

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM

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

W.A.No.2685 of 2018
C.M.P.No.18673 of 2018

1. The Special Secretary and Commissioner,
Health and Family Welfare Department,
Government of Tamil Nadu,
Fort St. George, Chennai-9.
2. The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai-10. ... Appellants

vs.

1. R.S.Dwarakanath,
No.88/2, P.T.Rajan Road,
Madurai 625 014.
2. The Accountant General,
Office of the Accountant General,
Anna Salai, Chennai 600 006.
3. A.Kumaresan .. Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act for setting aside the order dated 14.09.2017 made in W.P.No.16681 of 2010.

WP No.16681/2010 : In these circumstances it is prayed that this Hon'ble Court may be pleased to call for the records pertaining to G.O.Ms.No.298/Health dated.17-6-1997 issued by the 1st respondent herein and quash the same and consequently direct the 1st and 2nd respondents herein to treat the petitioner as having been promoted and appointed to the post of Joint Director of Medical Education (pharmacy) in the office of the Director of Medical Education chennai in the place of the 4th respondent herein ignoring his alleged seniority and refix the petitioners salary appropriately in the then pay scale of the said post and intimate it to the 3rd respondent herein within a time limit to be fixed by this Honble court.

For Appellants ... Mr.C.Munusamy,
Special Government Pleader (Education)

For Respondent ... Mr.A.R.Gokulnath

JUDGMENT

(Judgment of the Court was pronounced by S.MANIKUMAR, J.)

Challenge in the appeal is, to an order, dated 14.09.2017 made in W.P.No.16681 of 2010, by which, a learned single Judge, while setting aside G.O.Ms.No.298, Health Department, dated 17.06.1997, directed the appellants herein, to treat the 1st respondent as promoted and appointed to the post of Joint Director of Medical Education (Pharmacy), in the office of the Director of Medical Education, Chennai, in the place of the third respondent and to re-fix the 1st respondent's salary appropriately.

2. Writ Court has further directed the Accountant General, Office of the Accountant General, Chennai, 2nd respondent herein, to re-fix the amount of pension, due to the 1st respondent, within a period of twelve weeks from the date of passing of the order, as per the orders of re-fixation of salary of the 1st respondent. The 1st appellant was also directed to pay the appropriate arrears of salary from the date of promotion of the 1st respondent, as Joint Director of Medical Education (Pharmacy) till the retirement of the 1st respondent.

3. Facts leading to the appeal are as follows:

The 1st respondent was appointed as an Assistant in Pharmacy in Madurai Medical College, Madurai, vide proceedings, dated 31.08.1965 of the Dean, Madurai Medical College, Madurai and he reported for duty on 01.09.1965. Thereafter, by proceedings dated 14.09.1966 of the Director of Medical Education, Directorate of Medical Education, second appellant, the 1st respondent was promoted and posted as Assistant Reader, in Pharmacognosy, Madurai Medical College. The services of the 1st respondent, as Assistant Reader in Pharmacognosy, were regularized with retrospective effect from 16.09.1966, whereas, the services of the third respondent, were regularized with effect from 17.09.1966 as Assistant Reader, in Pharmaceutical Chemistry.

4. Thereafter, the first respondent was promoted to the post of Reader in the Department of Pharmacognosy and later, the second appellant, re-designated the 1st respondent, as Professor of Pharmacognosy, Madurai Medical College, Madurai, with

retrospective effect from 30.04.1988, i.e., the date on which, the 1st respondent, started working as in-charge Professor of Pharmacognosy. However, in the subject-wise seniority, notified by the Special Secretary and Commissioner, Health and Family Welfare Department, Government of Tamil Nadu, Secretariat, Chennai, first appellant, for the subject Pharmacy, placed the third respondent as senior to the 1st respondent. According to the 1st respondent, based on the subject seniority, he is senior to the third respondent.

5. It is the further case of the 1st respondent that the next avenue of promotion, under the first respondent, is Joint Director of Medical Education and it was not on subject-wise seniority, even though the nomenclature, was Joint Director of Medical Education (Pharmacy). A temporary panel of two officials, viz., Mr. Alen Chidambaram and the 3rd respondent herein was prepared, and approved by the first respondent, vide proceedings dated 30.04.1997 and consequent to the same, Mr. Alen Chidambaram was promoted and appointed temporarily, as Joint Director of Medical Education (Pharmacy), in the office of the Director of Medical Education, Chennai. Pursuant to such appointment, the said panel ceased to exist, but the second appellant, on the basis of G.O.Ms.No.298, Health and Family Welfare Department, dated 17.06.1997, promoted the third respondent temporarily, as Joint Director of Medical Education (Pharmacy), without preparation of a fresh panel for appointment.

6. The 1st respondent retired from service on 31.01.1998, as Professor of Pharmaceutical Chemistry, Madurai Medical College, Madurai and that the said fact of promotion of the third respondent, as Joint Director of Medical Education (Pharmacy), without preparing a fresh panel, was not known to him, while in service. Aggrieved by the promotion of the third respondent, the 1st respondent sent a representation on 16.07.2008 to the Special Officer, Hon'ble Chief Minister's Special Cell, Secretariat, Chennai, to re-fix his salary, by giving promotion, as upgraded Joint Director of Medical Education (Pharmacy), from the date, when the third respondent was promoted and appointed to the said post.

7. The Principal Secretary to the Government, Health and Family Welfare (AA1) Department, vide proceedings, dated 20.03.2009, addressed to the Director of Medical Education, Chennai, rejected the request of the 1st respondent, by referring to G.O.Ms.No.167, Health and Family Welfare Department, dated 30.04.1997. Though a copy of the above proceedings was furnished to the 1st respondent, it is the case of the 1st respondent that he was not furnished with a copy of the government order.

8. The 1st respondent retired from service on 31.01.1998. After obtaining a copy of the said Government Order, under the Right to Information Act, 2005, after 12 years from the date of retirement, the 1st respondent has filed W.P.No.16681 of 2010, for issuance of a writ of Certiorarified Mandamus, to quash the record pertaining to G.O.Ms.No.298, Health and Family Welfare Department, dated 17.06.1997 issued by the 1st appellant herein, and consequently, prayed for a direction to the appellants 1 and 2 herein, to treat the 1st respondent, as having been promoted and appointed to the post of Joint Director of Medical Education (Pharmacy), in the office of the Director of Medical Education, Chennai, in the place of the 3rd respondent herein, on the basis of his seniority, and to re-fix the 1st respondent's salary appropriately, in the pay scale to the said post and intimate the same to the 2nd respondent herein, within a stipulated period of time and further, to direct the first appellant, to pay the appropriate arrears of salary, from the date of promotion and temporary appointment of the 3rd respondent herein, as Joint Director of Medical Education (Pharmacy), till the 1st respondent retired from service on 31.01.1998 A.N. and to pay appropriate arrears of pension, from the date of retirement.

9. Before the writ Court, the appellants have contended that the 1st respondent was junior to the third respondent, and therefore, there was no illegality in promoting the third respondent as Joint Director of Medical Education (Pharmacy). Even though the 1st respondent joined in the promoted post on 16.09.1966 and that the 3rd respondent joined on 17.09.1966, a day later, that does not confer any seniority to the 1st respondent, as the third respondent was senior in the initial appointment and continued to be a senior, unless, reduced to a lower rank as a punishment.

