

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

+ **W.P.(C) No. 5685/2016**

% **7th March, 2017**

SMT. RAJNI RATHI Petitioner

Through: Mr. S.N. Bhardwaj, Advocate.

versus

GOVT. OF NCT OF DELHI AND ORS. Respondents

Through: Mr. Parag Chawla, Advocate for R-2.

**CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) 5685/2016 and C.M. Appl. No. 23523/2016 (for stay)

1. Essentially two reliefs are sought by the petitioner through this writ petition. One relief sought is for quashing of the inquiry proceedings by setting aside the orders dated 13.5.2016, 3.6.2016, 8.6.2016 and subsequent orders of the Inquiry Officer. The second relief sought is for payment of monetary emoluments to the petitioner as per Fifth and Sixth Pay Commission Reports which became applicable to schools in Delhi, including the respondent no. 2/school wherein the petitioner was working as a Vice-Principal.

2. Learned counsel for the respondent no. 2/school states that inquiry proceedings as also disciplinary proceedings since have concluded against the petitioner and petitioner has been dismissed from services with the respondent no. 2/school. Once that is so, and which position is not disputed by the counsel for the petitioner, challenge by the petitioner to the inquiry proceedings and the orders passed by the Inquiry Officer would become infructuous. Of course, petitioner is at liberty, in accordance with law, to challenge the order passed by the disciplinary authority directing dismissal of services of the petitioner, and for which liberty is given.

3. So far as the second relief is concerned, learned counsel for the respondent no. 2/school does not dispute the same except it is argued that monetary emoluments cannot be granted beyond the period prior to three years of the filing of this writ petition. This writ petition has been filed on 16.6.2016, and therefore, it is argued that the monetary emoluments on the basis of Fifth and Sixth Pay Commission Reports can be granted to the petitioner only prospectively from 16.6.2013 till the petitioner's services have been terminated by the disciplinary authority order dated 29.9.2016. Reliance by respondent no. 2/school is placed upon various judgments, including the judgment passed by this Court in the case titled as ***Mrs. R.K. Jodhka and Ors. Vs. Director of Education and Ors.***, in W.P. (C) No.

1300/2016 decided on 8.2.2017, and the relevant para 3 of which reads as under:-

“3. I have also recently examined this aspect afresh in the judgment in 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, and 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. In view of the factual position emanating from the record that petitioner has not been paid monetary emoluments as per Fifth and Sixth Pay Commission Reports, but which can only be granted for a period prospectively from the date of three years before filing of the writ petition i.e from 16.6.2013 and till the petitioner's services were terminated on 29.9.2016, accordingly, this writ petition is allowed to the extent that petitioner will be granted aforesaid monetary emoluments from 16.6.2013 till 29.9.2016 within a period of three months from today. In case, the said amount is not paid to the petitioner within three months from today, then the petitioner will be entitled to interest at the rate of 9% per annum simple from the date the amounts became due to the petitioner from the respondent no. 2/school. So far as the prayer pertaining to challenge to the inquiry

proceedings is concerned, the same is dismissed as infructuous with liberty granted to the petitioner to challenge the order of the disciplinary authority dated 29.9.2016 imposing the punishment of dismissal of services of the petitioner.

5. The present writ petition and the pending application are accordingly disposed of with the aforesaid observations.

MARCH 07, 2017

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VALMIKI J. MEHTA, J