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

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Date of Judgment: 21.05.2019

+ LPA 353/2019

DAMODAR YADAV

..... Appellant

Through: Mr. Kirti Uppal, Sr. Advocate with Mr.
Rakesh Kumar & Ms. Tulika
Bhatnagar, Advocates

versus

FOOD CORPORATION OF INDIA & ORS

..... Respondents

Through: Mr. Om Prakash, Mr. R.R. Pathak &
Mr. Pradeep Kr. Tripathi, Advocates

+ LPA 354/2019

FOOD CORPORATION OF INDIA MAZDOOR
UNION (REGD)

..... Appellant

Through: Mr. Kirti Uppal, Sr. Advocate with Mr.
Rakesh Kumar & Ms. Tulika
Bhatnagar, Advocates

versus

FOOD CORPORATION OF INDIA & ORS

..... Respondents

Through: Mr. Om Prakash, Mr. R.R. Pathak &
Mr. Pradeep Kr. Tripathi, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

CM APPL. 24294/2019 IN LPA 353/2019

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

LPA 353/2019

LPA 354/2019 & CM APPL. 24299/2019

3. Both the LPAs arise out of common order dated 19.03.2019. At the outset, we may note that the learned Single Judge has dismissed the writ petitions on the ground of delay and laches. The Single Judge has observed that the writ petitions have been filed after more than 27 years from the date of departmentalisation of 451 workers by Food Corporation of India (hereinafter referred to as 'FCI').

4. Mr. Kirti Uppal, learned senior counsel appearing for the appellant submits that the learned Single Judge has failed to take into consideration that the appellant have put in long years of service. He further submits that similarly situated persons were departmentalised while the appellants were singled out. He further submits that the appellants became aware of the irregular manner of fixation of seniority only in the year 2015 upon query raised under the Right to Information Act.

5. Learned counsel for the respondent, who enters appearance on advance copy, submits that there is no infirmity in the order passed by the learned Single Judge and that there is gross unexplained delay of 27 years.

6. Reliance is placed on paras 5 and 6 of the order of the Single Judge, which we reproduce below:

“5. This Court is of the *prima facie* view that this writ petition is barred by delay and laches having been filed after more than 27 years from the date of departmentalisation of 451 workers by FCI. The remaining 171 workers later on inducted under the DPS system in the year 1994. This writ petition is also not maintainable on the ground that the aggrieved workers have equally efficacious remedy under the Industrial Disputes Act which they have not availed. The writ petition is also not maintainable since disputed question of facts are involved in this petition which cannot be decided without recording of the evidence.

6. There is no merit in the petitioner's contention that the petitioner became aware of the correct facts in 2015 in reply to RTI application. The petitioner union came into existence in the year 2002 and has no personal knowledge of the facts in the year 1991. The petitioner is not even aware of the settlement between FCI Workers Union and the management of FCI recorded in the minutes dated 26th/27th February, 1992."

7. He further submits that the appellants were all along aware of the order, which had been passed and merely because they filed the RTI in the year 2015 cannot give them a cause of action.

8. We have heard learned counsel for the parties.

9. 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. (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] .)”

10. We find no infirmity in the order of the learned Single Judge. The explanation rendered to explain the delay in approaching this Court is not acceptable. Even otherwise as rightly held by the Single Judge disputed questions so raised cannot be adjudicated in writ proceedings.

11. At this stage, Mr. Uppal submits that in case the appellants seek any other remedy, the observation made by the learned Single Judge should not come in their way and the matter should be decided after hearing the parties in accordance with law. In case the appellants seek any other remedy, the rights and contentions of both parties are kept open.

12. Both the LPAs, along with pending applications, are thus dismissed.

G.S.SISTANI, J

JYOTI SINGH, J

MAY 21, 2019//rd