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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on : 5th September, 2018
Judgment pronounced on: 10th September, 2018

+ **LPA 532/2017**

SUMITA WADHWA

.....Appellant

Through: Mr. Avijit Singh, Advocate.

Versus

INSTITUTE OF HUMAN BEHAVIOUR AND ALLIED
SCIENCES

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. The appellant, is a Staff Nurse in the District Mental Health Programme (DMHP) under the Institute of Human Behaviour & Allied Sciences (IHBAS), Government of NCT of Delhi. On 05.06.2012, she had applied for maternity leave w.e.f. 02.07.2012. Vide office order dated 30.06.2012, she was informed that her tenure with DMHP had expired on 04.03.2012 and her application for extension is pending consideration as the implementation of new guidelines by Ministry of Health, Government of India was under process. On 02.07.2012, the appellant apprised her medical condition to the Director, IBHAS and requested him to grant leave

as per the procedure being already followed. She proceeded on maternity leave on 02.07.2012 and resumed her services after 180 days i.e. on 29.12.2012. Vide office order dated 11.02.2013, the competent authority granted her 84 days leave i.e. from 02.07.2012 to 23.09.2012 as provided under Section 5 of the Maternity Benefit Act, 1961. Aggrieved by the said decision, the petitioner approached this Court and filed a writ petition, which was dismissed on 11.01.2017 by the learned Single Judge on the ground of delay and *laches*. Hence, the present appeal.

2. Learned counsel for the appellant on merits contended that the appellant was entitled for 180 days maternity leave as provided under Central Civil Services (Leave) Rules, 1972 which was also sanctioned to other similarly placed project staff or contract staff appointed by the respondent/IHBAS. Hence, the Office Order dated 11.02.2013 passed by the respondent is unjust, biased and illegal. He further contended that learned Single Judge erred in applying the ratio laid down in the case of ***State of Orissa Vs. Mamata Mohanty reported in (2011) 3 SCC 436*** to the present case and dismissed the writ petition on the ground of delay and *laches*.
3. We have heard the learned counsel for the appellant.
4. Admittedly, there is an inordinate delay of more than three years in filing the writ petition which is not in dispute and such delay can only be explained by the appellant.

5. In the case of *Prabhakar vs. Joint Director Sericulture Department and Ors.* reported in *AIR 2016 SC 2984*, the Apex Court has observed that :

36. 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"

6. In the case of *Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar and Ors.* reported in *AIR 2011 SC 2161*, wherein it has been held that :

“It is now well settled that the power of the High Court under Article 226 of the Constitution to issue an appropriate writ, order or direction is discretionary. One of the grounds to refuse relief by a writ court is that the Petitioner is guilty of delay and laches. Inordinate and unexplained delay in approaching the court in a writ is indeed an adequate ground for refusing to exercise discretion in favour of the Petitioners therein. The unexplained delay on the part of the Petitioner in approaching the High Court for redressal of their grievances under Article 226 of the Constitution was sufficient to justify rejection of the petition. The other factor the High Court should have taken into consideration that during the period of delay, interest has accrued in favour of the third party and the condonation of unexplained delay would affect the rights of third parties.”

7. It is well settled principle of law that "delay defeats equity". In the instant case, the appellant proceeded on leave from 02.07.2011 and

resumed her duties on 29.12.2012. The respondent vide its letter dated 11.02.2013 granted 84 days leave i.e. from 02.07.2012 to 23.09.2012 to the appellant instead of 180 days. The appellant had no grievance till 22.10.2016 but all of a sudden after a passage of more than three years she chose to file a writ petition against the which was dismissed on the ground of delay as the appellant failed to tender any plausible reason justifying such delay.

8. From the record, it is apparent that the appellant has been thoroughly negligent in evoking her rights and remedies available to her which speaks of her callous and irresponsible attitude and in her entire averments, the appellant failed to assign any reasonable, satisfactory or even a proper explanation for filing the subject writ at such a belated stage. It was incumbent upon appellant to show that besides acting bona fide, all possible steps within her power and control were taken to approach the Court without any unnecessary delay. However, this is not so in the present case. Therefore, applying the ratio laid down by the Apex Court to the present case, we find that the present appeal being devoid of any merit and is liable to be dismissed.
9. Ordered accordingly.

SANGITA DHINGRA SEHGAL, J.

G. S. SISTANI, J.

SEPTEMBER 10, 2018 / gr