

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2756 of 2018
and
CMP No.21228 of 2018

S.Vaidhyanathan

... Appellant

Vs.

1.The Government of Tamil Nadu
Rep by its Secretary
Revenue Department
Secretariat, Chennai - 600 009

2.The District Collector
Salem District, Salem-1

3.The District Revenue Officer
Salem District, Salem

4.The Revenue Divisional Officer
Salem Division, Salem Collectorate
Salem

5.The Tahsildar
Salem Taluk, Salem

6.Murugaiyan
(Then Tahsildar of Salem Taluk)
Assistant Settlement Officer
O/o the Assistant Settlement Office
Attur, Salem District

7.The Principal Accountant General (A&E),
Tamil Nadu
361, Anna Salai, Teynampet
Chennai - 600 018

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the Order dated 12.01.2018 made in W.P.No.824 of 2018.

W.P.No.824 of 2018:

To issue a Writ of Mandamus or any other order or direction in the nature of a Writ, directing the respondents herein to forthwith consider and pass orders on the representation dated 16.9.2017 and the Reminder dated 28.11.2017 of the petitioner requesting to pay salary for the period from 1.3.1983 to 23.3.1983 from 6.4.1984 to 12.12.1985 and from 23.12.1985 to 13.2.1986 with interest to the petitioner and also to take appropriate action against Mr.Murugaiyan the then Tahsildar Salem the 6th respondent herein for tampering with the service Registrar of the petitioner as if the petitioner was paid salary for the above periods.

For Appellants : Mr.Kandhan Duraisami

For Respondents: Mr.P.S. Sivashanmugasundaram,
Spl. Govt. Pleader for 1 to 5 and 7

J U D G E M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

Testing the correctness of the order of a learned single Judge dated 12.01.2018 made in W.P.No.824 of 2018, instant writ appeal has been filed.

2. Short facts leading to the filing of the writ appeal are that, when the appellant/petitioner was serving as a Village Administrative Officer, he was issued with a charge memo on 18.1.2005 calling for explanation to the charges mentioned therein. On receipt of the same, he submitted his explanation on 20.9.2006. Thereafter, during the pendency of the disciplinary proceedings, the petitioner, attained the age of superannuation on 31.8.2006. The fourth respondent passed an order on 31.8.2006 permitting him to retire from service on the afternoon of 31.8.2006 without prejudice to the pending disciplinary proceedings.

3. It is the contention of the appellant that, thereafter, the enquiry officer submitted a report on 31.1.2007 and the petitioner was also furnished with a copy of the report with a second show cause notice calling for further explanation to the enquiry officer's report. Accordingly, he submitted his explanation to the report of the enquiry officer on 5.3.2007. Once again, the petitioner was issued with another show cause notice on 27.5.2008 calling upon him to show cause, as to why the proposed punishment of withholding Rs.750/- per month from his pension should not be imposed, for which he submitted his explanation and finally, with the intervention of this Court vide order dated 17.9.2010 made in W.P. No.21312 of 2018, directing the first respondent to pass a final order, the first

respondent has passed a final order in G.O.(2D) No.467, Revenue Department dated 20.8.2013 proposing the punishment of withholding of Rs.750/- per month from his pension for a period of three years.

4. It is the further contention of the appellant that since his terminal benefits were not settled by the authorities even after passing the final order, a representation was given on 2.11.2015. Again there was no response. Having waited for a long time, he filed W.P.No.39372 of 2015 seeking for a direction to the respondents 1 to 3 to consider his representation dated 2.11.2015 and only after an order was passed by this Court, followed by another order in the contempt petition, the Revenue Divisional Officer passed an order sanctioning provisional pension stating that there are several missing entries in his service register. Aggrieved by the same, petitioner has filed W.P. No.824 of 2018, for a direction to the respondents therein to forthwith consider and pass orders on the representation dated 16.09.2017 and the reminder dated 28.11.2017 of the petitioner requesting to pay salary for the period from 01.03.1983 to 23.03.1983, from 06.04.1984 to 12.12.1985 and from 23.12.1985 to 13.02.1986 with interest to the petitioner and also to take appropriate action against Mr.Murugaiyan, the then Tahsildar, Salem, for tampering with the Service Register of the petitioner as if the petitioner was paid salary for the above periods.

