

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 486 of 2018

- Girdhari Lal Verma S/o Shri Punit Ram Verma, Aged About 51 Years R/o Rohinipuram, Dindayal Nagar, Near Gol Chowk, Raipur, Civil And Revenue District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Law And Legal Affairs, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Deputy Secretary, Department Of Law And Legal Affairs, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Interview Committee, Department Of Law And Legal Affairs, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
4. Abhishek Shukla, S/o Shri Santosh Kumar Shukla, Aged About 46 Years R/o Near Title Flower School Kanchan Ganga Phase- li, D.D. Nagar, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

----Respondents

For Appellant	: Shri GM Hasan, Advocate
For Respondent/State	: Shri PN Bharat, Additional Advocate General

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Justice Sharad Kumar Gupta

Judgment on Board

Per Thottathil B. Radhakrishnan, Chief Justice

04.05.2018

- 1) We have heard the learned counsel for the appellant and the learned Additional Advocate General.

2) The appellant holds a Master Degree and M.Phil in law. He applied for being considered for appointment as Notary at Tahsil and District Raipur. The select list was notified and prepared on 15.07.2015. Respondent-4 was appointed. The writ petition challenging the said selection is filed on 31.01.2018. The learned Single Judge found that the writ petition suffers from delay and laches and no reasonable explanation whatsoever is available for the delay of three years of its institution from the date of cause of action.

3) The learned counsel for the appellant argued that Article 137 of the Schedule to the Limitation Act, 1963 applies to writ petitions since they are applications which would fall under that Article. The provisions of the Limitation Act do not apply for seeking relief under Article 226 of the Constitution. The larger principles that govern entertaining of writ petitions, be they for enforcement of fundamental rights or non-fundamental rights, are well settled to the effect that delay and laches, may in the given circumstances of a case, dissuade the writ court from exercising the discretionary jurisdiction of issuing any order under Article 226 of the Constitution by entertaining the writ petition. Even for applications under Article 227 of the Constitution, there is no prescribed period of limitation which is referable to the Limitation Act, 1963. These positions notwithstanding, it is the fairly well settled concept as a matter of judicial policy and judicial comity that writ petitions would be entertained or would not be, on the basis of the wholesome consideration of the facts. Delay and laches is one of the grounds on which the discretionary jurisdiction may be refused. Reference could be made to the decision of the Apex Court in **Tilokchand Motichand & Ors vs H.B. Munshi & Anr**; AIR 1970 SC 898, **Rabindranath Bose And Ors. vs The Union Of India**; AIR 1970 SC 470, and **Khub Chand v. State of Rajasthan**; AIR 1967 SC 1074 and various other precedents handed down by the Apex Court as well as the different jurisdictional High Courts which will stand to advise that it is not the Limitation Act that

governs the proceedings under Article 226/227 of the Constitution. It is predominantly the prudence of the Judges which govern the issue as to whether a particular writ petition is eligible to be entertained even if there is delay which could be treated as reasonably explained to the satisfaction of the writ court. It is worthwhile to read the relevant commentaries in these aspects in the celebrated work “Commentary on the Constitution of India” by Durga Das Basu, elaborated in the 8th Edition of 2010 by the editorial team headed by Honb'le Justice C.K.Thakkar.

4) We see no ground to hold that the learned Single Judge was unjustified in taking the view that there is no explanation offered by the Appellant-writ petitioner to have the writ petition entertained, notwithstanding the inordinate delay. The writ appeal therefore fails

5) In the result, the writ appeal is dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge