



2023:DHC:9176



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

% **Pronounced on: 20th December, 2023**

+ W.P.(C) 16086/2022 & CM APPL. 50213/2022, CM APL.9285/2023, CM APPL. 13419/2023, CM AL.13430/2023, CM APPL. 20791/2023

MUKESH SAIN & ORS. Petitioners

Through: Mr. Anunaya Mehta and Mr. Vinayak Thakur, Advocates

versus

PRAGATI POWER CORPORATION LIMITED & ORS.

..... Respondents

Through: Mr. S. Wasim A. Quadri, Sr. Advocate with Mr. R. K. Vats, Mr. Saeed Qadri and Mr. Sahil Gupta, Advocates for R-1 and R-2

Ms. Laavanya Kaushik, Mrs. Taniya Ahlawat, Mr. Nitesh Kumar Singh, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates for R-3 for Mrs. Avnish Ahlawat, SC

Mr. Vinay Kr. Garg, Sr. Advocate with Mr. Parv Garg, Mr. K. S. Rekhi and Mr. Pawas Kulshrestha, Advocates for R-4 to R-26

Mr. Nitesh Gupta, Advocate in CM APPL. 50213/2022, CM APL.9285/2023, CM APPL. 13419/2023, CM AL.13430/2023, CM APPL. 20791/2023



CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant writ petition has been filed under article 226 of Constitution of India praying for the following reliefs:

- a) *Pass an appropriate writ or order quashing and setting aside the 'combined seniority list' and 'combined list of posts' maintained by the Respondents No. 1 and 2;*
- b) *Pass an appropriate writ, order or direction directing the Respondents to carry out promotions for the Petitioners against the posts available in Respondent No. 1 Company and to not promote any employee of Respondent No. 2 Company against a post available in the Respondent No. 1 Company;*
- c) *In the alternative to prayers (i) and (ii), pass a writ, order or direction to Respondents give effect to an amended promotion policy formulated so as to give prioritized promotional avenues to employees of Respondent No. 1 to posts under Respondent No. 1 such that posts are first offered to employees of Respondent No. 1 and only thereafter, offered to employees of Respondent No. 2."*

FACTUAL MATRIX

2. The relevant facts necessary for the adjudication of the instant petition are reproduced hereinbelow:

- a) On 20th November, 2001, the Government of National Capital Territory of Delhi ('GNCTD' hereinafter) in exercise of powers conferred under Section 60 read with Sections 15 and 16 of Delhi Electricity Reforms Act, 2000 ('DERA' hereinafter) notified the Delhi Electricity Reform (Transfer Scheme) Rules 2001



(‘Transfer Scheme Rules’ hereinafter) providing for the reorganization of the erstwhile Delhi Vidyut Board (‘DVB’ hereinafter) and its transfer to the following five companies namely:

- *The Delhi Power Supply Company Limited (TRANSCO);*
- *Indraprastha Power Generation Company Ltd. (GENCO) (respondent 2 herein);*
- *North-Northwest Delhi Electricity Distribution Company Ltd.;*
- *South-West Delhi Electricity Distribution Company Ltd.,*
- *Central-East Delhi Electricity Distribution Company Ltd.,*

- b) Further, the Delhi Power Company Limited was formed as a holding company in respect of the 5 above stated successor entities. All six companies were registered in July 2001. A separate company namely Pragati Power Company Limited (respondent no.1 herein) was incorporated by the GNCTD.
- c) The schedules to the Transfer Scheme Rules listed out the assets and liabilities of each of the undertakings that were to be transferred to and vested in the GNCTD, TRANSCO, GENCO and each of the three DISCOMs from the appointed date. The transfer Scheme was brought into force with effect from 1st July, 2002.
- d) The respondent no.1 i.e., Pragati Power Corporation Limited (‘PPCL’ hereinafter) and the respondent no.2 i.e., Indraprastha Power Generation Company Limited (‘IPGCL’ hereinafter) are



power generation companies which were incorporated on 19th January, 2001 and 4th July, 2001 respectively, after the unbundling of the erstwhile DVB and started doing business with effect from 1st July, 2002.

- e) The present petitioners were appointed by the respondent no.1 in the month of September, 2009 to the post of Assistant Manager (Technical) ('AM (T)' hereinafter). The petitioners were initially appointed on probation basis, and post completion of probation, they were confirmed against their posts *vide* office order dated 27th December, 2011.
- f) In the year 2011, the respondent proposed for a re-organization of the respondent no.1 and 2 based on an agenda note titled "*re-organization of IPGCL-PPCL [item No. 54.2.7/50.2.2]*" for the meeting of the Board of Directors ('BOD' hereinafter) of both the respondents.
- g) The above stated agenda note was put before the Board of Directors of respondent no. 1 and 2 at the meeting held on 15th February, 2011 wherein, the same was approved and an appropriate action plan was proposed and placed before the board for re-organization of the respondents.
- h) Subsequently, in the year 2012, another agenda note titled "*re-organization of IPGCL-PPCL [item No. 59.4.1 / 56.4.1]*" was put forth in the meeting before the BOD of both the respondents.
- i) The above stated agenda note was approved by the BOD, with certain modifications, essentially approving the proposal for having unified promotion rules and a combined seniority list for



- promotions to a combined list of posts at the respondent no. 1 and 2.
- j) Subsequently, in the year 2015, the application seeking approval for the scheme of 'merger and amalgamation' of respondent no. 1 and 2 were found to be 'not feasible' and the same was intimated *vide* letter dated 7th October, 2015 and reiterated *vide* another letter dated 16th December, 2015.
- k) Thereafter, the respondents *via* their respective 'Annual Reports' published, after the above stated intimation date, to its effect, stating categorically that the scheme of merger and amalgamation of the said companies has been found to be not feasible considering the current scenario, wherein, issues pertaining to the union/associations are yet to be resolved.
- l) The petitioners after serving the requisite period (4 years post appointment) were granted a time-bound promotion to the post of Deputy Manager (Technical) (DM(T) hereinafter).
- m) The respondent no. 1 and 2 prepared and published a combined seniority list of all employees belonging to respondent no. 1 and 2 for the posts of DM (T) and AM (T) *vide* office order dated 15th February, 2016.
- n) The petitioners and other aggrieved employees sent various representations addressed to the Chairperson and MD of respondent no. 1 and 2.
- o) The respondent no. 1 and 2, *vide* office order dated 8th July, 2022, granted to the petitioner, a 'time-bound promotion scale ('TBPS' hereinafter)' to the post of Manager.



p) The petitioners have challenged the unified promotion rules, wherein, a combined seniority list for promotions to a combined list of posts is effectuated. Since the representations filed by the petitioners have gone unanswered, the petitioners have approached this Court by way of the present writ petition.

SUBMISSIONS

(on behalf of petitioners)

3. Learned counsel appearing on behalf of the petitioners submitted that the petitioners have preferred this instant petition challenging the unified promotion rules, wherein, a combined seniority list for promotions to a combined list of posts is effectuated by the respondent no.1 and 2.

4. It is submitted that the intention of the BOD at the meeting held on 15th February, 2011 was clear that a re-organization shall take effect, wherein, employees of respondent no.2 were proposed to be transferred to respondent no.1 under the transfer/absorption scheme. Since this very scheme could not be fruitfully implemented, the BOD completely changed the course of the re-organization at the meeting held on 15th February, 2012, essentially opting to, illegally, unification of the company by charting out a 'common seniority list', 'common list of posts' and a 'unified promotion policy' for both the respondents.

5. It is submitted that a proposed scheme for merger and amalgamation of respondent no.1 and 2 had been pending action for a long time however, due to various disputes/issues flagged between the union and the management, the proposed scheme could not be implemented and the merger fell short and the pending merger



application was found to be not feasible by the Ministry of Corporate Affairs, Government of India which was intimated *vide* letter dated 7th October, 2015 and the same was reiterated *vide* letter dated 16th December, 2015.

6. It is submitted that the decisions taken at the meeting dated 15th February, 2012 are *ex facie* illegal and contrary to the law, since the merger/amalgamation of the companies could not succeed in terms of the provisions of the Companies Act, 1956 and the unification scheme could not have nonetheless commenced in practice.

7. It is submitted that it can be assumed that the Board was aware of the illegality of its actions and decided to implement the illegal and *mala fide* proposal for 'unification' of the Companies.

8. It is submitted that although the agenda item for the meeting held on 15th February, 2012, was regarding the objections to the impugned schemes, however, the petitioners being the junior most in the hierarchy did not speak at that time leading to said situation turning out to the detriment of the said employees.

9. It is submitted that a combined seniority list of all employees belonging to respondent no. 1 and 2 was not published by the respondents during the pendency of the proposed merger application, however, the same was published immediately after the rejection of the merger application the respondent companies.

10. It is submitted it is completely illegal to formulate a promotional scheme which consists of a 'combined seniority list' and 'combined seniority posts' for the employees of both entities as the said entities have separate legal identity.



11. It is submitted that the statutory auditor of respondent no.1 had also flagged the said issue and the same could be observed under the 19th Annual Report, however, the same were not relied upon by the BOD.

12. It is submitted that respondent no.1 had a total of 40 sanctioned posts of Manager (T) and an employee possessing the required degree and having completed 4 years of service at the post of DM (T), would be qualified for promotion to 75% posts (reserved to be filled *via* promotion) of Manager (T) as per the Recruitment and Promotion Regulation issued by respondent no.1 as on 29th April, 2009.

13. It is submitted that petitioners have submitted various representations requesting the respondents that the vacancies in respondent no.1 shall be filled-in by employees of respondent no.1 only, however, the requests and pleas of the petitioners have gone unanswered; and a situation continues to prevail.

14. It is submitted that the instant petition has been filed expeditiously and without any delay and the cause for the petitioners to challenge the actions of respondents arose in the year 2022 when the petitioners were not promoted to a higher post.

15. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner seeks that the instant petition may be allowed, and the relief be granted, as prayed.

