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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 311/2017

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17th January, 2017

SHRI OM PRAKASH

..... Petitioner

Through: Mr. D.K. Sharma, Advocate.

versus

AIRPORT AUTHORITY OF INDIA

..... Respondent

Through: Mr. Digvijay Rai, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) 311/2017 and C.M. Appl. No. 1493/2017

1. By this writ petition under Article 226 of the Constitution of India the petitioner impugns the order of the respondent/Airport Authority of India/employer dated 17.4.2008 whereby the respondent/employer has concluded that the petitioner's actual date of birth was 21.3.1947 but he manipulated the same in the official records wrongly to be 3.8.1948 at the time of giving papers for various welfare schemes in the year 2004. Accordingly, by the impugned order dated 17.4.2008 it has been ordered that whatever monetary benefits which the petitioner has received after the

age of normal retirement from the respondent/employer should be recovered from the petitioner.

2. The impugned order dated 17.4.2008 reads as under:-

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CONFIDENTIAL

**AIRPORTS AUTHORITY OF INDIA
DEPTT. OF PERSONNEL**

No. AAD:PERS:CONF:OP – Attdt. (Apt.)/07/62

**I.G.I. AIRPORT
NEW DELHI -110037
Dt. Apr. 17th, 2008**

OFFICE ORDER

Sh. Om Prakash, Sr. Attdt. (Airport) s/o Sh. Fakira while filling the Bio-data Form at the time of joining in International Airports Authority of India furnished his date of birth as 21/03/1947.

2. In the year 2007, he had submitted Employees Declaration and Nomination Form obtained from the employees for the purpose of nomination and for various welfare schemes wherein he mentioned his date of birth as 03/08/1948. In the year June 2004 when Photo Identity Cards were prepared, he submitted his details with date of birth as 03/08/1948.

3. Shri Om Prakash, S/o Shri Fakira, Sr. Attendant (Airport), Employee No. 36404 manipulated his date of birth from 21.3.1947 to 03.08.1948 for malafide reasons and as per actual date of birth declared at the time of joining, he was to be retired from the services of AAI on 31/03/2007 whereas due to his manipulation, he has continued his services after 31.03.07.

4. A Show Cause Notice was issued to Sh. Om Prakash, Sr. Attdt. (Airport) S/o Sh. Fakira vide No: AAD/PERS/CONF/OP-Attdt.(Apt.)/07/1064 dated 11.12.07. He submitted his reply dated 18.12.07 which was not found satisfactory.

5. Sh. Om Prakash, Sr. Attdt. (Airport) was again advised vide letter dtd. 10.01.08, 01.02.08 & 03.03.08 to submit/show the original documents in support of his claim of his Date of birth. But he failed to submit any proof regarding his date of birth according to him i.e. 03.08.1948.

6. Shri Om Prakash, S/o Shri Fakira, Sr. Attendant (Airport) also submitted a letter dtd. 29.11.07 wherein he submitted that his date of birth is 21.3.1947. Being illiterate he mentioned his date of birth in his official records as 03.08.1948. He also apologized for his mistake.

7. After verification of official records, his submissions, Shr. Om Prakash, S/o Shri Fakira, Sr. Attendant (Airport) is deemed retired w.e.f 31.03.07 from the services of AAI. The final settlement of his dues will be done after settling the excess payment made to him after 31.3.07 towards salary etc.

Sd/-
(A.B. SAXENA)
SR. MANAGER (PERS.)

Residential Address :
Shri Om Prakash, S/o Shri Fakira,
D-22, Rajiv Park, Sagar Park,
New Delhi – 110046”

(underlining added)

3. At the outset, it is seen that *dehors* the merits in the case, the writ petition is grossly barred by delay and *laches*, inasmuch as, though the Limitation Act, strictly does not apply to a writ petition, the principals of limitation will apply for the purposes of application of doctrine of delay and *laches* for holding the writ petition not to be maintainable. The reason for this is obvious inasmuch as if a suit is barred by time and cannot be entertained then a writ petition under Article 226 of the Constitution of India on the same cause of action for the same reliefs cannot be filed so as to circumvent the law of limitation. When jurisdiction under Article 226 of the Constitution of India is invoked, the same is exercised for the purposes of enforcing the laws of the country, and not for defeating the laws of the country including the Limitation Act.

4. Accordingly for the abovesaid reason the Supreme Court in the case of *State of Orissa and Another Vs. Mamata Mohanty (2011) 3 SCC 436* has held that the principles of limitation will also apply to writ proceedings under Article 226 of the Constitution of India and writ proceedings which are beyond the period of limitation under the Limitation Act should be dismissed on the ground of delay and *laches*. 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.”

5. Thus even assuming that the case of the petitioner had merits, and which it has not as stated below, the writ petition is liable to be dismissed and is accordingly dismissed on the ground of delay and *laches* because the impugned order dated 17.4.2008 cannot be challenged eight years later in 2016.

6. Even for the sake of arguments, if I look into the issue of the date of birth of the petitioner the impugned order shows that the petitioner was asked to submit proof of his date of birth not as 21.3.1947 but as 3.8.1948 which was contended by the petitioner, but the petitioner not only failed to submit any documents showing his date of birth as 21.3.1947. In fact the petitioner had written a letter dated 29.11.2007 apologizing for wrongly submitting the date of birth in the official records as 3.8.1948 instead of the correct date of birth being 21.3.1947 as is observed in para 6 of the impugned order dated 17.4.2008. Also, it is seen that in the show cause notice dated 11.12.2007 the respondent specifically mentioned that in a photocopy of the petitioner's ration card No. 891124 of the year 1997 petitioner had himself shown to be of the age of 50 years and therefore as on 2007 petitioner would be 60 years of age. All these aspects are not denied

by the petitioner in the writ petition whether as regards the petitioner writing his letter dated 29.11.2007 to the respondent or the factum of his age being 60 years in 2007 as per his own ration card.

7. In view of the above, there is no merit in the writ petition, besides the fact that the petition is squarely barred by delay and *laches*, and has to be accordingly dismissed.

8. The petition is accordingly dismissed, leaving the parties to bear their own costs.

JANUARY 17, 2017

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VALMIKI J. MEHTA, J