10. On the contention that temporary panel drawn for promotion would cease to exist on the promotion of one individual and thereafter, a fresh panel needs to be drawn for promoting a candidate, it was submitted by the appellants that a temporary panel need not be drawn due to emergency conditions and the 1st respondent cannot find fault with the same. Considering the facts and circumstances of the case, the writ Court, vide order, dated 14.09.2017, held as follows:

"17. A perusal of the proceedings of the Assistant Director of Medical Services (Medical) dated 14.09.1966 reveals that the petitioner, whose name finds place at Serial No.8 has been promoted as Assistant Reader; and the fourth respondent, whose name finds place at Serial No.13 has also been promoted as Assistant Reader. Thereafter, by proceedings dated 21.04.1976, of the Madurai Medical

College, the probation of the petitioner and the fourth respondent, among others, was declared. The annexure to the said proceedings reads as under:

Sl. No.	Name and Designation	Date of regular appointment	Date of completion of probation	Date of passing the test
1	Thiru.S.Subramanian Nainar, formerly Assistant Reader in Pharmaceutical Chemistry, now as Reader in Pharmaceutical Chemistry, Madras Medical College.	26.09.1966	25.09.1968 A.N.	November, 1969
2	Thiru.V.Ranganathan, Assistant Reader in Pharmaceutics	16.09.1966	15.09.1968 A.N.	November, 1971
3	Thiru.R.S.Dwarakanath, Assistant Reader in Pharmacognosy	16.09.1966	15.09.1968	May, 1973
4	Thiru.A.Kumaresan, Assistant Reader in Pharmaceutical Chemistry	17.09.1966	17.09.1968 A.N.	November, 1968

The above annexure makes it ample clear that the petitioner's regular appointment was on 16.09.1966, whereas the fourth respondent's regular appointment was on 17.09.1966. Even the date of completion of probation of the petitioner (15.09.1968) is two days earlier to that of the fourth respondent (17.09.1968). Even though the date of passing the test by the petitioner was after that of the fourth respondent, by proceedings dated 18.07.1977 of the Madurai Medical College, Rule 10(a) of the Special Rules for Tamil Nadu Medical Services was relaxed in favour of the petitioner for the purpose of declaration of probation. Therefore, the delayed passing of the test by the petitioner is of no relevance. Even the annexure to the proceedings dated 18.07.1977 places the petitioner in third place, whereas the fourth respondent in fifth place. The above said factors show beyond any iota of doubt that the petitioner is senior to the fourth respondent.

18. It is also seen from the records, more particularly, the G.O.Ms.No.167, Health and Family Welfare Department, dated 30.04.1997, that a temporary panel was drawn for appointment to the post of Joint Director of Medical (Pharmacy), which panel consisted of names of two individuals, viz., (i) Alen

Chidambaram; and (ii) A.Kumaresan (fourth respondent), and from that panel Alen Chidambaram was appointed temporarily as Joint Director of Medical Education (Pharmacy).

19. Subsequently, by G.O.Ms.No.298, Health Department, dated 17.06.1997, the fourth respondent was temporarily promoted and appointed to the post of Joint Director of Medical Education (Pharmacy) under Rule 39(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Service Rules. The said government order refers to the earlier Government Order dated 30.04.1997 and bears no reference to drawing of any fresh panel before promoting and appointing the fourth respondent. Neither does the said government order cite any emergent conditions, warranting appointment to be made without drawing any panel.

20. Admittedly, the petitioner retired from service only on 31.01.1998 A.N., and while the above said exercise was undertaken, he was very much in service.

21. Under identical circumstances, in respect of employee of State Transport Department, a learned Single Judge of this Court in K.Krishnan Nair v. Government of Tamil Nadu and others, 1978 II LLJ 40, held that even in the matter of temporary promotions under Rule 39(a)(i), the claims of duly qualified senior cannot be ignored.

