

C.W.P. No. 11944 of 2013

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 11944 of 2013

DATE OF DECISION: 24.10.2017

Kamlesh Rani

.....Petitioner

Versus

State of Punjab and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Ms. Alka Chatrath, Advocate
for the petitioner.

Ms. Akshita Chauhan, AAG, Punjab.

DAYA CHAUDHARY, J.

Petitioner-Kamlesh Rani has filed the present petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned order dated 30.7.2012 (Annexure P-14) passed by the Director, Health and Family Welfare, Punjab, whereby, her claim for appointment to the post of Multi-purpose Health Worker (Female) was rejected by wrongly stating that meritorious SC candidates have been considered under General Category, whereas, the said facts were found to be incorrect on receiving information under RTI. A further prayer has also been made for issuance of a writ in the nature of mandamus directing the respondents to consider the claim of the petitioner

for appointment against the vacant posts which had fallen vacant after considering the appointment of meritorious SC (2) candidates, who were higher in merit than the last selected candidate in the General Category.

Briefly, the facts of the case as made out in the present petition are that a public notice dated 28.5.2006 inviting applications for 208 posts of Multi Purpose Health Workers (Female) and 656 posts of Multi Purpose Health Worker (Male) on consolidated salary of ₹5000/- was published in 'Daily Ajit'. As per advertisement, the essential qualification for the post of Multi-purpose Health Worker (Female) was that the candidate must have passed matriculation or its equivalent examination with science from recognized University/Institution, Diploma in Multi Purpose-health Worker (Male/Female) from a recognized Board/University and must have passed Punjabi upto matric standard. The petitioner finding herself to be eligible for the aforesaid post applied under SC category and was called for interview on 23.8.2006 under Roll No. 3045. However, the Director, Health and Family Welfare, Punjab issued public notice for postponement of the interviews scheduled from 7.8.2006 to 24.8.2006. Thereafter again an advertisement was published on 31.8.2006 in the Punjab Kesari inviting applications for various posts including 656 posts of Multi-purpose Health Worker (Male) and 208 posts of Multi-purpose Health Worker (Female). A note was also given in the said advertisement that the candidates who have already applied need not apply again and their earlier applications would be considered. Thereafter, a public notice was issued on 23.12.2006 for calling the candidates whose percentage of marks was equivalent to or above the cut off percentage mentioned against various categories after preparing the merit list for scrutiny of their original documents. Meaning

thereby, the merit list was prepared after scrutinizing the applications and documents for the posts of Multi-purpose Health Worker (Male) and Multi-purpose Health Worker (Female) on the basis of marks obtained in Diploma. The posts belonging to SC category were bifurcated among SC (M&B) and SC (R&O) category for Multi-purpose Health Worker (Female). According to public notice dated 23.12.2006, the respondents while considering the candidates under General Category for the post of Multi-purpose Health Worker (Female) called the candidates who secured merit No. 78.331 to 93.78, whereas, the candidates who secured merit between 75.67 to 81.89 were considered under SC (M&B) category. Similarly candidates who secured merit between 77.11 to 85.22 were considered under SC (R&O) category. The petitioner, who belongs to SC (R&O) category and scored merit of 76.55 was not considered, however, under SC (M&B) category candidates who secured merit of 75.67 were considered for the post of Multi-purpose Health Worker (Female).

When the petitioner was not called for scrutiny of original documents, she visited the office of respondent No.2 but her request for interview was not acceded to. Thereafter, respondent No.2 allowed the selected candidates to join their duties on 30.12.2006. The action of respondents No.1 and 2 in not considering the Scheduled Castes Candidates in open merit was challenged before this Court by way of filing C.W.P. No. 4296 of 2007 titled as **Sarabjit Singh and another Vs. State of Punjab and others**, which was disposed of on the undertaking given by the Director, Health and Family Welfare, Punjab that the petitioners of said petition would be given appointment on contract basis as per terms and conditions on which respondents No.3 to 7 in said petition were working.

