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

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Date of Judgment: 27th May, 2019

+ LPA 352/2019
RAM NIWAS

..... Appellant

Through: Mr. Ashok Sekhri, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Monika Arora, Standing Counsel
with Mr. Abhishek Khanna and Mr.
Kushal Kumar, Advocates for UOI
Mr. Zoheb Hussain, Standing Counsel
for respondents No.2 & 3

CORAM:

**HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH**

G.S. SISTANI, J. (ORAL)

CM APPL.24204/2019 (Exemption)

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. Challenge in this appeal is to the order dated 1st April, 2019 passed by the learned Single Judge of this Court by which the writ petition No.3227/2019 filed by the petitioner-appellant herein stands dismissed on the ground of inordinate delay and laches.
4. Learned counsel for the appellant submits that the writ petition was filed well within the period of limitation and there is no delay in the

matter, which is evident from the fact that the appellant gained knowledge only in the year 2018. Reliance is placed on a Communication received by him in 2018, annexing an order dated 3rd July, 2009 informing the appellant that he was not entitled to a Selection Grade.

5. Learned counsel for the respondents No.2 and 3 submits that the writ petition is blatantly barred by delay and laches. He submits that the appellant was all along aware that he was not granted the Selection Grade. In fact, he was granted two ACPs on 9th August, 1999, which remained unchallenged. His cause of action, if any, had arisen in 1986 or at best in 1999.
6. We have heard learned counsels for the parties. The learned Single Judge in his order has noted that the petitioner was initially appointed as a Lab Assistant on 20.11.1967. The petitioner had been granted two ACPs on 09.08.1999, but his claim was that he was entitled to selection scale w.e.f. 01.01.1986. The petitioner had filed the writ petition impugning the order dated 03.07.2009 by which his claim for selection scale had been declined. The learned Single Judge has dismissed the writ petition by noting that the petitioner should have been more vigilant about his right. He did not approach the court after 01.01.1986 when the selection scale was not given to him. Thereafter, when the ACPs were given on 09.08.1999 even that order was not challenged. The writ petition has been dismissed on account of delay and laches.
7. The Hon'ble Supreme Court of India in the case of ***State of Orissa & Anr. vs. Mamata Mohanty (2011) 3 SCC 436*** has observed in paras 52, 53 and 54 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 *Lachhmi 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.”

8. We are conscious of the fact that no period of limitation has been prescribed under writ jurisdiction, but the Supreme Court has repeatedly held that there is no strait-jacket formula for allowing the writ petition

or dismissing them, purely on the ground of delay and laches. This is, of course, subject to the condition that the delay is satisfactorily explained.

9. The crux of the argument of the learned counsel for the appellant is that the appellant was actually entitled to a selection scale from 01.01.1986 and was wrongly given the ACP from 09.08.1999. He further submits that he became aware of his entitlement for grant of selection scale only on 25.04.2008 when a press note was published in the newspaper and which is when he submitted his request to the respondent. The request was rejected on 03.07.2009 and which order was communicated to him only on 31.03.2018 pursuant to his application under the RTI Act. He thus, submits that the writ petition was not barred by delay and laches and the learned Single Judge has erred in dismissing the same.
10. We have examined the judgment of learned Single Judge and the pleadings. There is no doubt that the cause of action, if any, for grant of selection scale arose in favour of the appellant on 01.01.1986, which is the date from which, he seeks the selection scale. Even assuming for the sake of arguments that the entitlement of the selection scale was known to the appellant only in 2008 through a press note, even then, the writ petition has been filed after 11 years from such knowledge. The plea that the order dated 31.03.2018 communicating to him the decision of 03.07.2009 gives cause of action to the appellant is also misconceived. If the appellant had made a request for grant of selection scale in 2008 and he did not receive any response, he should have been taken steps at that time itself for seeking a response to his request and in case, no communication was coming forth, it was at that stage that he should

have approached the court. Needless to say that the order of 31.03.2018 has been passed only because the appellant had chosen to file an application on 27.02.2018 seeking information under the RTI Act. There is no justification nor there can be any for the appellant to have waited from 2008 to 2018 to seek information under the RTI Act or as mentioned above to take steps for grant of selection scale. In our view, the learned Single Judge has rightly dismissed the writ petition on delay and laches. There is no infirmity in the impugned order. The appeal is accordingly dismissed.

G.S. SISTANI, J

JYOTI SINGH, J

MAY 27, 2019

s/ck



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