22. Qua the ratio that a panel ceases to exist with the appointment of the first candidate, it is apposite to refer to a decision of the Hon'ble Supreme Court in State of Punjab v. Raghbir Chand Sharma and another, (2002) 1 SCC 113, wherein it is held as under:

"4. We have carefully considered the submissions of the learned counsel on either side. In our view, the judgment rendered by the learned Single Judge as well as the Division Bench of the Punjab and Haryana High Court cannot be sustained. As rightly contended for the appellant State, the notification issued inviting applications was in respect of one post and the first candidate in the select panel was not only offered but on his acceptance of offer came to be appointed and it was only subsequently that he came to resign. With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been

offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently. The circular order dated 22-3-1957, in our view, relates to select panels prepared by the Public Service Commission and not a panel of the nature under consideration. That apart, even as per the circular orders as also the decision relied upon for the first respondent, no claim can be asserted and countenanced for appointment after the expiry of six months. We find no rhyme or reason for such a claim to be enforced before courts, leave alone there being any legally protected right in the first respondent to get appointed to any vacancy arising subsequently, when somebody else was appointed by the process of promotion taking into account his experience and needs as well as administrative exigencies."

23. By virtue of the law enunciated in the decision referred supra, it is explicitly clear that with the promotion and appointment of Alen Chidambaram, the said panel ceased to exist and has outlived its utility and without drawing a fresh panel, the fourth respondent cannot be promoted overlooking the petitioner, who is senior to the fourth respondent even as per the records and annexures, referred supra.

24. In the result: a) This writ petition is allowed, by setting aside G.O.Ms.No.298/Health, dated 17.06.1997 passed by the first respondent;

b) The respondents 1 and 2 are directed to treat the petitioner as promoted and appointed to the post of Joint Director of Medical Education (Pharmacy) in the office of the Director of Medical Education, Chennai, in the place of the fourth respondent and to re-fix the petitioner's salary appropriately;

c) The third respondent is hereby directed to re-fix the amount of pension due to the petitioner appropriately within a period of twelve weeks from the date of receipt of a copy of this order, as per the orders of the re-fixation of salary of the petitioner;

d) The first respondent is directed to pay the appropriate arrears of salary from the date of promotion of the petitioner as Joint Director of Medical Education (Pharmacy) till the petitioner's retirement;

e) The above said exercise shall be done by the first respondent within a period of eight weeks thereafter."

11. Aggrieved by the order of the writ Court, present writ

appeal has been filed, on the following grounds,

"(i) Writ Court ought to have seen that the 1st respondent and third respondent were selected through the employment exchange and they were initially appointed as Assistant Professor in Pharmacy on 01.09.1965 and 16.08.1965. The seniority assigned by the Tamil Nadu Public service Commission to the 1st respondent is 12 and the third respondent is 11.

(ii) Writ Court ought to have seen that the third respondent is senior than the 1st respondent from their initial appointment itself,

since he joined in Government service, 16 days before the 1st respondent came into Government service.

(iii) Appellants have submitted that not only in the post of Assistant in Pharmacy, but in their future promotions i.e. in the posts of Assistant Reader in Pharmacy and Reader in Pharmacy, the third respondent is the senior to the 1st respondent.

(iv) Writ Court ought to have seen that in order to join in the promotional post of Assistant Reader, the third respondent herein was relieved from his previous station of Madurai Medical College, Madurai on 16.09.1966 AN and he joined duty on 17.09.1966 at Madras Medical College, Chennai, which is 500 KMS away. But, the 1st respondent was promoted and posted at the same place i.e., Madurai Medical College, Madurai and he joined duty on 16.09.1966. Though the 1st respondent has joined in the promotional post earlier, than the 3rd respondent, that does not mean that he is a senior for the reason that the senior always remains as a senior, unless he has been reduced to a lower rank as punishment.

(v) Appellants have submitted that as per the adhoc rules prescribed for the post of Joint Director of Medical Education (Pharmacy), a temporary list was prepared by the Government for the year 1997-1998, from the eligible individuals according to seniority in their feeder category of Reader / Professor in Pharmacy. During the year 1997 - 1998, as per the orders issued in G.O.Ms.No.298, Health and Family Welfare Department, Dated: 17.06.1997, the third respondent was considered for the post of Joint Director of Medical Education (Pharmacy). At the time of consideration and the writ petitioner had not reached his turn for promotion to the post of Joint Director of Medical Education (Pharmacy) and in the meantime he retired from government service on 31.01.1998 on attaining the age of superannuation.

