

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.6514/2002**

% **7th March, 2017**

NUSRAT ZAFAR Petitioner

Through: Mr. Javed Ahmad, Advocate
with Mr. Anis Ahmad,
Advocate.

versus

JAMIA MILLIA ISLAMIA & ORS. Respondents

Through: Mr. Apurb Lal, Advocate.

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 challenges the order dated 16.11.1991 of the respondent no.1/Jamia Millia Islamia cancelling the selection process for the post of Production Manager. The impugned order dated 16.11.1991 reads as under:-

“I have considered the representations of Mr. Rizwan Afzal dated 17.9.1991 and 4.10.1991. It is apparent that some irregularity was committed while considering the cases of candidates for appointment on the post of Production Manager.

Therefore, I set aside the selection made by the Selection Committee on 13.9.1991 and the consequential appointment of Mr. Nusrat Zafar on the post of Production Manager vide appointment letter No.F.140/JMCRC/91 dated 14.10.1991 is cancelled.

The post be advertised a fresh and fresh selection/appointment be made for the post of “Production Manager”.

Sd/-
(PROF. MUJEEB H. RIZVI)

Dated: 16.11.1991”

2. The impugned order is dated 16.11.1991 and this writ petition has been filed on 8.10.2002 i.e the impugned order has been challenged after around 10 and a half years. Though the Limitation Act, 1963 strictly does not apply to a writ petition but principles of the Limitation Act apply for dismissing of writ petitions on the ground of delay and *laches* by invoking the limitation period under the Limitation Act. This is the ratio of the judgment of the Supreme Court in the case of *State of Orissa and Another Vs. Mamata Mohanty, (2011) 3 SCC 436*.

3. I have had an occasion to examine this aspect of limitation in the judgment in a bunch of cases with lead case being W.P. (C) No.7792/2015 titled as *Ms. Preeti Sharma Vs. Ganga International School & Ors.* decided on 19.1.2017. The relevant paras of this judgment in the case of *Ms. Preeti Sharma (supra)* are paras 6 to 8, and which paras read as under:-

“6. That Limitation Act does not strictly apply to writ petitions, but principles of Limitation Act do apply by application of doctrine of delay and *laches* in a writ petition is no longer *res integra* and has been so held by the Supreme Court in the case of *State of Orissa and Another Vs. Mamata Mohanty, (2011) 3 SCC 436*. Paras 52 to 54 of the judgment in the case of *Mamata 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.”

7. The reasoning of the case of *Mamata Mohanty (supra)* is that if a suit to claim the same relief is time barred and has to be dismissed, then at that stage a writ petition cannot be filed and the limitation period provided by the Limitation Act be circumvented. Under Article 226 of the Constitution of India orders are passed for the purposes of applying the laws of this country and not defeating the laws of this country including the Limitation Act. If limitation period is held not at all to apply to writ petitions as such, then a suit which is time barred will be filed as a writ petition for being entertained. Also, doctrine of delay and *laches* in their application to a writ petition are considered in a liberal manner, however, such doctrine of delay and *laches* is considered on principles equivalent as contained either in Section 14 of the Limitation Act or similar to acknowledgments of liability under Sections 18 and 19 of the Limitation Act i.e there is a ground for extension of limitation period beyond the period provided under the schedule of the Limitation Act.

8. Also, the issue of extension of limitation will arise provided a cause of action arises i.e if a representation is filed by an employee and pending for favorable consideration before an employer in terms of a

letter of the employer, then till an actual refusal a cause of action would not arise for an employee to approach the Court, and in which case, since limitation does not accrue till actual refusal, then in such circumstances, the issue of delay and *laches* is considered liberally in favour of the petitioner/employee. With this position of law let us turn to the facts of the present case.”

4. Accordingly, this writ petition has to be dismissed by applying the ratio of the judgment of the Supreme Court in the case of ***Mamata Mohanty (supra)***. Contention of the counsel for the petitioner that the impugned order dated 16.11.1991 was illegal because the Vice-Chancellor of the respondent no.1 had no power to issue such an order inasmuch as such an order could only have been issued by the Board of Management of the respondent no.1, and failing which by the President who is the visitor of the respondent no.1, however, this is an issue of merits as to whether the impugned order is legally valid or not and which can be looked into only if the petition is not barred by delay and *laches*. Challenge to an order on the ground that the same is legally valid or not necessarily has to be within the limitation period as held in the case of ***Mamata Mohanty (supra)***. Therefore, merely because the respondent no.1 after filing of the writ petition has taken approval of the Board of the respondent no.1 for the order dated 16.11.1991 does not extend the limitation period for the petitioner to challenge the order dated 16.11.1991. Once there is specific and subsequent validation by the Board of the respondent no.1,

that validation will give validity to the order, but the said aspect is not a ground to challenge the order of the year 1991 in the year 2002 on the ground that impugned order was earlier not validated by the Board, and which aspect is an aspect of merits to challenge the order dated 16.11.1991.

5. In view of the above, this writ petition is barred by delay and *laches* and accordingly is dismissed by applying the ratio of the judgment of the Supreme Court in the case of *Mamata Mohanty (supra)*. Parties are left to bear their own costs.

MARCH 07, 2017
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VALMIKI J. MEHTA, J