

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: November 24, 2021

+ W.P.(C) 6515/2018, CM Nos. 24919/2018 & 29771/2020

ASHOK KUMAR

..... Petitioner

Through: Mr. Mahboob Alam Inayati,
Mr. Vishrut Raj, Mr. Rashid Hussain
and Mr. Anubhav Mehrotra, Advs.

versus

JAMIA MILLIA ISLAMIA AND ANR.

..... Respondents

Through: Mr. Fuzail Ahmad Ayyubi, SC with
Ms. Akanksha Rai, Adv. for JMI

**CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO**

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioner with the following prayers:

“That in light of the above, the petitioner humbly prays that this Hon’ble Court may be pleased to:

(a) Set aside the order dated 16.04.2018 bearing file no. 3588/AK/RO/ESTT/2018 passed by the respondent no 1;

(b) Set aside the promotion of respondent no 2 granted Vide office order dated 23.03.2017 F No. UGC-CAS/RPS/RO/JMI/2017 from lecturer

(senior scale to lecturer (selection grade) and all other subsequent benefits or promotions granted to her;

(c) issue any other writ, order or directions ex debito justitiae in the facts and circumstances of the case”

2. In substance, the challenge of the petitioner is to an order dated April 16, 2018 whereby the representation of the petitioner dated January 11, 2018 was considered by the respondent University in terms of the directions given by this Court on March 5, 2018 in *W.P.(C) 2014/2018* titled *Ashok Kumar v. Jamia Millia Islamia and Ors.* for his appointment as Reader in the respondent University from November 2006 instead of October 2009 and also for cancellation of promotion granted to respondent No. 2 Ms. Shikha Kapur as Lecturer (Selection Grade) w.e.f September 24, 2006 was rejected.

3. The facts as noted from the petition are, respondent No.2 Ms. Shikha Kapoor was appointed as Lecturer in the respondent University in the month of September, 1994. She was appointed as Senior Lecturer in September, 2000. On September 24, 2006, respondent No. 2 became eligible for promotion to Lecturer (Selection Grade). It is the case of the petitioner that in the Selection Committee meeting held on November 27, 2006, respondent No.2 was not recommended for promotion to the post of Lecturer (Selection Grade). In the year, 2006, an advertisement to the post of Reader in the Department of Adult and Continuing Education was issued by the respondent University. The petitioner who had applied against the

advertisement referred to above was selected to the post of Reader in the year 2006. The respondent No.2 subsequently went on study leave for a period of three years. In the year 2008, petitioner filed a writ petition in this Court bearing W.P.(C) 1202/2008 seeking a direction for his appointment as Reader in the respondent University.

4. It is noted that the counsel for the respondent during the hearing of the writ petition has referred to a communication written by the Registrar of the respondent University to the Secretary, Ministry of Human Resource Development, Government of India seeking a reference to the Visitor of the respondent University for a final decision inter alia in the case of the petitioner because the recommendation of the Selection Committee for appointment of the petitioner as Reader was declined by the Executive Council on December 6, 2006. The said writ petition was disposed of by this Court vide Order dated February 15, 2008 granting liberty to the petitioner to approach the Court after a final decision was made by the Visitor of the respondent University. Be that as it may, it transpired that the petitioner was appointed as a Reader in the respondent University vide letter dated July 29, 2009. The petitioner joined the said position on October 21, 2009. On completion of three years, i.e., January 21, 2012, the petitioner was appointed as an Associate Professor in the respondent University. It appears that vide Office Order dated March 23, 2017, respondent No.2 was promoted as Lecturer (Selection Grade) w.e.f September 24, 2006. It is also noted that the petitioner made a representation to

the UGC seeking cancellation of the promotion of the respondent No.2 as Lecturer (Selection Grade) w.e.f September 24, 2006. No response thereto was received by him which made him file W.P.(C) 2014/2018, which was decided on March 5, 2018 as stated above. The respondent No.2 and the petitioner have been promoted as Associate Professors w.e.f September 24, 2009 and October 21, 2012 respectively. At this stage, it is necessary to note one fact that on November 27, 2017, the petitioner was issued a communication conveying the approval of the Vice-Chancellor to make the petitioner as Convener and Member of the Departmental Research Committee ('DRC', for short). His stand is that during the meeting, respondent No.2 created a ruckus alleging that she being senior to the petitioner as an Associate Professor she should have been made Convener and Member of the DRC.

5. Counter-affidavit has been filed on behalf of the respondent University and respondent No.2.

6. The facts as noted above are not disputed except stating that the respondent No.2 joined the University on June 1, 1990 on the post of Associate Programme Coordinator (Training) and on September 23, 1994 joined the Department of Adult and Continuing Education and Extension as Lecturer.

7. Mr. Mahboob Alam Inayati, learned counsel appearing for the petitioner would submit that the grievance of the petitioner is the draft seniority list of Associate Professors as on December 31, 2017, issued on March 12, 2018, which says respondent No.2 is senior to the petitioner. According to him,

respondent No.2 who had served for 7½ years is junior to the petitioner. According to him, the grant of seniority is in violation of Para 3.2 of Schedule for Clause 6.8.0 of UGC Regulations, 2010 and also Statute 28 of Jamia Millia Islamia Act, 1988, ('JMI Act' for short) which provides, for the purpose of seniority, it is the length of continuous service in a particular grade which determines the seniority. He stated the ground on which the respondent University had rejected the representation is primarily on delay. It is also stated that the prayer for retaining the seniority of the petitioner is not belated for the reasons, it was only on December 7, 2017 that the respondent No.2 claimed herself to be senior to the petitioner and the draft seniority list as on December 31, 2017 showing the petitioner to be junior to the respondent No.2 came to the knowledge of the petitioner only in March, 2018. That apart, certain penalty imposed on the respondent No.2 for delay and breach of University bond in relation to her non-completion of Ph.D., was pending. He also stated that the respondent No.2 could not have been designated as Associate Professor without completion of service of three years in the grade of Lecturer (Selection Grade) as required under Para 3.2 of Schedule for Clause 6.8.0 of the UGC Regulations, 2010. It is also his submission that the respondent University has violated Statute 28 of the JMI Act by showing respondent No.2 to be senior to the petitioner in the draft seniority list of Associate Professors, dated March 12, 2018. He stated that the petitioner was appointed as Reader in the concerned Department and he was serving on the same post

since October 21, 2009 while the respondent No.2 was promoted to the rank of Lecturer (Selection Grade) only vide Office Order dated March 23, 2017 with retrospective effect from September 24, 2006, and therefore the continuous service of the petitioner in the grade of Reader / Associate Professor is around 7½ years more than that of respondent No.2. As a result, the petitioner should be treated senior to the respondent No.2 by the respondent University. In support of his submissions, he has relied upon the Judgments of this Court in the cases of *Najma Siddiqui (Prof.) v. University of Delhi, 1998 (46) DRJ 216*, *Prof. M.M. Aggarwal v. University of Delhi, LPA 257/2003* decided on January 9, 2006 and *Prof. Shreekant Gupta v. University of Delhi, W.P.(C) 13219/2018*, decided on March 15, 2021.

8. Mr. Fuzail Ahmad Ayyubi, learned Standing Counsel appearing for the respondent University on the other hand would state that the challenge of the petitioner to the promotion of the respondent No.2 and seeking antedation of his promotion from 2006 is highly belated. He stated that the petitioner having been appointed as Reader in the year 2009 had accepted the same without any demur and could not have sought the relief for antedation of his promotion for the first time in the year 2018. According to him, this Court in the Order while disposing of the writ petition in the year 2018 had kept the issue of delay and laches open. In support of his submission, he has relied upon the Judgments in the case of *Malcolm Lawrence Cecil D'Sauza vs Union of India & Ors., (1976) 1 SCC 599*; *B.S. Bajwa & Anr. vs State of Punjab, (1998) SCC (L&S) 611* and *R. S. Makoshi and*

Ors. vs. I. M. Menon [1982] 2 SCR 69. He also justified the draft seniority list as on December 31, 2017 issued on March 12, 2018 by stating that the respondent No.2, having been given promotion as Lecturer (Selection Grade) w.e.f September 24, 2006 and having been appointed Associate Professor on October 24, 2009 shall rank senior to the petitioner, who was only promoted as Associate Professor on October 21, 2012 and as such the challenge needs to be rejected.

9. Having heard the learned counsels for the parties and noting the prayers as made, it is clear that the challenge is primarily with regard to the communication dated April 16, 2018 whereby the representation of the petitioner was rejected. In his representation, the petitioner has primarily raised two issues, one that his appointment must relate back to 2006 and also that the promotion of respondent No.2 as Lecturer (Selection Grade) made from a back date of September 24, 2006, be set aside.

10. Insofar as the prayer of the petitioner that his appointment as Reader must relate back to 2006 is concerned, there is no dispute that the petitioner was appointed as Reader pursuant to a reference made to the Visitor of the University vide letter dated July 27, 2009, which position / post he joined on October 21, 2009. Concedingly, nothing has been shown to me to say that the petitioner had contested his appointment as Reader from the year 2009 and claimed the same must have been from 2006, until January 11, 2018, when he sent a representation on both the issues, i.e., claiming his appointment as Reader must relate back to November 27, 2006 and seeking cancellation of promotion of

respondent No.2 to the post of Lecturer (Selection Grade). This representation is after almost 9 years of his appointment as Reader.

11. Mr. Ayubbi is justified in taking a plea of delay and laches. It appears what triggered the filing of the writ petition was the objection taken by the respondent No.2 to the petitioner being made the Convener and Member of the DRC instead of her. In any case law of delay and laches is well settled. The Supreme Court has in the context of promotion held that a promotion which has been accepted without demur and protest cannot be challenged on the ground that the same must relate back after much time has elapsed. In this regard, I may refer to the Judgment of the Supreme Court in the case of ***State of Uttaranchal and another v. Shiv Charan Singh Bhandari and others*** , ***Civil Appeal Nos. 7328-7329 of 2013***, wherein in paras 13 to 22, it was stated as under:-

“13. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983. In C. Jacob v. Director of Geology and Mining and another¹, a two-Judge Bench was

dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus:

“Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.”

14. In Union of India and others. v. M.K. Sarkar², this Court, after referring to C. Jacob (supra) has ruled that when a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action.

The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In Karnataka Power Corp. Ltd. through its Chairman & Managing Director v. K. Thangappan and another³, the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

16. In State of Orissa v. Pyarimohan Samantaray⁴, it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in State of Orissa v. Arun Kumar Patnaik⁵.

17. In Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others⁶, a three-Judge Bench of this Court reiterated the principle stated in Jagdish Lal v. State of Haryana⁷ and proceeded to observe that as the respondents therein, preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

18. In State of T.N. v. Seshachalam⁸, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus:

“...filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

19. There can be no cavil over the fact that the claim of

promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in Ghulam Rasool Lone v. State of Jammu and Kashmir and another⁹.

20. In New Delhi Municipal Council v. Pan Singh and others¹⁰, the Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

21. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in P.S. Sadasivaswamy v. State of Tamil Nadu¹¹, wherein it has been laid down that a person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time, but it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.

22. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant

one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court.

True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades.

Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time.”

12. That apart, insofar as the plea of the leaned counsel for the petitioner that the respondent No.1 could not have ante-dated the promotion of the respondent No.2 as Lecturer (Selection Grade) from September 24, 2006 is concerned, the petitioner in his written submissions filed through his counsel has clearly

stated that since the main grievance of the petitioner is his seniority, therefore, the petitioner does not want to press this prayer any more to avoid complexity. So this Court takes the stand of the petitioner on record and states that insofar as this prayer (b) of the petitioner is concerned, that has been rendered infructuous. In any case, the petitioner has no locus to challenge the promotion of respondent No.2 to the post of Lecturer (Selection Grade), firstly, because he is not a contender to the said post. Secondly, the promotion of the respondent No.2 is in the year 2017 to a promotion post in accordance with the promotion scheme and could not have been denied.

13. Now the grievance of the petitioner with regard to the seniority as Associate Professor is concerned, the draft seniority list of Associate Professor was issued as on July 31, 2017 wherein the respondent No.2 has been shown at serial 42 with date of joining as Associate Professor being September 24, 2009 whereas the petitioner has been shown at serial no. 73 with date of joining as Associate Professor as October 21, 2012.

14. At this stage, I must state there is no prayer in the petition challenging the seniority list. So, the issue of seniority cannot be gone into. Moreover, persons whose seniority shall be affected have not been made party/respondents.

15. The Judgments of this Court, relied upon, in the case of *Najma Siddiqui (Prof.) (supra)*, *Prof. M.M. Aggarwal (supra)* and *Prof. Shreekanth Gupta (supra)* are not required to be considered in the facts of this case and in view of the nature of reliefs sought for inasmuch as no challenge has been made to the

seniority list. Hence the present petition for the reliefs prayed for is liable to be rejected. It is ordered accordingly. No costs.

CM Nos. 24919/2018 & 29771/2020

In view of my conclusion above, these applications are also dismissed.

V. KAMESWAR RAO, J

NOVEMBER 24, 2021/jg