(vi) Writ Court ought to have seen that the 1st

respondent has filed the writ petition before this court after a gap of thirteen years praying to quash G.O.Ms.No.298, Health and Family Welfare Department, Dated: 17.06.1997 and to promote him to the post of Joint Director of Medical Education (Pharmacy) for the year 1997 - 1998 in the place of the third respondent.

(vii) It is submitted that sub-section (6) of section 40 of the Tamil Nadu Government servants (Conditions of Service) Act, 2016 (Tamil Nadu Act 14, of 2016) provides as follows:

"(6) Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected".

As per the above said provision of the said Act, the 1st respondent has not made any application for claiming genuine seniority over the 3rd respondent, while he was in service.

(viii) Writ Court ought to have seen that as there is no rule provision for giving notional promotion to a retired personnel. If the request of the 1st respondent is considered, it will affect the well settled procedure being followed by the Government of Tamil Nadu and it will affect the system of administration also."

Heard the learned counsel for the parties and perused the materials available on record.

12. Before advertng to the case of the appellants, let us consider the comparative statement of the service particulars of the 1st respondent and 3rd respondent, as given in the counter affidavit to W.P.No.16681 of 2010, which is as follows:

Sl.No	Details	Thiru.Kumaresan (3rd respondent)	Thiru.Dwarakanath (1st respondent)
1	First appointment	Assistant in Pharmacy	Assistant in Pharmacy
2	Mode of appointment	Selected through Professional Employment Exchange, Madras.	Direct appointment by Dean, Madurai Medical College, Madurai.

Sl.No .	Details	Thiru.Kumaresan (3rd respondent)	Thiru.Dwarakanath (1st respondent)
3	Date of joining in the post of Assistant in Pharmacy	16.08.1965	01.09.1965
4	Next promoted post	Assistant Reader	Assistant Reader
5	Date of joining in the post of Assistant Reader in Pharmacy	17.09.1966 (Seniority No.11 assigned by the TNPSC)	16.09.1966 (Seniority No.12 assigned by the TNPSC)
6	Next promoted post	Reader/Professor in Pharmacy	Reader/Professor in Pharmacy
7	Date of joining in the post of Reader/Professor in Pharmacy	01.09.1986 (Seniority No.5)	01.05.1988 (Seniority No.6)
8	Next promoted post	Joint Director of Medical Education (Pharmacy)	Joint Director of Medical Education (Pharmacy)
9	Date of joining in the post of Joint Director of Medical Education (Pharmacy)	04.07.1997	Not reached his turn for promotion and retired on 31.01.1998.

13. Counter affidavit of the government makes it clear that the 1st respondent joined as Assistant in Pharmacy at Madurai Medical College, Madurai on 01.09.1965, whereas, the 3rd respondent joined duty, as Assistant in Pharmacy at Madurai Medical College, Madurai on 16.08.1965, which clearly shows that the 3rd respondent was senior to the 1st respondent, in the initial appointment itself, since he joined Government service, 16 days before the 1st respondent.

14. Material on record further discloses that the 3rd respondent is senior to the 1st respondent, in the post of Assistant Reader in Pharmacy and that the next avenue of promotion to the post of Reader/Professor in Pharmacy, is Joint Director of Medical Education (Pharmacy). During 1997-98, the 3rd respondent was considered for the post of Joint Director of Medical Education (Pharmacy) and in this regard, Government have issued G.O.Ms.No.298, Health and Family Welfare Department, dated 17.06.1997. At that time, the 1st respondent was not considered for the said post, as he did not reach his turn for promotion to the said post.