On the basis of said undertaking, appointment letter was issued to one Sarabjeet Singh-petitioner No.1 but rejected the claim of Tilak Raj-petitioner No.2 in the aforesaid petition stating therein that he did not fulfill the qualification for being considered for the post of Radiographer in the General category due to over age. Thereafter an application was moved in the said petition, which was disposed of on the basis of statement made by the State counsel to the effect that all the petitioners would be adjusted and appointed within a period of two months subject to verification of their documents.

As per case of the petitioner, the selected candidates were allowed to join their duties without publishing any merit list. A request was made to supply the merit list but the same was not considered. The petitioner moved an application under RTI on 31.7.2011 for getting information regarding complete merit list of 208 posts of Multi-purpose Health Worker (Female) and 656 posts of Multi-purpose Health Worker (Male). In pursuance of said application, information was supplied under RTI, wherein, it has been revealed that the candidates selected under SC (II) category were having more merit than the last selected candidate in the General Category as the last selected candidate in General Category, who was having merit of 71.80. The petitioner made representation to the respondents to appoint her on the post of Multi-purpose Health Worker (Female) but no action was taken thereupon. Thereafter legal notice was sent through counsel on 9.1.2012, wherein, it was requested that the appointment letter be issued to the petitioner on the post of Multi-purpose Health Worker (Female) as posts were still lying vacant but the petitioner was not considered inspite of fact that her merit was 76.55 under SC

category. The petitioner also filed C.W.P. 7935 of 2012 before this Court, which was disposed of with a direction to consider the claim of the petitioner as made out in the legal notice by passing a speaking order. The claim of the petitioner was rejected vide order dated 30.7.2012, which is subject matter of challenge in the present petition.

The grievance of the petitioner in the present petition is that the respondents have not considered the SC meritorious candidates, whereas, she should have been appointed by considering her merit in the SC category as the candidates of SC category being higher in merit viz-a-viz last selected candidate were to be considered in General Category.

Learned counsel for the petitioner contends that Hon'ble the Apex Court in the case of **Indra Sawhney and others Vs. Union of India**, AIR 1993 SC 477 has held that if a reserved category candidate gets selected in open competition field, his post will not be counted under the reserved category. Learned counsel further contends that same view was taken by Hon'ble the Apex Court in another case of **Union Of India and Ors. Vs. Virpal Singh Chauhan and others** JT 1995 (u) SC 231. Learned counsel further submits that the action of the respondents in not considering the claim of the petitioner for appointment inspite of her merit and by not considering SC category candidates in General Category, who have secured more marks than the last selected candidates in General Category is illegal, arbitrary and against the well reasoned preposition of law. Learned counsel has also brought to the notice of this Court that posts are still lying vacant. Learned counsel for the petitioner has relied upon the judgments of Hon'ble the Apex Court in the case of **Jitendra Kumar Singh and another Vs. State of U.P. and others** 2010 (1) SLR 526 and of this Court in the cases

of **Jaskaran Singh Vs. State of Punjab** 1995 (2) SCT 65, **Malkiat Singh Vs. State of Punjab** 1997 (4) SCT 322, **Bhupinder Kaur and others Vs. Vanita and others** 2011 (3) SCT 130, **Harinder Pal Singh Vs. State of Punjab and others** 2015 (1) SCT 167, **Sukhpreet Singh and others Vs. Punjab State Electricity Board** (CWP No. 5774 of 2010 decided on 13.10.2010) and **Ashok Kumar and others Vs. Punjab State Power Corporation Limited (POWERCOM) and others** (C.W.P. No. 14887 of 2010 decided on 11.5.2011), in support of her contentions.

