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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 7380/2003

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22nd March, 2017

PRIYA RANJAN SAMAL AND ANR.

..... Petitioners

Through: None.

versus

VICE CHANCELLOR IGNOU AND ORS.

..... Respondents

Through: Mr. Aly Mirza, Advocate for R-1-3.

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 two petitioners seek the relief of quashing of the seniority list dated 11.9.2000 for the post of Technical Assistants in the Communication Division of the respondent no.2/IGNOU/employer, wherein the respondent no. 4 has been shown as senior to the petitioners.

2. Petitioners were appointed to the post of Technicians in the Communication Division of the respondent no. 2 with effect from 11.6.1993 and 25.6.1993, respectively. Respondent no. 4 was, however, appointed earlier on 3.1.1992. Respondent no. 4 was appointed as a Technician for working under the Computer Division of the respondent no. 2.

3. Petitioners claim that in the seniority list dated 11.9.2000 the respondent no. 4 has been wrongly placed as senior to the petitioners and therefore the seniority list be quashed. Petitioners contend that they are appointed in Communication Division which is a separate cadre than the Computer Division in which the respondent no. 4 has been appointed and which is a separate cadre.

4. The present writ petition is liable to be dismissed on two counts. The first reason is that the petition is barred by the doctrine of delay and *laches* by applying the principle of limitation. The second reason is that petitioners have failed to substantiate their stand that the Computer Division is a separate cadre which is governed by separate rules for promotion from the post of Technicians to Technical Assistants.

5. On the aspect of limitation and application of doctrine of delay and *laches*, the Supreme Court has held in the judgment in the case of *State of Orissa and Another Vs. Mamata Mohanty, (2011) 3 SCC 436* that though the Limitation Act, 1963 strictly does not apply to a writ petition, the principles of the Limitation Act apply so that writ petitions have to be dismissed by applying the doctrine of delay and *laches*. The relevant paragraphs in the case of *Mamata 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.”

6. In the present case it is undisputed that respondent no. 4 was shown as senior to the petitioners in the seniority list of Technical Assistants which was published on 26.3.1996. This is stated by the respondents in para 6 of its counter affidavit. In the rejoinder affidavit the petitioners in reply to para 6 admit that the seniority list of Technicians dated 26.3.1996 was drawn up, but petitioners contend that such a seniority list showing the respondent no. 4 as senior to the petitioners was wrongly drawn up. Therefore, if the seniority list of 26.3.1996 was wrongly drawn up showing the respondent no. 4 as senior to the petitioners, then within three years of

26.3.1996, in accordance with the ratio of the judgment of the Supreme Court in the case of *Mamata Mohanty (supra)*, this seniority list had to be challenged by the petitioners but the petitioners admittedly have not done so. Petitioners now by seeking to challenge the seniority list dated 11.9.2000 are effectively challenging the seniority list dated 26.3.1996, and therefore, petitioners by a circuitous route cannot now be allowed to challenge the seniority list dated 26.3.1996 by this writ petition filed in November, 2003. I may also note that the seniority list dated 26.3.1996 was in fact acted upon by the employer, inasmuch as, in terms of this list respondent no. 4/Sh. Virender Singh Chhikara was promoted to the post of Technical Assistant in February, 1997 and the petitioners were promoted to the same post of Technical Assistant only later on 2.7.1998. Therefore all the concerned parties, including the petitioners, had duly acted upon the seniority list dated 26.3.1996, and which was not challenged, and which has therefore become final and hence now cannot be challenged through this writ petition.

7. The present writ petition, therefore, by applying the ratio of the judgment in the case of *Mamata Mohanty (supra)* is hit by the doctrine of delay and *laches* by applying the principle of limitation, and therefore the writ petition is accordingly dismissed on the ground of delay and *laches*.

The writ petition is also dismissed because respondents in their counter affidavit have stated that the post of Technical Assistant in the Computer Division has no separate channel of promotion and all Technical Assistants, whether they be in the Communication Division or in the Computer Division, form the same feeder cadre for promotion to the higher post and which position the petitioners have not been able to dispute because I have already stated above that petitioners have failed to substantiate and file if and what are the separate recruitment and promotion rules to the higher post than that of a Technical Assistant for Computer Division is concerned, and therefore, respondents are correct in arguing that the post of Technical Assistants in Communication Division as also the Computer Division are taken in totality as a same feeder cadre for promotion to the posts of Technical Assistants.

8. In view of the above, there is no merit in the writ petition and the same is therefore dismissed. No costs.

MARCH 22, 2017

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VALMIKI J. MEHTA, J