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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Judgment: 16th August, 2018*

+ LPA 98/2018

MRINAL RANJAN

..... Appellant

Through: Mr. Keshav Dayal, Sr. Adv with
Mr. Sheo Kumar Gupta, Adv
versus

AIRPORT AUTHORITY OF INDIA & ANR

..... Respondents

Through: Mr. Digvijay Rai and Mr. Kustubh
Singh, Advs for AAI/R-1
Ms Anjana Gosain, Adv for R-2

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. The present appeal is directed against the order dated 05.01.2018 passed by a learned Single Judge of this Court. The appellant herein seeks parity with the petitioners in *W.P.(C) 685/2011* i.e. *Ankit Kumar Aggarwal & Ors. vs. Airport Authority of India & Anr.* and further seeks to avail the benefit of the order dated 09.04.2015 which has attained finality as the order was upheld by the Division Bench and the Special Leave Petition filed was also dismissed.

2. Some necessary facts which are required to be noticed for disposal of this appeal are that respondent No. 1/Airport Authority of India issued an

advertisement No. 2/2007 for appointment of 171 persons as Managers (Electricals). The breakup of the posts is as under:-

- (i) 8 posts were to be filled from the General Category.
- (ii) 46 posts were to be filled from the OBC Category.
- (iii) 25 posts were to be filled from the SC Category.
- (iv) 12 posts were to be filled from the ST Category.

3. The total number also included 5 posts for the physically handicapped persons. Examinations were conducted. The appellant herein was declared successful in the written examination and appeared for the interview. Thereafter, the result was prepared and a select list was prepared. Admittedly, out of 87 candidates who were issued appointment letters, only 65 candidates joined the post leaving 22 vacancies unfilled. In the year 2011, 4 candidates from the waiting list (3 from the General Category and 1 from the OBC Category) filed a writ petition bearing No. 685/2011. All the four petitioners complained that although their names were in the wait listed candidates, they were not offered the post. The learned Single Judge allowed the writ petition and directed that appointment letters be issued to the petitioners therein. When the matter was finally carried to the Supreme Court as late as in the year 2015, the present appellant made an application seeking impleadment. The said application was not entertained and the following order was passed:

“Heard learned counsel appearing on behalf of the petitioner.

We do not find any reason to entertain this petition.

The special leave petition is, accordingly, dismissed.

I.A. Nos. 3 & 4, applications for impleadment are dismissed as withdrawn with liberty to the applicant(s) to take appropriate steps in accordance with law.

As a sequel to the above, pending application stands disposed of.”

4. Post the dismissal of the application seeking impleadment, on 19.04.2017, the appellant herein filed a writ petition bearing No. 6665/2017 which was disposed of based on the statement made by the learned counsel for the respondent that the representation of the petitioner would be considered. The representation was considered and rejected which led to filing of another writ petition in the year 2018 being W.P.(C) 87/2018 which was dismissed by the learned Single Judge of this Court. The learned Single Judge had dismissed the writ petition on the ground of delay. Paragraphs 5 to 9 of the impugned order reads as under:-

5. Upon hearing and on perusal of impugned order (Annexure P-1), material on record and the decisions cited, I find that delay aspect has to be considered in the light of legal position reiterated by Supreme Court in Mamta Mohanti (Supra), which is as under:-

“54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in

a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time.”

6. Petitioner herein has pleaded ignorance about filing of writ petition and LPA by Ankit Kumar and others but that by itself is not enough. What petitioner was required to assert is that he was unaware of the select list. Pleadings in this petition on this crucial aspect are lacking. In any case, it is evident from the order of 4th August, 2017 (Annexure P-14) in the earlier round of litigation, that petitioner was aware that he was in the wait list of the panel prepared for the selected candidates, in pursuance to the Advertisement of the year 2007.

7. Way back in the year 2009-2010, when the wait list of the select panel was displayed, similarly placed persons, as petitioner, had approached the Court in the year 2011, whereas petitioner had opted to apply afresh in terms of subsequent Advertisement of the year 2010, but was unsuccessful. Evidently, the delay aspect, as in the case of Ankit Kumar and others was not substantial, whereas in the instant case it is.

