

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

+ **W.P.(C) No.6106/2016**

% **23rd March, 2017**

R.A.S. GOTHWAL Petitioner

Through: Mr. P.S.Nagpal, Adv.

versus

MANAGING DIRECTOR, CRIS Respondent

Through: None.

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, petitioner seeks the relief of grant of Grade Pay of Rs.6600/- instead of the Grade Pay of Rs.5400/- granted vide order of the respondent/employer dated 15.7.2008. Petitioner therefore is effectively challenging the order dated 15.7.2008 by which, as per the petitioner, he was wrongly granted the Grade Pay of Rs.5400/- instead the correct Grade Pay of Rs.6600/-. Petitioner as per the relief clause of the writ petition, impugns the order of the respondent/employer dated 30.6.2015 which rejected the representation of the petitioner for grant of Grade Pay of Rs. 6600/-.

2. The facts of the case are that the petitioner was appointed as an Assistant Manager with the respondent/employer on 28.7.2004 on deputation from Bikaner Division of Northern Railways. Petitioner thereafter was regularly absorbed with the respondent/employer vide order dated 15.7.2008. Petitioner on his regularization/absorption with the respondent/employer was absorbed in the Grade Pay of Rs.5400/- i.e in the pay of Rs.8000-13500/- pre-revised pay and post revision pay of Rs.15,600-39,100/-.

3. Petitioner challenges the impugned order dated 30.6.2015 which reads as under:-

“CENTRE FOR RAILWAY INFORMATION SYSTEMS
CHANAKYAPURI
NEW DELHI-110021

NO.2012/CRIS/NDLS-HQ/PERS/ESTT./1020/0206/PT-1

DATED 30.06.2015

Shri Ram Avtar Singh Gothwal,
Deputy Manager,
CRIS, Northern Region, IRCA
New Delhi

Please refer to your representation dated 16.06.2015 regarding re-fixation of pay with effect from the date of permanent absorption in CRIS i.e 15.7.2008.

You had given your consent for absorption in PB-3 Rs.15600-39100 GP 5400(Rev)(Pre-revised Grade Rs.8000-13500) and pay was fixed accordingly.

The question of re-fixation of your pay at this stage does not arise.

Sd/-
(Ramesh Chand)
Chief Manager/Pers.”

4. Respondent/employer by the impugned order dated 30.6.2015 effectively states that the principle of estoppel applies

against the petitioner, because the petitioner has worked right from 15.7.2008 till he retired in the year 2015 at the Grade Pay of Rs.5400/-. I may note that the petitioner has not given the date of retirement in the writ petition, and the year 2015 of retirement, is given as per the statement made by counsel for the petitioner in Court today.

5. In my opinion the writ petition is hopelessly barred by limitation because if petitioner was aggrieved by the order of absorption dated 15.7.2008 with Grade Pay Rs.5400/- instead of Rs.6600/-, then petitioner had to challenge such order within the limitation period of three years. Mere pendency of a representation, and that too filed in the year 2015 and after expiry of limitation period, will not extend the period of limitation unless there was an acknowledgment by the respondent/employer that the representation of the petitioner was being favorably considered and which is not the factual position and hence the pendency of this representation thus cannot extend the limitation period. The Supreme Court in the case of *State of Orissa and Another Vs. Mamta Mohanty (2011) 3 SCC 436* has held that though the Limitation Act, 1963 does not apply to a writ petition yet by applying the principles of limitation the writ petition which is time-barred has to be dismissed by applying the doctrine of delay and *laches*. I have referred to the judgment of *Mamta Mohanty*

(*supra*) in the 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 and the relevant paras of the judgment in *Ms. Preeti Sharma's* case (*supra*) are paras 6 to 8 and which 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.” (underlining added)

6. Therefore, merely because a formal rejection has come in the year 2015, would not mean that limitation is extended beyond the period of three years which commenced from absorption of the petitioner with the respondent/employer on 15.7.2008. Also, I may note that the impugned order dated 30.6.2015 has been passed on representation of the petitioner which was made only as late as on 16.6.2015, and which representation itself was therefore much beyond the period of limitation of three years which commenced from 15.7.2008. In my opinion therefore giving of a representation beyond

the period of limitation and consequent passing of orders thereon by the appropriate authority will not in any manner detract from applying the doctrine of delay and *laches* for dismissing the writ petition. If the argument of the petitioner is accepted that any representation made even beyond the period of limitation will result in extending the limitation period, and that therefore may be after dozens of years of passing of an impugned order a person can challenge this order by which a person is actually aggrieved, simply on the ground that the appropriate authority is kind enough to pass a speaking order declining the prayer made in a representation filed much after the period of limitation. This cannot be the legal position.

7. In view of the above discussion, this writ petition is hit by the doctrine of delay and *laches* and is accordingly dismissed.

MARCH 23, 2017/ib

VALMIKI J. MEHTA, J