

\$~10

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

% *Date of Order : 22nd May, 2019*

+ LPA 414/2017

MEENAKSHI BHARTI

..... Appellant

Through Mr. Lave Kumar Sharma, Mr. Manish
Gupta & Mr. Sumit, Advocates.

versus

THE MANAGER SD BANKEY BIHARI (AIDED SCHOOL) & ORS

..... Respondents

Through Mr. Prabhat Kumar, Advocate for R-2
& R-3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. The present appeal arises out of an order dated 20.12.2016 passed by a learned Single Judge of this court by which the writ petition filed by the petitioner/appellant herein stands rejected on the ground that the same was barred by delay and laches.
2. Counsel for the appellant submits that the learned Single Judge has erred in law by dismissing the writ petition on the ground that it is barred by delay and laches. Counsel contends that law of limitation has not been prescribed for filing a petition under Article 226 of the Constitution of India, even otherwise, it is submitted that after the period of probation was confirmed in the year 2013 within three years thereafter, the writ petition was filed. Counsel contends that the observations of the Supreme Court in the case of *State of Orissa and*

another Vs. Mamata Mohanty, reported in **2011 (3) SCC 436**, would not apply in the present case for the reason that the writ petition was filed within three years. Even otherwise, the learned counsel submits that the law of limitation does not *stricto sensu* apply to proceedings arising out of Article 226 of the Constitution of India. Reliance is placed on paras 25 to 30 in the case of ***Royal Orchid Hotels v. G. Jayarama Reddy***, reported in **(2011) 10 SCC 608**, which read as under :

25. Although the Framers of the Constitution have not prescribed any period of limitation for filing a petition under Article 226 of the Constitution of India and the power conferred upon the High Court to issue to any person or authority including any Government, directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari is not hedged with any condition or constraint, in the last 61 years the superior courts have evolved several rules of self-imposed restraint including the one that the High Court may not enquire into belated or stale claim and deny relief to the petitioner if he is found guilty of laches. The principle underlying this rule is that the one who is not vigilant and does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of the constitutional, legal or other right is not entitled to relief under Article 226 of the Constitution. Another reason for the High Court's refusal to entertain belated claim is that during the intervening period rights of third parties may have crystallised and it will be inequitable to disturb those rights at the instance of a person who has approached the Court after long lapse of time and there is no cogent explanation for the delay. We may hasten to add that no hard-and-fast rule can be laid down and no straightjacket formula can be evolved for deciding the question of delay/laches and each case has to be decided on its own facts.

26. In *Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur* [(1992) 2 SCC 598] this Court set aside the

judgment of the Patna High Court whereby the writ petition filed by the appellant against the demand notice issued for levy of cess for the period 1953-1954 to 1966-1967 was dismissed only on the ground of delay. The facts of that case show that the writ petition filed by the appellant questioning the demand for 1967-1968 to 1971-1972 was allowed by the High Court. However, the writ petition questioning the demand of the earlier years was dismissed on the premise that the petitioner was guilty of laches.

27. While dealing with the question of delay, this Court observed: (*Dehri Rohtas case* [(1992) 2 SCC 598] , SCC pp. 602-03, paras 12-13)

“12. The question thus for consideration is whether the appellant should be deprived of the relief on account of the laches and delay. It is true that the appellant could have even when instituting the suit agitated the question of legality of the demands and claimed relief in respect of the earlier years while challenging the demand for the subsequent years in the writ petition. But the failure to do so by itself in the circumstances of the case, in our opinion, does not disentitle the appellant from the remedies open under the law. The demand is per se not based on the net profits of the immovable property, but on the income of the business and is, therefore, without authority. The appellant has offered explanation for not raising the question of legality in the earlier proceedings. It appears that the authorities proceeded under a mistake of law as to the nature of the claim. The appellant did not include the earlier demand in the writ petition because the suit to enforce the agreement limiting the liability was pending in appeal, but the appellant did attempt to raise the question in the appeal itself. However, the Court declined to entertain the additional ground as it was beyond the scope of the suit. Thereafter, the present writ petition was filed explaining all the circumstances. The High Court considered the delay as inordinate. *In our view, the High Court failed to*

appreciate all material facts particularly the fact that the demand is illegal as already declared by it in the earlier case.

13. The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not as to physical running of time. Where the circumstances justifying the conduct exist, the illegality which is manifest cannot be sustained on the sole ground of laches. The decision in *Tilokchand Motichand v. H.B. Munshi*, (1969) 1 SCC 110] relied on is distinguishable on the facts of the present case. The levy if based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has been questioned though belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for.”

(emphasis supplied)

28. In *Ramchandra Shankar Deodhar v. State of Maharashtra* [(1974) 1 SCC 317 : 1974 SCC (L&S) 137]

the Court overruled the objection of delay in filing of a petition involving challenge to the seniority list of mamlatdars and observed: (SCC p. 327, para 10)

“10. ... Moreover, it may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Article 16 is itself a fundamental right guaranteed under Article 32 and this Court which has been assigned the role of a sentinel on the *qui vive* for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like.”

29. In *Shankara Coop. Housing Society Ltd. v. M. Prabhakar* [(2011) 5 SCC 607 : (2011) 3 SCC (Civ) 56] this Court considered the question whether the High Court should entertain a petition filed under Article 226 of the Constitution after a long delay and laid down the following principles: (SCC pp. 629-30, para 54)

“(1) There is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.

(2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.

(3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy.

(4) No hard-and-fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

(5) That representations would not be adequate explanation to take care of the delay.”

30. Another principle of law of which cognizance deserves to be taken is that in exercise of power under Article 136 of the Constitution, this Court would be extremely slow to interfere with the discretion exercised by the High Court to entertain a belated petition under Article 226 of the Constitution of India. Interference in such matters would be warranted only if it is found that the exercise of discretion by the High Court was totally arbitrary or was based on irrelevant consideration. In *Narayani Debi Khaitan v. State of Bihar* [Civil Appeal No. 140 of 1964 decided on 22-9-1964 (SC)] , Gajendragadkar, C.J., speaking for the Constitution Bench, observed:

“It is well settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party moving the High Court under Article 226 for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. *No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable*

delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably.”

(emphasis supplied)

3. Counsel for the appellant submits that in the case of ***Royal Orchid Hotels*** (*supra*), the Supreme Court has observed that the framers of the constitution have not prescribed any period of limitation for filing the petition under Article 226 of the Constitution of India. The Apex Court has also observed that while dealing with the objection regarding delay and laches, the court must consider as to whether the litigant has been vigilant or not and also as to whether any third party rights have been crystalized on account of delay and laches. In short, the Supreme Court has held that the claims which are delayed and the dead claims should not be entertained, but no straitjacket formula can be evolved for deciding the question of delay and laches and each case must be decided on its own facts. Applying the law to the facts of the present case, we are of the view that the petitioner/appellant has been able to render a plausible explanation for the delay in not approaching this court being that she was under probation and upon confirmation, she approached the court.
4. We may note that despite service, none has chosen to appear on behalf of the respondent/school. On the last date of hearing, we had again directed the petitioner to inform the school. A communication has been addressed to the respondent/school by speed post dated 17.05.2019. However, none has chosen to appear on behalf of the respondent/school in the matter.

5. It is the contention of the learned counsel for the appellant that three identically placed persons namely Smt. Alka Sharma, Smt. Monika Malhotra & Smt. Sonam Suryan received appointment letters on 06.02.2010 whereas the appellant, who was identically placed received an appointment letter on 25.01.2011. Learned counsel has also highlighted the fact that even prior to the issuance of appointment letters to all the four persons, the Directorate of Education had granted approval for the selection of the said four persons as teachers in respondent no.1's school on 01.02.2010. Counsel submits that the only reason for delay in issuance of the appointment letter was due to re-appointment and extension of service of one Punam Arora. In this backdrop, the following prayers were made in the writ petition :

“(i) issue writ, order, direction under Article 226 of the Constitution of India in the nature of mandamus or any other appropriate writ, order, direction, for issuing direction to the respondent no.1 to 3 to prepare seniority list and promotion roster and reckon the seniority of the petitioner as per selection panel 2009 and place the petitioner at appropriate place in the seniority list and promotion roster and further direct the respondent no.1 to 3 to grant all consequential benefits in pay and allowances including increment to the petitioner w.e.f. 06.02.2010 at par as her similarly situated persons have been granted in the interest of justice and equity.

(ii) any other order/orders/relief which this Hon'ble Court may deem fit and proper in the fact and circumstances of this may kindly be passed in favour of the petitioner.”

6. Learned counsel for the appellant submits that the date of employment of the appellant should not have been dependant on the re-employment of Punam Arora and the appellant should not have been singled out.

Moreover, it is pointed out that the appellant was appointed on a reserved category whereas Smt. Punam Arora pertains to a general category and if at all her appointment would impact any candidate, the candidate would be of general category and not the appellant.

7. We find force in the submission made by counsel for the appellant. As already noticed, four persons were selected by the selection committee for appointment as teachers in the respondent no.1's school vide resolution dated 18.12.2009. Three identically placed persons received appointment letters on 06.02.2010 while the appellant, who was identically placed received his appointment letter on 25.01.2011. This court cannot lose track of the fact that even prior to issuance of appointment letters, the Directorate of Education had granted approval for the selection of all four persons as teachers in respondent no.1's school on 01.02.2010. The only reason, which was provided to the appellant for issuance of appointment letter at a subsequent date was due to re-appointment and extension of one Smt. Punam Arora. In our view the re-appointment and extension of service of one Punam Arora could not have been a ground for issuance of an appointment letter to the appellant at a later date i.e. 25.01.2011, more so, when the appellant falls in the reserved category and Punam Arora was a teacher in the general category.
8. Resultantly, the order of learned Single Judge is set aside and prayer made in the appeal is allowed. The date of appointment of the petitioner/appellant shall be 06.02.2010 instead of 25.01.2011 and she would be entitled to all consequential benefits, which may accrue in her favour.

9. The LPA is allowed in above terms.

G.S. SISTANI, J

JYOTI SINGH, J

MAY 22, 2019

ck