Learned counsel for the respondents has opposed the submissions made by learned counsel for the petitioner. A preliminary objection has been raised by learned counsel for the respondents that the petitioner had already approached this Court by way of filing C.W.P. No. 7935 of 2012 for the same grievance and second petition is not maintainable. In pursuance of direction issued in the said petition, a speaking order has already been passed, wherein, it has been mentioned that the candidates who were having marks below the cut off percentage were not called for counselling. The petitioner was never called for counselling and her claim was rejected. Learned counsel for the respondents further submits that the present petition is hopelessly time barred and suffers from delay and laches. The advertisement was issued in the month of May, 2006 and last date for receipt of application was 19.6.2006. Even the counselling was conducted w.e.f. 26.12.2006 and thereafter appointment letters were issued to the selected candidates in the month of December, 2007. The petitioner remained silent for more than four years and thereafter a legal notice was served. The petitioner is not entitled for any relief sought in the petition. At the end, learned counsel submits that the present petition is also

liable to be dismissed on the ground of non-joinder of necessary parties as the petitioner has not impleaded the selected candidates as party respondents.

Heard the arguments advanced by leaned counsel for the parties and have also gone through the documents available on the file.

The facts relating to publication of advertisements, inviting applications, requisite qualification, last date for submission of applications and preparing list on the basis of merit, are not disputed. It is also not disputed that the petitioner was lower in merit and was not fulfilling the criteria of cut off marks and hence she was not called for interview. The petitioner is claiming her right only on the ground that certain candidates belonging to same category of the petitioner were having more marks than the last selected candidate in General Category and they should have been considered in General Category. In case those candidates were considered in General Category then posts would have fallen vacant and the claim of the petitioner would have been considered. It is an admitted fact that earlier advertisement was published on 28.5.2006 and thereafter another advertisement was published on 31.8.2006. Even no representation was made by the petitioner when she was not called for counselling. On the basis of information sought under RTI on 31.7.2011 a legal notice was served upon the respondents on 9.1.2012 (Annexure P-12). It is also necessary to mention here that the petitioner has not impleaded those candidates who were higher in merit in SC category and have been considered in General Category as party respondents. Not only a long unexplained delay in filing the present petition is there but candidates, who were necessary party have not been impleaded as respondents. No efforts

have been made to explain the delay. Simply, it has been mentioned that the information was sought under RTI and thereafter the present writ petition was filed.

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

In another judgment of this Court in ***Vironika vs State of Punjab and others 2016(2) SCT 814***, the process of selection was initiated in the year 2011 and the petitioner in that case approached the Court in the year 2015. It was held that no fresh cause of action arose in favour of the petitioner and the petition suffered from delay and laches and the writ petition was dismissed on the ground of delay only.

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 in that case slept over his rights and woke up only when orders were passed in the cases filed by some other persons. It was held that the petitioner could not 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.

In a judgment of Division Bench of this Court in ***Yash Paul Raheja vs Union of India and others 2016(2) SCT 821***, the petitioner approached the Court by moving representation after a delay of more than

twenty years and his claim was declined on the ground of delay. It was held that the petitioner was not entitled for any relief on account of principle of delay and laches.

Hon'ble the Supreme Court in ***Chandigarh Administration vs Jagjit Singh 1995(1) SCC 745***, has 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.”

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. 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 as 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’. 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 subsection (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 Debidas

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"]

It has also been held in various judgments of this Court as well

as of Hon'ble the Apex Court that even the selected candidates has no indefeasible right to claim appointment. It is also well settled that candidate having participated in the selection process without any protest cannot be allowed to turn around and question the very process having failed to qualify. Hon'ble the Apex Court in the case of **Om Parkash Shukla Vs. Akhilesh Kumar Shukla** AIR 1986 (SC) 1043 has held that when the candidate had appeared in the examination without protest and perhaps had realized that he would not succeed in the examination and filed petition challenging said examination, the High Court should not have granted any relief to such petitioner.

In the present case, the petitioner has approached this Court after a long delay and only ground explained for delay is that information sought under RTI was supplied late. The petitioner could have challenged the action of the respondents when she was not called for counselling but no remedy was availed. Even the candidates selected in SC category who were having more marks than the last selected candidates are not party before this Court and their selection in SC category cannot be shifted to General Category at their back. Even the candidates belonging to SC category who were having higher marks, have not approached the Court for redressal of their grievance. There is no merit in the arguments raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed on delay as well.

24.10.2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes