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

% *Date of Judgment: 19th July, 2018*

+ LPA 690/2017

KIRTI JAIN

..... Appellant

Through: Mr.Ashok Agarwal, Advocate

versus

KULACHI HANSRAJ MODEL SCHOOL & ORS. Respondents

Through: Ms.Jyoti Singh, Sr.Adv. with
Mr.Tarun Khurana and Mr.Jaskaran
Singh, Advocates for Respondents
no.1 and 2.

Ms.Jyoti Taneja, Adv. for GNCTD/
Respondent no.3.

Mr.K.P.Tevathia, Legal Assistant,
Directorate of Education.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

LPA 690/2017 & C.M.38540/2017 (delay)

1. The appellant is aggrieved by the order dated 01.03.2017 passed by a learned Single Judge of this Court, by which the relief claimed was allowed in favour of the appellant herein and has been restricted to a period of three years i.e. three years prior to filing of the writ petition which was filed on 09.04.2015 and till the date of resignation of the appellant herein i.e. 25.03.2015.
2. Mr.Ashok Agarwal, learned counsel appearing for the appellant submits that the learned Single Judge has failed to take into consideration that the law of limitation does not apply to proceedings under Article 226 of

the Constitution, although the Court would be well within its right to deny the relief in case of unexplained delay and laches. However, in the present case, the delay had occurred on account of cogent reasons as the appellant had been constantly approaching the respondent No. 1 & 2 and demanding her right to be paid in terms of VIth Pay Commission. Attention of the Court is drawn to the fact that representations were made on 14.02.2011 and 11.05.2015 but no satisfactory response was received. Counsel further submits that the school cannot be allowed to enrich itself at the cost of the poor teacher and deprive her rightful benefits from the date of circular issued by the Directorate of Education dated 11.02.2009. It is contended that the action on the part of the school is arbitrary and thus, liable to be quashed. Counsel further submits that since the representations of the appellant remained undecided and since the appellant was not working in the school, she did not deem it appropriate to approach the Court. Ms.Jyoti Singh, learned Senior counsel appearing for the respondent No. 1 & 2 submits that the learned Single Judge has rightly denied the reliefs so claimed. The delay in approaching the Court is completely unexplained as it is not disputed that the circular sought to be relied upon was issued as far back as in the year 2009 and even as per the case of the appellant, the first representation was made in the year 2011 and then in 2015 and thereafter the writ petition was filed only in the year 2015. Counsel for the respondent No. 1 & 2 further submits that the respondent school has been contesting the applicability of the circular with regard to the appellant herein. According to the consistent stand of the respondents, the appellant is not entitled to the benefit of VIth Pay Commission as

she was performing her duties in an unrecognized school and not with the recognized school, which is respondent herein.

3. We have heard learned counsels for the parties. We may note that the learned Single Judge has allowed the writ petition filed by the appellant in part and has restricted the claim of the appellant to three years before filing of the writ petition. This aspect has been dealt with in para 8 (i) and (ii) of the judgment which read as under:

*8. (i) The fact that schools in Delhi have to pay the teachers' salaries as per the 6th Pay Commission Report cannot be doubted in view of the order of the DOE dated 11.2.2009, and therefore, petitioner will be entitled to her salary from the date when 6th Pay Commission Report became applicable to private schools in Delhi including the respondent no.1/school, and therefore the respondent no.1/school is directed to pay all the arrears which are due and payable to the petitioner by giving monetary emoluments in terms of 6th Pay Commission Report. However, since principles of the Limitation Act, 1963 apply to writ petitions by virtue of the judgment of the Supreme Court in the case of **State of Orissa and Another Vs. Mamta Mohanty** (2011) 3 SCC 436 accordingly petitioner will only be entitled to amounts of arrears for a period of three years i.e from the date of three years before filing of the writ petition and which has been filed on 9.4.2015 and till the date of resignation of the petitioner on 25.3.2015.*

(ii) I cannot agree with the contention urged on behalf of the counsel for the petitioner that since representations were made by the petitioner on 14.2.2011 and 11.5.2012, hence petitioner is entitled to extend the period of limitation, inasmuch as, mere pendency of the representations will not extend the period of limitation unless there was an acknowledgment by the respondent no.1/school that representations were pending favorable consideration.

4. In the case of ***Union of India and others vs. Tarsem Singh*** reported in **(2008) 2 SSC (L&S) 765**, it was held as under:

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

5. In the case of ***State of Orissa and others vs. Mamata Mohanty*** reported at **(2011) 3 SCC 436**, it was held as under:

“52. In the very first appeal, the respondent filed writ petition on 11-11-2005 claiming relief under the Notification dated 6-10-1989 w.e.f. 1-1-1986 without furnishing any explanation for such inordinate delay and on laches on her part. Section 3 of the Limitation Act, 1963, makes it obligatory on the part of the court to dismiss the suit or appeal if made after the prescribed period even though the limitation is not set up as a defence and

there is no plea to raise the issue of limitation even at the appellate stage because in some of the cases it may go to the root of the matter. (See Lachmi Sewak Sahu v. Ram Rup Sahu [AIR 1944 PC 24] and Kamlesh Babu v. Lajpat Rai Sharma [(2008) 12 SCC 577] .)

53. Needless to say that the Limitation Act, 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the respondent claimed the relief from 1-1-1986 by filing a petition on 11-11-2005 but the High Court for some unexplained reason granted the relief w.e.f. 1-6-1984, though even the Notification dated 6-10-1989 makes it applicable w.e.f. 1-1-1986.

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. (See Rup Diamonds v. Union of India [(1989) 2 SCC 356 : AIR 1989 SC 674] , State of Karnataka v. S.M. Kotrayya [(1996) 6 SCC 267 : 1996 SCC (L&S) 1488] and Jagdish Lal v. State of Haryana [(1997) 6 SCC 538 : 1997 SCC (L&S) 1550 : AIR 1997 SC 2366] .)”

6. Having regard to the aforesaid decisions, we find no infirmity in the judgment passed by the learned Single Judge. We find no merit in this appeal. The appeal along with C.M.38540/2017 is dismissed.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

JULY 19, 2018

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