8. This Court is of the considered opinion that reliance placed upon Supreme Court's decision in Mahesh Chand (Supra) is of no avail, as the delay aspect was not subject matter of consideration in the said decision, whose ratio is that similarly placed persons are to be treated at par. In the instant case, unexplained delay assumes importance for the reason that a person, who sleeps over his rights, is not entitled to discretionary relief in exercise of writ jurisdiction. Since inordinate delay of more than six years remains unexplained, therefore, there is no option except to dismiss this petition on the ground of delay and laches.

9. In the light of the aforesaid, this petition and is dismissed in limine, being hit by delay and laches.

5. Mr. Keshav Dayal, learned senior counsel appearing for the appellant, submits that the appellant herein is identically placed as the 4 writ petitioners in the case of **Ankit Kumar Aggarwal & Ors vs. Airport Authority of India & Anr.** wherein the learned Single Judge has given a categorical finding that since 22 vacancies remained unfilled and the petitioners were wait listed candidates, they should have been given appointment letters.

6. Per contra, learned counsel for the respondent has opposed this appeal on the ground of delay. The counsel for the respondent submits that after the 2007 advertisement, another advertisement was published in the year 2010 and the appellant had applied for the same but was found unsuccessful. Additionally, he points out that the vacancies have been filled up and in fact persons from the batches of Ankit Kumar have since been promoted as Sr. Manager as per available vacancies and the clock cannot be put back, which is disputed by the learned counsel for the appellant. He further submits that with the passage of time the appellant herein already stands promoted as a Manager and thus in fact, the present appeal has become infructuous.

7. We have heard the learned counsel for both the parties and considered their rival submissions.

8. The basic facts which we have detailed above are not in dispute. As far as the question of delay is concerned, Mr Dayal, learned senior counsel, submits that the question of delay was decided by the learned Single Judge in para 8 of order dated 09.04.2015 in W.P.(C) 685/2011, which reads as under:-

“8. In my opinion, petitioners cannot also be said to be guilty of delay and laches in approaching the Court, inasmuch as, the doctrine of delay and laches is applied by Courts if vested interests of the third parties would have come into existence in the meanwhile or the posts in question were either abolished or were merged in the subsequent selection process. Admittedly, none of this happened. It is not as if with respect to the 22 posts which remained vacant in the General Category and 12 posts in the OBC Category, other persons have joined, and hence those persons’ right would be affected because they would have to be removed from service before giving appointments to the petitioners. Since no appointments have been made and no third party vested interest has come into existence, the doctrine of delay and laches cannot be pressed against the petitioners. Also in the present case it is not that the petitioners and third parties are pitted for employment against each other for posts, inasmuch as, petitioners fall well within the available vacancies as compared to their waitlisted position and even after appointing the petitioners vacancies will still remain for appointing others in the waitlisted position. This argument urged on behalf of respondent no. 1 is therefore rejected.”

9. Learned counsel for the respondent has strongly opposed this appeal on the ground of delay and laches. The advertisement in this case was published as far back in the year 2007. The recruitment process was completed in the year 2010. Admittedly, the appellant herein is a

departmental candidate. The appellant has feigned ignorance that he was not aware that the persons similarly situated had approached this Court in the year 2011 and thereafter their writ petition was allowed in the year 2015 cannot be believed. There is also no explanation as to how the appellant learnt about the pendency of the SLP and what led to the filing of the application of impleadment and why such an application was not filed when the writ petition was pending. Additionally, we may note that even a wait list would have a life, the moment an additional or second advertisement is published, the wait listed candidates cannot stake any claim over the said list. It may also be noted that the appellant herein had participated pursuant to the advertisement published in the year 2010 but was not successful as he did not clear the written examination. Once having participated pursuant to the advertisement in the year 2010, the appellant, in our view, cannot stake any claim over the 2007 advertisement. In any case, much water has flown between 2007 when the first advertisement was published and now and in case the relief so claimed is granted the rights of other persons who would have been promoted subsequently would be affected. We find no grounds to entertain this appeal, the same is accordingly, dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 16, 2018//SU