5. Writ court, by order dated 12.01.2018 in W.P. No.824/2018, dismissed the petition, as here under:

"3. But, in my considered opinion, in all these proceedings, the petitioner has not asked for the salary for the period from 1.3.83 to 23.3.83, from 6.4.84 to 12.12.85 and from 23.12.85 to 13.2.86. Moreover, when the writ petition has been filed to consider his representation, even in this representation dated 16.9.2017 to 28.11.2017 also, he has asked for the payment of salary for the above periods so belatedly. Therefore, this court is not inclined to entertain the writ petition. Accordingly, the writ petition is dismissed. No costs."

6. Being aggrieved by the same, instant writ appeal has been filed.

7. Mr.P.S.Sivashanmugasundaram, learned Special Govt. Pleader, takes notice for respondents 1 to 5 and 7. As no adverse order is passed against respondent No.6, notice to the 6th respondent is waived.

8. Heard Mr.Kandhan Duraisamy, learned counsel for the appellant and Mr.P.S.Sivashanmugasundaram, learned Special Govt.

Pleader for the respondents 1 to 5 and 7 and perused the materials available on record.

9. From the material on record, it could be deduced that that the appellant, Village Administrative Officer, retired on 28.01.2006. Taking note of the proceedings of the Revenue Divisional Officer in R.O.C. No.8985/2004/A1 dated 06.04.2006, wherein the said Officer has recorded that there were several missing entries which should be updated from 1.3.83 to 23.3.83, from 6.4.84 to 12.12.85 and from 23.12.85 to 13.2.86 and contending inter alia that he was not paid salary for the above said period, Writ Petition No.824/2018, has been filed, for the prayer stated supra.

10. Appellant retired in 2006. Representation seemed to have been made on 16.09.2017 and a reminder dated 28.11.2017 requesting payment of salary for the above said period. There is inordinate delay and laches on the part of the appellants in sending even the representation claiming salary.

11. In the case on hand, though the appellant has contended that the cause of action has arisen from the proceedings of the Revenue Divisional Officer dated 06.04.2016 and therefore, writ petition was filed in the year 2018, we are not inclined to accept the said contention for the reasons that, no individual, would keep quiet if salary is not paid for the work done from 1.3.83 to 23.3.83, from 6.4.84 to 12.12.85, which is about one year and eight months and from 23.12.85 to 13.2.86. We are unable to accept the contention that for one year and ten months, the appellant worked without any salary. Even taking it for granted that he was not paid salary, there was no reason as to why he has not requested the employer to pay salary for the relevant period when the cause of action arisen.

12. Under Article 226 of the Constitution of India, there is no time limit for filing a Writ Petition. However, there should be a reasonable time to file the writ petition, for seeking seniority or promotion.

13. Though reasonable time is not prescribed in the rules framed under Article 229 of the Constitution of India, the words "reasonable time", as explained in *Veerayeeammal v. Seeniammal* reported in 2002 (1) SCC 134, at Paragraph 13, is extracted hereunder:

"13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its

conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's The Law Lexicon it is defined to mean:

"A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than "directly"; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

14. There is an inordinate delay and laches on the part of the appellant. What is laches is as follows:

"Laches or reasonable time are not defined under any Statute or Rules. "Latches" or "Lashes" is an old french word for slackness or negligence or not doing. In general sense, it means neglect to do what in the law should have been done for an unreasonable or unexplained length of time. What could be the latches in one case might not constitute in another. The latches to non-suit, an aggrieved person person from challenging the acquisition proceedings should be inferred from the conduct of the land owner or an interested person and that there should be a passive inaction for a reasonable length of time. What is reasonable time has not been explained in any of the enactment. Reasonable time depends upon the facts and circumstances of each case.'"