15. G.O.Ms.No.298, Health and Family Welfare Department,
dated 17.06.1997 is extracted hereunder:

GOVERNMENT OF TAMIL NADU

ABSTRACT

Tamil Nadu Medical Services - Post of Joint Director
of Medical Education (Pharmacy) - Appointment of
Thiru.A.Kumaresan, Professor of Pharmacy, Thanjavur
Medical College, Thanjavur as Joint Director of
Medical Education (Pharmacy) in the O/o. the Director
of Medical Education - Orders - Issued.

HEALTH AND FAMILY WELFARE DEPARTMENT

G.O.Ms.No.298

Dated 07.06.1997

Read

Again:-

G.O.Ms.No.167, Health, dated 30.04.1997.

Read Also:

From the Director of Medical Education, Letter
No.75795/E1/(1)/95, dated 12.05.1997.

ORDER:

Under Rule 39(1)(i) of the General Rules for the
Tamil Nadu State and Subordinate Service Rules,
Thiru.A.Kumaresan, Professor of Pharmacy, Thanjavur
Medical College, Thanjavur is promoted and appointed
temporarily as Joint Director of Medical Education
(Pharmacy) in the O/o. the Director of Medical
Education, Chennai, with effect from the date of
taking charge in the existing vacancy.

The following notification will be published in
the Tamil Nadu Government Gazette:-

NOTIFICATION

Thiru.A.Kumaresan, Professor of Pharmacy,
Thanjavur Medical College, Thanjavur is promoted and
appointed temporarily as Joint Director of Medical
Education (Pharmacy) in the O/o. the Director of
Medical Education with effect from the date of taking
charge.

(GOVERNOR OF TAMIL NADU)

S.Ramakrishnan,
SECRETARY TO GOVERNMENT.

16. Aggrieved by the above government order, W.P.No.16681 of 2010 has been filed by the 1st respondent, after more than 12 years, with a consequential relief to promote him to the post of Joint Director of Medical Education (Pharmacy), for the year 1997-98, in the place of the 3rd respondent. 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.

17. 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."

18. There is an inordinate delay and laches on the part of the 1st respondent. 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 laches in one case might not constitute in another. The laches 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.''

19. 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."

20. 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:- सत्यमेव जयते

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."

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.

(xiv) 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."

(xv) 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])

(xvi) 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."

(xvii) 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."

(xviii) 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."

(xix) 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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(xxi) 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.

(xxii) 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."

(xxiii) 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."

(xxiv) 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'."

(xxv) 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."

(xxvi) In State of Gujarat v. Sree Ratnakar Enterprise 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."

21. In the instant case, both the 3rd respondent and the 1st respondent were appointed as Assistant Readers in Pharmaceutics and Assistant Reader in Pharmacognosy temporarily under 10(a) (i) of the General Rules of the Tamil Nadu State and Subordinate Service Rules, as per the orders issued in G.O.Ms.No.1608, Health and Family Welfare Department, dated 05.09.1966. Rule 10(a) (i) of the said Rules, reads as follows:

"(a) (i) (1) where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the

cadre of a service, class or category and there would be undue delay in making such appointment in accordance with these rules and the Special Rules, the appointing authority may temporarily appoint a person, who possesses the qualifications prescribed for the post otherwise than in accordance with the said rules.

"(Added Vide G.O.Ms.No.21, P&AR (S) Dept., 23-1-96 w.e.f.23-1-96)

Provided that no appointment @ by direct recruitment under this clause shall be made of any person other than the one sponsored by the Tamil Nadu Public Service Commission from its regular or reserve list of successful candidates to any of the posts with in the purview of the Tamil Nadu Public Service Commission.

@(Added Vide G.O.Ms.No.21, P&AR (S) Dept., 23-1-96 w.e.f.23-1-96)

Second Proviso omitted vide G.O.Ms.No.146 P&AR(S) Dept. dt. 13.9.2006 w.e.f. 16.8.82

Provided ** further that appointment by direct recruitment under this clause (1) in respect of posts within the purview of Tamil Nadu Public Service Commission shall be made, only where new posts with new qualifications are created temporarily and where the Tamil Nadu Public Service Commission does not have a regular or reserve list of successful candidates for sponsoring.

** Substituted vide G.O.Ms.No.146 P&AR(S) Dept. dt.13.9.2006 w.e.f. 16.8.82."

22. Writ Petition ought to have been filed within a reasonable time, from the date of cause of action. Third Respondent has been promoted to the post of Joint Director of Medical Education (Pharmacy) on 17.06.1997 and the writ petition has been filed only in 2010, after nearly 13 years. There is an inordinate delay and unexplained laches. Trite law that the power under Article 226 of the Constitution of India is discretionary. When inordinate delay and laches on the part of the 1st respondent in approaching the Court, is apparent on the face of the record, writ Court ought to have addressed, as to whether, the writ petition can be entertained or not. Inordinate delay and laches itself is a ground for dismissal of the writ petition.

23. Even though they were appointed under 10(a)(i), their services were regularised in that post, with retrospective effect, from the date of their temporary appointment, duly fixing their seniority, by the Tamil Nadu Public Service Commission, vide G.O.Ms.No.1396, Health and Family Welfare Department, dated 04.06.1973, in which, the seniority of the

third respondent has been given as 11 and that of the first respondent, as 12.

24. When the 3rd respondent was placed senior to the 1st respondent, in the subjectwise seniority, notified by the Secretary to the Government, Health and Family Welfare Department, Government of Tamil Nadu, the 1st respondent has not chosen to challenge the same. Similarly, when the Director of Medical Education, Directorate of Medical Education, Chennai, 2nd appellant, on the basis of G.O.Ms.No.298, Health Department, dated 17.06.1997, promoted the 3rd respondent as Joint Director of Medical Education (Pharmacy), the 1st respondent, neither challenged the abovesaid Government Order, issued in the year 1997, nor questioned the promotion of the 3rd respondent as Joint Director of Medical Education (Pharmacy).

25. Though the request of the 1st respondent to refix his salary, by giving upgradation as Joint Director of Medical Education (Pharmacy), has been rejected by the Principal Secretary to Government, Health and Family Welfare (AA1) Department, on 20.03.2009, by referring to G.O.Ms.No.167, Health and Family Welfare Department, dated 30.04.1997, material on record do not indicate that the 1st respondent, has either challenged G.O.Ms.No.167, dated 30.04.1997, or the rejection order, dated 20.03.2009 of the Principal Secretary to the Government, Health and Family Welfare (AA1) Department, immediately, when the cause of action arose.

26. After a long number of years, the 1st respondent cannot file a writ petition, challenging the settled seniority, that too, after the retirement. Useful reference can be made to a decision in H.S.Vankani v. State of Gujarat, (2010) 4 SCC 301, wherein, the Hon'ble Supreme Court underlined the importance of seniority and the consequences of unsettling the seniority. At Paragraphs 38 and 39, it is held as follows:

"38. Seniority is a civil right which has an important and vital role to play in ones service career. Future promotion of a government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority, etc. Seniority once settled is decisive in the upward march in ones chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instils confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of ones junior in service is unsettled, it may generate bitterness, resentment, hostility among the government servants and the enthusiasm to do quality work might be lost. Such a

situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume a lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and government, driving the parties to acute penury. It is well known that the salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money-making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further, it also consumes a lot of judicial time from the lowest court to the highest resulting in constant bitterness among the parties at the cost of sound administration affecting public interest.

39. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action."

27. In the light of the discussion and decisions, Writ Appeal is allowed, setting aside the order of the writ Court, dated 14.09.2017. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

skm

To

The Accountant General,
Office of the Accountant General,
Anna Salai, Chennai 600 006.

+1cc to Mr.A.R.Gokulnath, Advocate SR.No.84205

+1cc to Government Pleader, High Court, Madras SR.No.84205

W.A.No.2685 of 2018

VGII(CO)
GMY(29/01/2019)