

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

+ **W.P.(C) No.1927/2017**

% **3rd March, 2017**

P.N. SHUKLA Petitioner
Through: Ms. Garima Sachdeva,
Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Kavindra Gill, Advocate for
respondent No.1.

**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, a retired employee of the respondent no.2/Canara Bank, seeks the relief of quashing of the reply dated 23.5.2016 issued by the respondent no.2/employer whereby petitioner has been denied the benefit of promotion.

2. A reading of the writ petition shows that petitioner in effect challenges the seniority list which was circulated by the respondent no.2 around 22 years back on 16.4.1994. This seniority list dated 16.4.1994 shows that petitioner was not given the promotion for the year 1990-91. Petitioner had filed a statutory appeal dated

18.5.1994 to the appellate authority for his being favorably considered for promotion for the year 1990-91. The statutory appeal was however dismissed in terms of the letter dated 24.3.1995 of the respondent no.2. Petitioner thereafter engaged in a series of correspondence with the respondent no.2, but the petitioner did not get his promotion w.e.f the year 1990-91 even till his retirement on 31.3.2008. Petitioner had applied for information under the Right to Information Act, 2005, as to details of 1994-95 decision denying him promotion and the petitioner pleads that after 22 years the respondent no.2 has provided the information with respect to promotion appraisal for the relevant year 1990-91 vide letter dated 17.3.2016 and which letter shows that petitioner was wrongly denied promotion because petitioner was appraised by those officers under whom the petitioner never worked. Therefore it is claimed that petitioner is entitled to benefit of promotion.

3. This writ petition has been filed on 22.2.2017. By a writ petition of the year 2017, petitioner cannot claim benefits of promotion for the year 1990-91 and which was denied to him in terms of the seniority list dated 16.4.1994 and the statutory appeal of the petitioner was rejected way back in view of the respondent no.2/bank's letter dated 24.3.1995. Petitioner has retired on 31.3.2008 without getting

benefit of promotion for the year 1990-91. The principles of the Limitation Act, 1963 apply to writ petitions and writ petitions filed beyond the period of limitation have to be dismissed as being barred by delay and *laches* in view of the judgment of the Supreme Court in the case of ***State of Orissa and Another Vs. Mamata Mohanty (2011) 3 SCC 436.***

4. I have considered the aspect of the Limitation Act applying to writ petitions in the judgments dated 16.4.2015 in W.P. (C) No.4107/2013 titled as ***Dr. Avtar Singh Vs. Guru Nanak Public School & Ors.*** and in a bunch of cases with lead case being ***Ms. Preeti Sharma Vs. Ganga International School and Ors.*** in W.P. (C) No.7792/2015 decided on 19.1.2017. The relevant paras of the judgment in the case of ***Ms. Preeti Sharma (supra)*** are paras 6 to 8 and these 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.”

5. Merely because petitioner may have kept on filing representations or sought information under the Right to Information Act in the year 2006 will not mean that period of limitation is extended and which cause of action arose in the year 1995 when the petitioner received reply from the respondent no.2 rejecting his claim of promotion. This writ petition therefore filed after around 22 years of the letter of the respondent no.2 dated 24.3.1995 is therefore clearly barred by delay and *laches* on account of applying the underlying principles of the Limitation Act in terms of the ratio of the judgment of the Supreme Court in the case of *Mamta Mohanty (supra)*.

6. Merely because reply is given in an RTI query to the petitioner vide letter dated 17.3.2016 will not mean that cause of action has accrued on 17.3.2016 inasmuch as mere filing of RTI application does not result in arising of a cause of action because cause of action accrues only when the relief claimed by a person is denied by his employer. The relief of promotion claimed by the petitioner was denied by the employer in the year 1994-95, and therefore, the writ petition had to be filed within three years thereafter but which was not done. If the argument of the petitioner is accepted of reply to an RTI query

furnishing a cause of action, then there is no reason why if the RTI query had been made after even 10 years or more from today, for it to be argued that cause of action will accrue 10 years or thereafter even from today. That is however not the legal position.

7. In view of the above, this writ petition is barred by delay and *laches* by applying the underlying principles of the Limitation Act and in view of the ratio of the judgment of the Supreme Court in the case of *Mamta Mohanty (supra)*. The writ petition is therefore dismissed, leaving the parties to bear their own costs.

MARCH 03, 2017
Ne

VALMIKI J. MEHTA, J