J