15. Statement of law has also been summarized in Halsbury's Laws of England, Para 911, pg. 395 as follows:

"In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

- (i) acquiescence on the claimant's part; and
- (ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in

progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

16. In addition to the above, this Court deems it fit to consider few decisions, on the aspect of delay, laches and reasonable time, in approaching the Writ Court.

(i) In State of M.P., v. Bhailal Bhai reported in AIR 1964 SC 1006, the Hon'ble Supreme Court held that unreasonable delay denies to the petitioner, the discretionary extraordinary remedy of mandamus, certiorari or other relief.

(ii) In Dilbagh Rai Jarry v. Union of India, reported in (1974) 3 SCC 554, the Hon'ble Supreme Court considered the question of condoning delay of an application filed beyond the statutory period of limitation and on the aspect of delay, the Supreme Court observed thus:-

".....the Authority is competent to devise, consistently with the provisions of the Act and the Rules made thereunder, its own procedure based on general principles of justice, equity and good conscience. One of such principles is that delay defeats equity. The Authority found that the applicant was guilty of gross negligence. He took no steps whatever to carry out the amendment for several months after the order permitting the amendment, and thereafter, when the case was at the final stage, he suddenly woke up, as it were, from slumber, and sought to amend his application. In the circumstances, the Authority rightly refused to put a premium on this delay and laxity on the part of the appellant."

(iii) P.S.Sadasivasamy Vs. State of Tamil Nadu, reported in (1975) 1 Supreme Court Cases 152, wherein, the Supreme Court, at Paragraph 2, held as follows:-

"2....A person aggrieved by an order or promoting a junior over his head should approach the Court at least within six months or at the most a year order of suspension such promotion; it is not that there is any period of limitation of the Courts to exercise their powers under Article 226 nor is it that there can never

be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal"

(iv) In State of M.P., v. Nandlal Jaismal reported in 1986 (4) SCC 566, the Hon'ble Supreme Court, at Paragraph 24, held as follows:

"24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or

illegal.Of course, this rule of laches or delay is not a rigid rule which can be cast in a strait jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it."

(v) In G.C.Gupta v. N.K. Pandey, reported in (1988) 1 SCC 316, the Hon'ble Supreme Court at paragraph 16, held as follows:-

16. Inordinate delay is not merely a factor for the court to refuse appropriate relief but also a relevant consideration it be so minded not to unsettle settled things.

(vi) In State of Maharashtra v. Digambar reported in AIR 1995 SC 1991, the Hon'ble Supreme Court, considered a case, where compensation for the acquired land was claimed belatedly and at Paragraphs 12, 18 and 21, held as follows:

"12. How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State invoking writ jurisdiction of the High Court under article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decision of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blame-worthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a welfare State, is also difficult to comprehend. Where the relief sought under Article 226 of the Constitution by a person against the welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason

that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blame-worthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State.

18. Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled for grant of such relief was explained succinctly by Sir Barnes Peacock, long ago, in *Lindsay Petroleum Co. v. Prosper Armstrong* (1874) 5 PC 221) thus : "Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay,

that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of Justice or injustice in taking the one course or the other, so far as it relates to the remedy."

21. Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement of such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily."

(vii) In *Hameed Joharan v. Abdul Salem*, reported in (2001) 7 SCC 573, the Hon'ble Supreme court considered the enforceability of a decree, and the limitation thereof. In the said judgment, the Hon'ble Supreme Court after taking note of the Latin maxim "vigilantibus et non dormientibus jura subveniunt", explained the use of legal diligence and as to how lapse of time is species for forfeiture of right. In the words of Hon'ble Supreme Court, the above principle is explained as hereunder:-

14. It cannot but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times: even the doctrine of prescription in Roman law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favoured rather than claiming disfavour. Law courts never tolerate an indolent litigant since delay defeats equity – the Latin maxim vigilantibus et non dormientibus jura subveniunt (the law assists those who are vigilant and not those who are indolent). As a matter of fact, lapse of time is a species for forfeiture of right. Wood, V.C. in *Manby v. Bewicke*, reported in 1857 (3) K&J 342 = 69 ER 1140 (K&J at p. 352) stated: (ER p. 1144)

"The legislature has in this, as in every civilized country that has ever existed, thought fit to prescribe certain limitations of time after which persons may suppose themselves to be in peaceful possession of their property, and capable of transmitting the estates of which they are in

possession, without any apprehension of the title being impugned by litigation in respect of transactions which occurred at a distant period, when evidence in support of their own title may be most difficult to obtain."

(viii) In *State of Rajasthan v. D.R. Laxmi* reported in 1996 (6) SCC 445, the Hon'ble Supreme Court observed that though the order may be void, if the party does not approach the Court within a reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner.

(ix) In *Board of Secondary Education of Assam v. Mohd. Sarifuz Zaman*, reported in (2003) 12 SCC 408, the Hon'ble Supreme Court has observed as follows:-

12. Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting into depriving of the remedy, is a principle based on public policy and utility and not equity alone....."

(x) In *Karnataka Power Corpn. Ltd., v. K. Thangappan and Anr* reported in 2006 (4) SCC 322, the Hon'ble Supreme Court, at Paragraph 6, held as follows:

"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party".

(xi) In *Chairman, U.P. Jal Nigam and another v. Jaswant Singh* reported in AIR 2007 SC 924, the Hon'ble Supreme Court, after considering a catena of decisions, on the aspect of delay, at Paragraph 13, held as follows:

"13.....Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted."

(xii) In *Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project*, reported in (2008) 17 SCC 448, the Hon'ble Supreme Court considered the question of extension of limitation, in matters pertaining to land acquisition proceedings. The Hon'ble Apex Court explained the meaning of the word 'limitation' scope, rationale and the object in the enactments. While explaining limitation and exercise of power of condonation by courts, at paragraph 14, the Hon'ble Supreme Court held as follows:-

14. It is true that the power to condone the delay rests with the court in which the application was filed beyond time and decide whether there is sufficient cause for condoning the delay and ordinarily the superior court may not interfere with such discretion even if some error is to be found in the discretion so exercised by the court but where there is no sufficient cause for condoning the delay but the delay was condoned, it is a case of discretion not being exercised judicially and the order becomes vulnerable and susceptible for its correction by the superior court. The High Court having found that the respondent in its application made incorrect submission that it had no knowledge of the award passed by the Reference Court ought to have refused to exercise its discretion. The High Court exercised its discretion on wrong principles. In that view of the matter we cannot sustain the exercise of discretion in the manner done by the High Court.

Holding that laws of limitation are founded on public policy, the Hon'ble Supreme Court extracted Halsbury's Laws of England, at paragraph 26:-

26. Basically, the laws of limitation are founded on public policy. In Halsbury's Laws of England, 4th Edn., Vol. 28, p. 266, Para 605, the policy of the Limitation Acts is laid down as follows:

"605. Policy of the Limitation Acts.-The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove the stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence."

(vi) Again, while referring to statutes of limitation, the Hon'ble Supreme Court described them as statutes of peace. Paragraphs 27 to 29 would be relevant for the purpose of understanding the rationale behind fixing time limit, under the

statutes and also as to how the courts have to exercise their jurisdiction of condonation of delay. Though the Hon'ble Apex Court referred to the statutory limitation, yet the principles are applicable to writ jurisdiction also, for the reason that delay defeats equity, due to negligence or laches on the part of the parties.

27. Statutes of limitation are sometimes described as "statutes of peace". An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. This Court in *Rajender Singh v. Santa Singh*, reported in 1973 (2) SCC 705, has observed: (SCC p. 712, para 18)

"18. The object of law of limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches."

28. In *Tilokchand Motichand v. H.B. Munshi*, reported in 1969 (1) SCC 110, this Court observed that this principle is based on the maxim "*interest reipublicae ut sit finis litium*", that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression.

29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his *Jurisprudence* states that the laws come to the assistance of the vigilant and not of the sleepy.

(xiii) In *S.S.Balu v. State of Kerala* reported in 2009 (2) SCC 479, at Paragraph 17, the Hon'ble Supreme Court held as follows:

"17. It is also well-settled principle of law that "delay defeats equity". The Government Order was issued on 15-1-2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal thereagainst, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to

them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage. In NDMC v. Pan Singh this Court held: (SCC p. 283, para 16)

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction."

(xiv) In Virender Chaudhary v. Bharat Petroleum Corporation reported in 2009 (1) SCC 297, the Hon'ble Supreme Court held as follows:

"The court exercises its jurisdiction only upon satisfying itself that it would be equitable to do so. Delay and/or laches, indisputably, are the relevant factors.

"15. The Superior Courts, times without number, applied the equitable principles for not granting a relief and/or a limited relief in favour of the applicant in a case of this nature. While doing so, the court although not oblivious of the fact that no period of limitation is provided for filing a writ petition but emphasize is laid that it should be filed within a reasonable time. A discretionary jurisdiction under Article 226 of the Constitution of India need not be exercised if the writ petitioner is guilty of delay and laches."

Some of the decisions considered by the Hon'ble Apex Court in Virender Chaudhary's case (cited supra), are reiterated as follows:

"16. In Uttaranchal Forest Development Corporation and Anr. v. Jabar Singh and Ors. [(2007) 2 SCC 112], this Court held:

"It is not in dispute that the effective alternative remedy was not availed of by many of the workmen as detailed in paragraphs supra. The termination order was made in the year 1995 and the writ petitions were admittedly filed in the year 2005 after a delay of 10 years. The High Court, in our opinion, was not justified in entertaining the writ petition on the ground that the petition has been filed after a delay of 10 years and that the writ petitions should have been dismissed by the High Court on the ground of laches."

17. In New Delhi Municipal Council v. Pan Singh and Ors. [(2007) 9 SCC 278], this Court held:

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. (See Govt. of W.B. v. Tarun K. Roy [(2004) 1 SCC 347], U.P. Jal Nigam v. Jaswant Singh [(2006) 11 SCC 464] and Karnataka Power Corpn. Ltd., v. K.Thangappan [(2006) 4 SCC 332])

17. Although, there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily, writ petition should be filed within a reasonable time. (See Lipton India Ltd. v. Union of India [(1994) 6 SCC 524] and M.R.Gupta v. Union of India [(1995) 5 SCC 628])

(xv) In Vijay Kumar Kaul v. Union of India, (2012) 7 SCC 610, following the earlier judgment relating to delay and laches, the Supreme Court held that belated approach in filing writ petition is impermissible and at Paragraphs 26 and 27, it is held as follows:

"26. From the aforesaid pronouncement of law, it

is manifest that a litigant who invokes the jurisdiction of a court for claiming seniority, it is obligatory on his part to come to the court at the earliest or at least within a reasonable span of time. The belated approach is impermissible as in the meantime interest of third parties gets ripened and further interference after enormous delay is likely to usher in a state of anarchy.

27. The acts done during the interregnum are to be kept in mind and should not be lightly brushed aside. It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time."

(xvi) In *Tukaram Kana Joshi v. Maharashtra Industrial Development Corporation* reported in 2013 (1) SCC 353, the Hon'ble Supreme Court, at Paragraphs 12 and 14, held as follows:

"12. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience".

.....

14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause

of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners."

(xvii) In *State of Uttaranchal v. Shiv Charan Singh Bhandari*, (2013) 12 SCC 179, following the judgment in *P.S.Sadasivaswamy v. State of Tamil Nadu* (1975) 1 SCC 152, the Hon'ble Supreme Court held that in case a junior is promoted over his head, the senior must challenge it atleast within six months or at the most a year of such seniority and that any one who sleeps over his right is bound to suffer. At Paragraph 24, it is held as follows:

"24. There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in *Ghulam Rasool Lone v. State of J & K* (2009) 15 SCC 321.

.....

27. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled.... the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer."

.....

28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the Tribunal and accepted by the High Court."

(xviii) In *Chennai Metropolitan Water Supply and Sewerage Board v. T.T.Murali Babu* reported in 2014 (4) SCC 108, at Paragraphs 16 and 17, the Hon'ble Supreme Court held as follows:

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it

has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant - a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

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(xx) In *Brijesh Kumar v. State of Haryana* reported in 2014 (11) SCC 351, the Hon'ble Supreme Court held that it is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

(xxi) In State of U.P. v. Aravind Kumar Srivastava reported in 2015 (1) SCC 347, at Paragraph 22, the Hon'ble Supreme Court held as follows:

"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C.Sharma v. Union of India (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be

impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

(xxii) In *Prabhakar v. Joint Director, Sericulture Department* reported in 2015 (3) SCC 1, the Hon'ble Supreme Court, at Paragraphs 37 to 41, held as follows:

"37. Let us examine the matter from another aspect viz. laches and delays and acquiescence.

38. It is now a well-recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity "delay defeats equities".

39. This principle is applied in those cases where discretionary orders of the court are claimed, such as specific performance, permanent or temporary injunction, appointment of Receiver, etc. These principles are also applied in the writ petitions filed under Articles 32 and 226 of the Constitution of India. In such cases, courts can still refuse relief where the delay on the petitioner's part has prejudiced the respondent even though the petitioner might have come to court within the period prescribed by the Limitation Act.

40. Likewise, if a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while the act is in progress he cannot afterwards complain. This principle is based on the doctrine of acquiescence implying that in such a case the party who did not make any objection acquiesced into the alleged wrongful act of the other party and, therefore, has no right to complain against that alleged wrong.

41. Thus, in those cases where period of limitation is prescribed within which the action is to be brought before the court, if the action is not brought within that prescribed period the aggrieved party loses remedy and cannot enforce his legal right after the period of limitation is over. Likewise, in other cases even where no limitation is prescribed, but for a long period the aggrieved party does not approach the machinery provided under the law for redressal of

his grievance, it can be presumed that relief can be denied on the ground of unexplained delay and laches and/or on the presumption that such person has waived his right or acquiesced into the act of other. As mentioned above, these principles as part of equity are based on principles relatable to sound public policy that if a person does not exercise his right for a long time then such a right is non-existent."

(xxiii) In State of Jammu and Kashmir v. R.K.Zalpuri reported in 2015 (15) SCC 602, the Hon'ble Supreme Court, at paragraph 27, held as follows:

"27. The grievance agitated by the respondent did not deserve to be addressed on merits, for doctrine of delay and laches had already visited his claim like the chill of death which does not spare anyone even the one who fosters the idea and nurtures the attitude that he can sleep to avoid death and eventually proclaim "Deo gratias" - 'thanks to God'."

(xxiv) In B.S.Sheshagiri Setty v. State of Karnataka reported in 2016 (2) SCC 123, the Hon'ble Supreme Court, at Paragraph 28, held as follows:

"If a statute does not prescribe the time limit for exercise of revisional power, it must be exercised within a reasonable time frame. In the instant case, it is evident that constant litigation has been carried on by the appellants, and therefore they cannot be accused of suddenly waking up after 13 years to claim their land. Further, in the context of limitation, it has been held by this Court in a catena of cases that when what is at stake is justice, then a technical or pedantic approach should not be adopted by the Courts to do justice when there is miscarriage of justice caused to a public litigant."

(xv) In State of Gujarat v. Sree Ratnakar Entrprise reported in 2016 (13) SCC 186, the Hon'ble Supreme Court, on the facts and circumstances of the said case, at Paragraph 8, held as follows:

"6.This Revision was rejected on the ground of delay and was taken up in challenge before the High Court again after a delay of five years. In the circumstances the Single Judge of the High Court was right in observing that the respondent had remained indolent in pursuing its remedy and that because of delay and laches on its part, no indulgence could be shown."

17. Though fixation of correct pay and emoluments, is a continuous cause on the pension to be paid to a Government

servant, yet the same cannot be granted beyond a period of three years as held in Shiv Dass vs. Union of India and others reported in (2007) 9 SCC 274. Even taking it for granted that suit is filed it should have been done within three years from the date of cause of action. In the said judgment, the Hon'ble Supreme Court, at paragraph Nos.10 and 11 held as here under:

"10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.

11. In the peculiar circumstances, we remit the matter to the High Court to hear the writ petition on merits. If it is found that the claim for disability pension is sustainable in law, then it would mould the relief but in no event grant any relief for a period exceeding three years from the date of presentation of the writ petition. We make it clear that we have not expressed any opinion on the merits as to whether appellant's claim for disability pension is maintainable or not. If it is sans merit, the High Court naturally would dismiss the writ petition."

18. Writ court is right in dismissing the writ petition, not only on the ground that in the proceedings supra, appellant has not asked for salary for the above said period, but the appellant has sought for salary belatedly.

19. In the light of the above decisions stated supra, appellant has not made out even a prima facie case to entertain the writ appeal. There is no merit in the writ appeal.

In the result, writ appeal is dismissed. However, there shall be no order as to cost. Consequently, the connected civil miscellaneous petition is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Government of Tamil Nadu
Rep by its Secretary
Revenue Department
Secretariat, Chennai - 600 009

2.The District Collector
Salem District, Salem-1

3.The District Revenue Officer
Salem District, Salem

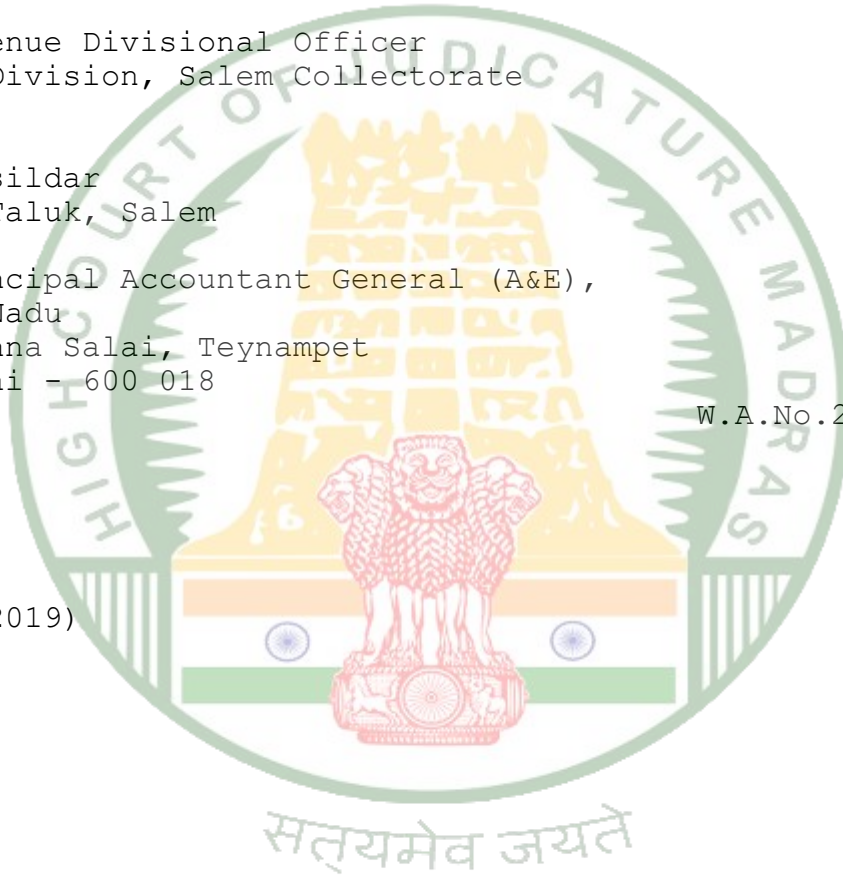
4.The Revenue Divisional Officer
Salem Division, Salem Collectorate
Salem

5.The Tahsildar
Salem Taluk, Salem

6.The Principal Accountant General (A&E),
Tamil Nadu
361, Anna Salai, Teynampet
Chennai - 600 018

W.A.No.2756 of 2018

RK(CO)
SP(23/01/2019)



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