

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 11939/2016 and C.M. Appl. No. 47076/2016 (for directions)

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20th December, 2016

SMT. MINAKSHI BHARTI

..... Petitioner

Through: Mr. Kartar Singh, Advocate.

versus

**THE MANAGER S D BANKEY BIHARI
(AIDED SCHOOL) AND ORS.**

..... Respondents

**Through: Mr. Prabhat Kumar, Advocate for R-
2 and 3.**

**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 who is an employee of the respondent no. 1/School seeks relief with respect to benefit of retrospective employment from 6.2.2010 instead of 25.1.2011 when the petitioner was appointed.

2. Petitioner, as also three other persons, was selected by the Selection Committee for appointment as teachers in the respondent no. 1/School as per the Resolution dated 18.12.2009. With respect to three other

persons, namely, Smt. Alka Sharma, Smt. Monika Malhotra and Smt. Sonam Suryan, who were also selected along with the petitioner in terms of the resolution dated 18.12.2009, these three persons got appointment letters on 6.2.2010 and they joined, whereas the petitioner subsequently got the letter of joining only on 25.1.2011. This letter dated 25.1.2011 reads as under:-

**“S.D. BANKEY BIHARI VIDYA MANDIR
3180, Bakey Bihari, Mandir Marg, Pahar Ganj, New Delhi – 110055**

Ref: No. SDBBYM392/11

Dated: 25.01.2011

Smt. Minakshi Bharti

Sub:- Appointment of Assistant Teacher

Madam,

With reference to your application dated 28.06.2009 for the post of Assistant Teacher, I am pleased to inform you that you have been selected by the management committee for the post of Assistant Teacher in the scale of Rs.9,300/- 34,800/- plus usual allowances as per M.C.D. rules subject to the following terms and conditions:-

1. Your appointment has been approved with effect from 29.01.2010 by the M.C.D. vide their letter no. D-1086-H/AEO/(G)Edu.(H.Q.). dtd 01.02.2010.
2. Your services are purely temporary and will be extended subject to the approval of M.C.D. from time to time.
3. You will have to abide by the rules and regulations of the MCD and also of the management committee of the school in case of non-compliance your services will be terminated and no claim will be entertained of your service period.
4. Your appointment has been sanctioned by the Education Department vide their letter no. 435/de/g/Edu/HQ/2011/dt.24.01.2011

Yours faithfully

Copy to:- A.E.O
M.C.D. Kashmiri gate
Delhi-110006”

(S.N. VOHRA)

3. Petitioner by this writ petition prays that since the petitioner was selected in terms of the Resolution dated 18.12.2009 of the respondent no. 1, petitioner should be treated equally with the three other persons whose appointments have been given with effect to 6.2.2010. Petitioner, therefore, effectively challenges the date of appointment given to the petitioner vide letter dated 25.1.2011.

4. Today, we are in the end of the year 2016. This writ petition has been filed on 11.11.2016. Effectively, the petitioner is challenging the letter dated 25.1.2011 by pleading that this date of joining letter of 25.1.2011 should be read as 6.2.2010, being the date of joining letter issued to the other three persons. If the petitioner was aggrieved with respect to her date of joining being wrongly given as 25.1.2011 instead of 6.2.2010, the petitioner had to seek legal remedies within the period of limitation, and though Limitation Act does not strictly apply to a writ petition, principles of Limitation Act do apply by applying the principles of delay and *laches*, inasmuch as, what otherwise cannot be done by filing of the suit because the suit will be time barred, the same then cannot be done by filing of the writ petition under Article 226 of the Constitution of India. The object of Article 226 of the Constitution of India is to enforce the laws and not breach any other law applicable to this Court. Accordingly, the Supreme Court in the judgment in the case of *State of Orissa and Another Vs. Mamta Mohanty*,

(2011) 3 SCC 436, has held that once the writ petition is filed beyond the period of limitation, such writ petition ought not to be entertained by the Courts and should be dismissed by applying principles of limitation as applicable to writ petitions by the doctrine of delay and *laches*. The relevant paragraphs 52 to 54 of the judgment in the case of **Mamta Mohanty** (*supra*) 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.”

5. In view of the above, the present petition is barred by limitation. Since this Court is bound by the law as laid down by the

Supreme Court in *Mamta Mohanty's* case (*supra*), this writ petition is dismissed by applying doctrine of delay and *laches* and the ratio of the judgment in the case of *Mamta Mohanty (supra)*.

DECEMBER 20, 2016

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VALMIKI J. MEHTA, J

