

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

**Civil Writ Petition No.21089 of 2017
Decided on : 10.10.2017**

Sunil Kumar and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Gaurav Sharma, Advocate for
Mr. Parveen Bhardwaj, Advocate
for the petitioners.

G.S. Sandhawalia, J. (Oral)

The petitioners challenge the order dated 22.06.2004 (Annexure P-3) whereby they were regularized w.e.f. 01.10.2003 and accordingly claim regularization from 01.02.1996 under Article 226 of the Constitution of India. Challenge has also been raised to the subsequent order dated 20.07.2017 (Annexure P-11), which has been passed in pursuance of directions issued by this Court on 17.05.2017 (Annexure P-10).

Vide the subsequent order the respondent has dismissed the claim of regularization from an earlier date on two accounts, namely, delay and laches, estoppel and the fact that the petitioners did not fulfill the 3 years service as on 31.01.1996 as per the regularization Policy of 1996. Accordingly, it has been justified that the earlier order of regularization was well passed and therefore the said respondent has declined to interfere with the earlier order of regularization.

It is not disputed that the petitioners were granted the benefit of regularization policy way back 13 years earlier. The petitioners did not

agitate against the said order. Only on account of another set of persons having filed **CWP No.1998 of 2003 Ashok and others Vs. State of Haryana and others'** being aggrieved and having got directions issued on 19.08.2004 (Annexure P-4). The said litigation had been decided in favour of those persons, since the Apex Court had dismissed the SLP on 05.08.2015. Resultantly, banking on the said decision, a fresh cause of action was sought to be raised after having been fully satisfied with the earlier order of regularization and a new cause of action was sought to be incorporated and this Court was approached in **CWP No.8131 of 2017** with the prayer that respondents were not deciding their representation dated 25.11.2016 (Annexure P-7). Resultantly, directions were issued on 17.05.2017 (Annexure P-10) to decide the said representation which led to the passing of the impugned order on 20.07.2017.

As noticed the petitioners were regularized on 25.05.1993, 01.05.1993, 01.06.1993 and 06.06.1993 and on that account benefit of earlier date regularization has not been granted as per the policy existing at that point of time. In similar circumstances, this Court has also declined the claim for regularization from an earlier date i.e. 01.02.1996 on the ground that merely serving a legal notice after a period of 5 years would not revive a cause of action and the petitioner could not be permitted to start the litigation all over again after having been satisfied with the benefits having been granted earlier. In **CWP No.22388 of 2013 'Karam Singh Vs. State of Haryana and others'** decided on 09.08.2017, it was held as under:-

*Reliance can be placed upon the judgment of the Apex Court in **State of Uttarakhand & another Vs. Sri Shiv Charan Singh Bhandari & others** 2013 (9) SCR 609 wherein it has been held that non-challenge of ground of promotion, as such, for 6 years, would debar the employees to seek consideration afresh and thereafter, to claim seniority, having accepted the position, while placing reliance upon the judgments in **C.Jacob Vs. Director of Geology & Mining** (2008) 10 SCC 115 and **Union of India Vs. M.K.Sarkar** (2010) 2 SCC 59, apart from other judgments. Relevant observations read as under:*

“The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court’s direction. Neither a court’s direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

*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 Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another**, 2006 (2) S.C.T. 417 : (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.

17. *In Bharat Sanchar Nigam Limited v. Ghanshyam Dass* (2) and others, 2011 (2) S.C.T.1 712 : (2011) 4 SCC 374, a three-Judge Bench of this Court reiterated the principle stated in *Jagdish Lal v. State of Haryana*, 1998 (1) S.C.T. 26 : (1997 6 SCC 538, and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

18. *In State of T.N. v. Seshachalam*, 2007 (4) S.C.T. 472 : (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.”

19. There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been

stated in *Ghulam Rasool Lone v. State of Jammu and Kashmir and another*, 2010 (1) S.C.T. 169: (2009) 15 SCC 321.

20. In *New Delhi Municipal Council v. Pan Singh and others*, 2007 (2) S.C.T. 601 : (2007) 9 SCC 278, the Court has opined that though there is no period of limitation provided for filing a writ petition under *Article 226* of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

21. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in *P.S. Sadasivasway v. State of Tamil Nadu*, (1975) 1 SCC 152, wherein it has been laid down that a person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under *Article 226* nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time, but it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under *Article 226* in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.

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. Any one 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.”

In Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T.Murali Babu 2014 (4) SCC 108, the order of dismissal challenged successfully before the High Court, was set aside on the ground of delay and laches, by holding that it does not foster the cause of justice, but brings injustice as it is likely to effect others precious ripened rights.

In State of Uttar Pradesh & others Vs. Arvind Kumar Srivastava & others 2015 (1) SCC 347, the principle of equality was examined as to whether persons who are fence sitters and seek the similar relief on account of certain benefits having been granted to the other persons and whether they are to be given the said relief, keeping in view the right of equality enshrined in Article 14 of the Constitution of India, was examined. It was, accordingly, held that there were exceptions and persons who were guilty of delay, could not be granted the same benefits and it would be a valid ground to dismiss the petition on account of delay and laches or acquiescence. The principles laid down read as under:

“23. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of [Article 14](#) of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court

earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

*(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma & Ors. v. Union of India* (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”*

Applying the above-said principles, merely because Om Parkash had filed writ petition in the year 2003, which would be clear from Annexure P-8 and thereafter, filed contempt petition in the year 2013, for enforcement of the order, as a

result of which, the order dated 17.12.2015 was passed, would not give right to the petitioner to claim regularization w.e.f. 01.02.1996, at a belated stage, in the year 2013, having accepted the regularization order passed on 03.11.2004. Similarly, the notification dated 18.06.2014 only provides that the persons who had not been regularized under the regularization policy for administrative reasons but were otherwise eligible, would be regularized w.e.f. the date they were eligible for regularization. Thus, the said notification would not be applicable to the petitioner who already stands regularized a decade earlier, from the date of the issuance of the notification and it cannot help the petitioner in any manner.

Even if notional benefits are to be given minus the financial liabilities, it means disturbing the chain of seniority in the line up after a decade and disturbing the well settled position and getting benefits at the cost of others, inspite of having not pursued the legal remedies at the relevant point of time and thus, being estopped from claiming limited relief, at this belated stage.

Resultantly, keeping in view the above discussion, the present writ petition is, hereby, dismissed.”

Accordingly, keeping in view the above observations, this Court is of the opinion that present writ petition also deserves the same fate as there is delay of 12 years in representing and the same is dismissed in limine.

OCTOBER 10, 2017

Naveen

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No