IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No.667 of 2018

Durga Kaur, W/o Late Jagarnath Ojha, R/o Village and P.O.-Ram Shahar, P.S.-Badhara (Ara) District-Bhojpur (Bihar).... ….Appellant

Versus

1. Steel Authority of India Ltd. represented through Chief Managing Director, Lodhi Road, P.O.-Lodhi Road, P.S.-Lodhi Road, Delhi-110003

2. The Managing Director, Steel Authority of India Ltd., Bokaro Steel Plant, Ispat Bhawan, Bokaro Steel City, P.O.+P.S.+District-Bokaro-827001

3. The General Manager (Personnel), Raw Material Division (SAIL), Industry House (6th Floor) 10, CAMAC Street, P.O.+P.S.-CAMAC Street, Kolkata-700017, West Bengal

4. The General Manager, Raw Material Division (SAIL), Bhawanathpur, P.O.+P.S.-Daltonganj, District-Palamau

5. The Assistant General Manager (Pers.) & PIO, Raw Material Division (SAIL), Industry House (6th Floor) 10, CAMAC Street, P.O.+P.S.-CAMAC Street, Kolkata-700017, West Bengal

6. Dy. General Manager (Personnel), Raw Material Division (SAIL), Bokaro Steel Plant, Ispat Bhawan, Bokaro Steel City, P.O.+P.S.+District-Bokaro …… ….. Respondents

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Appellant : Mr. Rajeeva Sharma, Sr. Advocate
: Mrs. Neetu Singh, Advocate
For the Resp.-SAIL : Mr. Indrajit Sinha, Advocate
: Mr. Vijay Kant Dubey, Advocate

ORAL JUDGMENT
09/Dated: 15.12.2020

The matter has been heard with the consent of learned counsel for the parties through video conferencing. There is no complaint about any audio and visual quality.

L.P.A. No.667 of 2018

The instant intra-court appeal is directed against the order/judgment dated 03.10.2018 passed by the learned Single Judge of this Court in W.P.(S) No.5599 of 2017, whereby and whereunder, the claim of the writ petitioner seeking death-cum-retiral benefits on compassionate appointment and family pension, claiming herself to be the widow of late Jagarnath Ojha said to have died in harness on 02.12.1974 while working under Steel Authority of India Limited, in short 'SAIL', at Bhawanathpur Lime Stone Mines has been declined to pass any positive direction by dismissing the writ petition.

2. The brief facts of the case are required to be referred herein which reads hereunder as:-

The writ petitioner happens to be the widow of the deceased employee, namely, late Jagarnath Ojha. Her husband was appointed in the year 1968 as Driller Staff in Bhawanathpur Lime Stone Mines on permanent basis, the services was confirmed on 01.07.1971 being Permanent Staff No.5360. He was died in harness on 02.12.1974. The writ petitioner was directed to submit all relevant documents and duly attested photographs for payment of death-cum-retiral benefits and also for fixation of family pension. The SAIL has not given any family pension and other benefits to the writ petitioner and as such, the information was obtained under Right to Information Act which was supplied to the writ petitioner stating therein that the husband of the writ petitioner was working, however, it was stated that as there is delay, his file cannot be traced.

The writ petitioner has pursued the matter before the authority but however, to that no effect, therefore, the writ petition was filed praying inter-alia therein for a direction to make payment of death-cum-retiral benefits, to provide appointment on compassionate ground and to release

the family pension.

The respondent-SAIL has appeared before the learned Single Judge taking the plea about non-availability of service record of the deceased.

The learned Single Judge after taking into consideration the fact that the husband of the writ petitioner has died in the year 1974 and the writ petition has been filed in the year 2017 i.e., after lapse of 43 years and further, no material particulars or supporting documents have been annexed to the writ petition.

3. Mr. Rajeeva Sharma, learned Senior Counsel appearing for the writ petitioner assisted by Mrs. Neetu Singh has submitted that the fact about employment of husband of the writ petitioner is not in dispute. The death in harness on 02.12.1974 is also not in dispute but as yet no terminal benefit, appointment on compassionate ground as also the family pension have given on the ground of non-availability of the record.

With respect to delay of 43 years on the date of filing of the writ petition, submission has been made to take lenient view on compassion.

4. Mr. Indrajit Sinha, learned counsel appearing for the respondent-SAIL has appeared and contested the case by defending the order passed by the learned Single Judge.

He submits that there is no infirmity in the impugned order since the writ petitioner has admittedly approached to this Court after lapse of 43 years and as such, on the ground of principle of delay and laches, the writ petition has rightly been dismissed.

5. We have heard the learned counsel for the parties and gone across the material available on record as also finding recorded in the impugned order.

The admitted fact herein is that the writ petitioner has raised the claim by filing the writ petition in the year 2017 for the cause of action which have occurred way back on 02.12.1974, the death of the husband of the writ petitioner.

6. The learned Single Judge has dismissed the writ petition on the ground of inordinate delay and laches.

7. This Court, in order to scrutinize the legality and propriety of the finding recorded by the learned Single Judge, has considered the judgment rendered by the Hon'ble Apex Court in the case of ***U.P. Jal Nigam & Anr. V. Jaswant Singh & Anr.*** reported in ***(2006) 11 SCC 464*****,** wherein on the ground of principle of delay and laches as under paragraph-9 to 11, it has been laid down that the delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution of India, for ready reference paragraph 9 to 11 reads as hereunder:-

> *"9.Similarly in Jagdish Lal v. State of Haryana reported in* ***(1997) 6 SCC 538*** *this Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the court, then such person cannot stand to benefit. In that case it was observed as follows: (SCC p. 542)*
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> *'The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Union of India v. Virpal Singh Chauhan reported in* ***(1995) 6 SCC 684****. The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage'*
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> *10. In Union of India v. C.K. Dharagupta reported in* ***(1997) 3 SCC 395*** *it was observed as follows: (SCC p. 398, para 9)*
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> *'9. We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P. Joshi v. Union of India gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit of Joshi case. In view of our finding that the benefit of the judgment of the Tribunal dated 17-3-1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief.'*
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> *11. In Govt. of W.B. v. Tarun K. Roy reported in* ***(2004) 1***

> ***SCC 347**, Their Lordships considered delay as serious factor and have not granted relief. Therein it was observed as follows: (SCC pp. 359-60, para 34)*
> *34. The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in State of W.B. v. Debdas Kumar reported in **(1991) Supp (1) SCC 138**. The plea of delay, which Mr Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a court of law."*

In the case of ***Harwindra Kumar v. Chief Engineer, Karmik & Ors.*** reported in ***(2005) 13 SCC 300,*** wherein, the Court refused to extend the benefit applying the principle of delay and laches. It was held that an important factor in exercise of discretionary relief under Article 226 of the Constitution of India is laches and delay. When a person who is not vigilant of his rights and acquiesces into the situation, his writ petition cannot be heard after a couple of years on the ground that the same relief should be granted to him as was granted to the persons similarly situated who were vigilant about their rights and challenged their retirement.

In the case of ***Govt. of West Bengal v. Tarun K. Roy & Ors.*** reported in ***(2004) 1 SCC 347***, Their Lordships considered delay as serious factor and have not granted relief. Therein it was observed at para-34 which reads hereunder as:-

> *"34.The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their*

> *part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in State of W.B. v. Debdas Kumar reported in* ***(1991) Supp (1) SCC 138****. The plea of delay, which Mr Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a court of law."*

8. In view of the aforesaid position of law, we have examined the factual aspect involved in this case wherefrom, it is evident that the husband of the writ petitioner was died on 02.12.1974 and for the first time an application was filed under Right to Information Act for seeking information which was provided on 08.02.2013 and thereafter, the writ petition was filed in the year 2017 and as such, there is delay of about 43 years.

The fact of laches and delay has been taken as a condition in the counter affidavit for dismissal of the writ petition coupled with the fact of non-availability of the record.

9. Learned Single Judge of this Court has agreed with the ground/submission advanced on behalf of respondent-SAIL and has dismissed the writ petition.

10. We, on the basis of the ratio laid down by the Hon'ble Apex Court as referred hereinabove, are of the view that the order passed by the learned Single Judge requires no interference on the ground of principle of delay and laches.

Further, the writ petitioner has not been able to produce any documents in substance of her claim.

11. In that view of the matter, the instant appeal lacks merit and accordingly, dismissed.

(Dr. Ravi Ranjan, C.J.)

Rohit/-
N.A.F.R.

(Sujit Narayan Prasad, J.)