(on behalf of Respondent)

16. *Per Contra*, the learned counsel appearing on behalf of the respondent nos.1 and 2 vehemently opposed the present petition submitting to the effect that the instant petition has been preferred by



the petitioners after a delay of more than 10 years and the same is liable to be dismissed since it suffers from delay and laches.

17. It is submitted that the instant petition may be dismissed solely on the ground of 'delay and laches', as the instant petition has been filed after an unreasonable delay of 10 years and is barred by the doctrine of delay and laches.

18. It is submitted that the petitioners had ample opportunities since the inception and approval of the 2012 policy, to file their objections particularly to the 'combined seniority list' and 'combined seniority posts', but they failed to avail any such recourse before this Court.

19. It is submitted that in order to evade inexplicable and inordinate delay of almost 10 years on their plea, the petitioners have sought to play safe by resorting to the plea of 'continuing wrong' to challenge the promotional scheme. To substantiate the argument the respondents relied on the reasoning stated by the Hon'ble Supreme Court in the matter of *Union of India & Ors. v Tarsem Singh; (2008) 8 SCC 648*.

20. It is submitted that the Committee of Directors in the meeting held on 22nd June, 2012, finalized a combined gradation list for Assistant Manager (AM) and Equivalent based on the 2012 policy. The above stated list was circulated *vide* office order dated 30th August, 2012 after having finalized post inviting objections from all concerned and circulation of the provisional seniority list of 2011 and the same was finalized after it did not receive any objections from the employees.

21. It is submitted that 64 executives including the petitioners, working in the grade of AM (T) were promoted to the post of Deputy



Manager (T) *vide* office order dated 21st January, 2014 on the recommendations of the DPC ('Departmental Promotion Committee' hereinafter) and the same was based on the combined sanctioned strength and combined gradation list as approved *vide* the 2012 policy.

22. It is submitted that a provisional combined seniority list of officers working on a regular basis as on 31st March 2015 in both organisations was prepared and circulated *vide* office order dated 16th April, 2015 for inviting objections from the concerned individuals, but no objection or representation of any sort was preferred by the any of the petitioners.

23. It is submitted that as per the extant system of promotion, the only procedure that exists in both organizations is by way of a combined number of posts for the post of a Manager (Technical) and Sr. Manager (Technical). Thus, vacancies arising against these combined posts cannot be segregated and filled in separately by any of the organization.

24. It is submitted that the employees of erstwhile DVB consisted of two sets of employees (i) the ones from the erstwhile DVB and the (ii) the ones recruited by IPGCL post unbundling i.e., 2002. The service conditions of the first set of employees are governed by the Tripartite Agreement dated 28th October, 2000 whereas the same conditions are not applicable to the second set of employees.

25. It is also submitted that the earlier management undertook and attempted to have a separate promotion policy for both the organizations but in order to meet the conflicting views of the company personnel the same could not be finalized.



26. It is submitted that the instant petition also does not seek to challenge the 2012 policy *per se*, whereas the prayer seeks to challenge and confine itself to the quashing of the ‘combined seniority list’ and ‘combined seniority posts’, which are inseparable from the 2012 policy.

27. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondents prayed that the present petition, may be dismissed on the grounds of delay and laches, and also being devoid of any merits, may be dismissed.

ANALYSIS AND FINDINGS

28. Heard the learned counsel for the parties and perused the records.

29. The instant petitioners have approached this Court seeking an appropriate writ for quashing and setting aside the ‘combined seniority list’ and ‘combined list of posts’ maintained by the respondents no. 1 and 2 and at the same time direct the respondent no. 1 to carry out promotions for the petitioners against the posts available in respondent no. 1 and to not promote any employee of respondent no. 2 against a post available in the respondent no. 1.

30. In rival submissions, the learned counsel appearing on behalf of the respondents, have contended that the respondent companies are well within their rights in effectuating the contended promotional scheme of 2012 as the said resolution was approved by the BOD of both the companies and when the same were implemented, no representation and objections to the same were ever submitted by the petitioners or any other person.

31. It is primary submission of the respondent companies that the instant petition suffers inadvertent delay, and the petition shall be



dismissed on this very ground alone.

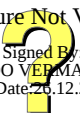
32. Having heard both parties at length, following issue emerge before this Court for adjudication-

Whether the instant petition challenging the ‘combined seniority posts’ and ‘combined seniority lists’, is maintainable on the account of suffering from ‘delay and laches’ and ‘doctrine of acquiescence’?

33. At this juncture it is important to deal with the aspect of the preliminary contentions of the respondents pertaining to setting aside the instant petition on the sole ground of ‘delay and laches’ as the instant petition has been filed after a delay of more than 10 years. Thus, it is imperative for this Court to refer to and highlight the settled principle as enunciated and expounded by the Hon’ble Supreme Court and discuss the same in context to the matter at hand.

34. In *Tilokchand Motichand v. H.B. Munshi*, (1969), 1 SCC 110, the 5 Judges Constitutional Bench of the Hon’ble Supreme Court extensively carved out the principle pertaining to ