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

% *Date of Decision: 12th December, 2022*

+ W.P.(C) 16875/2022 & C.M. APPL. 53481/2022

BANWARI LAL MEENA

..... Petitioner

Through: Ms. Kiran Singh and Mr. Ajay
Sharma, Advocates.

versus

SECRETARY, LOK SABHA SECRETARIAT..... Respondent

Through: Mr. Pramod Gupta and
Ms. Poonam Meena, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner seeking a direction to the Respondent to appoint the Petitioner to the post of Housekeeper Grade-III in the Lok Sabha Secretariat/Respondent.
2. The narrative of the facts to the extent relevant to the present writ petition is that in 2017, Respondent advertised 27 posts of Housekeeper Grade-III in the pay band of Rs.5200-20200 with Grade Pay of Rs.1900/-, *vide* advertisement No. 05/2017 on a direct recruitment basis. Out of 27 posts, 2 posts were reserved for Scheduled Tribe ('ST') candidates.
3. Petitioner being eligible, applied for the post in the ST category and submitted all the relevant documents. After the Screening Test, the result was declared on 17.05.2018. Petitioner scored 32 out of 50 marks. Only one candidate was selected in the ST category at Serial No.131, with a score of 32.33 out of 50 marks. Since Petitioner was at number 2, with 32 marks in ST category, Petitioner was hopeful of

getting an appointment letter. However, it later came to light that the unfilled ST vacancy had been initially reserved for a Physically Handicapped Person.

4. Not getting any favourable response from the Respondent, on 07.08.2019, Petitioner wrote to the National Commission for Scheduled Tribes (hereinafter referred to as the 'Commission') bringing to light the injustice in not being appointed against the ST vacancy and on 18.09.2019, the Commission sought a reply from the Respondent.

5. It is averred that due to the Pandemic COVID-19, Petitioner could not pursue his case further and finally made a representation to the Respondent on 15.03.2021. Simultaneously, the Petitioner also sought information on 16.09.2021 under the Right to Information Act, 2005 (hereinafter referred to as the 'RTI Act') regarding one unfilled vacancy in the ST category. On 12.10.2021, Petitioner received a reply from the Respondent stating that one unfilled vacancy in the ST category was kept for being filled up by a physically handicapped person. Finding no other remedy, Petitioner filed the present writ petition.

6. Learned counsel for the Petitioner submits that there is no delay in approaching the Court. The result was declared in May, 2018, which came to the knowledge of the Petitioner much later and he immediately wrote to the Commission for taking action. Thereafter, the Commission sought a response on 18.09.2019 from the Respondent. In between, the matter could not be pursued further by the Petitioner on account of Pandemic COVID-19. On 15.03.2021, a representation was made, followed by an application under the RTI Act, on 16.09.2021. On receiving information under the RTI on

12.10.2021, the Petitioner approached the Respondent several times to issue him an offer of appointment but to no avail. Petitioner belongs to a marginalized section of the society and thus, the delay, if any, in approaching the Court be condoned.

7. Reliance is placed by the learned counsel for the Petitioner on a judgment of the Supreme Court in *Tukaram Kana Joshi and Others Through Power-of-Attorney Holder v. Maharashtra Industrial Development Corporation and Others*, (2013) 1 SCC 353, more particularly, on paragraphs 10, 11 and 12 thereof to contend that there is no hard and fast rule for condonation of the delay and laches and each case has to be tested on its own facts and circumstances and condoning the delay is really a matter of discretion of the Court.

8. Learned counsel for the Respondent opposes the maintainability of the writ petition on ground of delay and laches and submits that the advertisement was issued in the year 2017 and the process of appointment was completed in 2018. No steps have been taken by the Petitioner to approach the Court in the last four years. He submits that several Courts have, time and again, held that in matters of appointment, seniority and promotion, delay and laches play a vital role, as this affects third party rights and is also not in the interest of the employer.

9. I have heard the learned counsels for the parties and examined their submissions.

10. It is an undisputed fact that the advertisement, premised on which Petitioner claims appointment to the post of Housekeeper Grade-III, was issued in the year 2017. The result was declared on 17.05.2018, which is evident from the document placed on record by the Petitioner. Aggrieved by the fact that offer of appointment was not

issued to the Petitioner, despite being 2nd in the merit, against the two ST vacancies, Petitioner wrote to the Commission highlighting the alleged injustice meted out to him. As the chronology of dates and events goes in the writ petition, between the years 2019 to 2022, Petitioner has made one representation to the Respondent and one application under the RTI Act. There is nothing in the writ petition which would shed light on why the Petitioner did not approach the Court between 2019 till date. Even assuming that the Petitioner was seeking information under the RTI Act or had written to the Commission, nothing prevented the Petitioner to file a writ petition in 2019 against his non-selection. Letter dated 07.08.2019, written to the Commission by the Petitioner, itself shows that at least in 2019, Petitioner was aware of his non-appointment. In any case, it is a settled law that making representations does not extend limitation and/or condone delay and laches.

11. The Supreme Court has, time and again, emphasized that in matters of appointment, seniority and promotion, gross delay and laches can be fatal and the only exception that has been carved out is in matters of pay scales or pensionary benefits, where entertaining a claim filed belatedly, will not impact rights of other people. [**Ref.: Union of India and Others vs. Tarsem Singh, (2008) 8 SCC 648**]

12. It is no doubt true that Limitation Act does not strictly apply to writ proceedings under Article 226 of Constitution of India, however, the principles are clearly applicable in the form of doctrine of delay and laches and the reason is simple. If a suit is time barred, it cannot be countenanced that the right can be enforced for the same claim through a writ petition under Article 226 of the Constitution. Supreme Court has consistently rejected the contention that petition should be

considered ignoring delay and laches where a litigant wakes up from a deep slumber. [*Ref.: State of Orissa and Another v. Mamta Mohanty, (2011) 3 SCC 436*].

13. There is no quarrel with the proposition that the delay and laches are not an absolute bar and it would depend on the facts of each case, whether the Court would be inclined to entertain the petition, depending on the Petitioner making out a strong case to overcome the hurdle of delay. Certainly, it cannot be laid down as a matter of rule that there can never be a case where Courts cannot interfere in a matter after passage of a certain length of time, however, as a matter of self-imposed restriction, it would be a sound exercise of discretion for the Court to refuse to exercise the extraordinary power under Article 226 of the Constitution, where a person does not approach a Court at the earliest and merely stands by permitting things to happen for a long time and then approaches the Court with a stale claim to unsettle, settled matters.

14. The writ petition, as aforementioned, discloses no plausible reason why the Petitioner waited from 2018 to 2022 to ventilate his grievances. The delay is unexplained and being a matter of appointment, this Court finds no reason to exercise the writ jurisdiction at this belated stage.

15. Learned counsel for the Petitioner has relied on the judgment in *Tukaram Kana Joshi (supra)*. However, perusal of the judgment shows that the subject matter of the said case relates to acquisition of land under Section 4 of the Land Acquisition Act, 2013 and it is in this context that the Supreme Court held as follows:-

“10. In the case at hand, there has been no acquisition. The question that emerges for consideration is whether, in a democratic body polity, which is supposedly governed by the rule of law, the

State should be allowed to deprive a citizen of his property, without adhering to the law. The matter would have been different had the State pleaded that it has right, title and interest over the said land. It however, concedes to the right, title and interest of the appellants over such land and pleads the doctrine of delay and laches as grounds for the dismissal of the petition/appeal.

11. *There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. The functionaries of the State took over possession of the land belonging to the appellants without any sanction of law. The appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode. There is a distinction, a true and concrete distinction, between the principle of “eminent domain” and “police power” of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of “absolute power” which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have treated the landowner as a “subject” of medieval India, but not as a “citizen” under our Constitution.*

12. *The State, especially a welfare State which is governed by the rule of law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.”*

16. Learned counsel for the Petitioner, at this stage, places reliance on the judgment in *Vikrant Oil Carrier, Through Its Proprietor Chanderpoo v. Hindustan Petroleum Corporation Ltd. Through its Chairman and Others*, 2021 SCC OnLine HP 7188. A bare reading of the judgment shows that the dispute therein related to a tender matter. Both the judgments relied upon by the Petitioner, in my view, are distinguishable on facts and cannot be made applicable to the principles that govern service jurisprudence.

17. There is yet another reason why the present writ petition cannot be entertained at this belated stage. DoPT has consistently issued several Office Memorandums, which stipulate the period of validity of select panels. The purpose behind prescribing a validity of a selection panel is clearly to ensure that there is finality to the process. Once the validity of the panel expires, it is mandated that no selection will be made from the panel and generally, the period of validity is one year, extendable by a period of six months. If the writ petition is allowed, as urged by the Petitioner, it would lead to setting up a precedent where no selection process would reach finality and would remain open ended permitting any aspiring candidate to challenge the process and seek its reopening at any point in time. Even by this yardstick, Petitioner cannot be permitted to re-open a selection process after four years of its conclusion.

18. For the aforesaid reasons, the writ petition along with pending application is dismissed on ground of delay and laches.

JYOTI SINGH, J

DECEMBER 12, 2022/rk/shivam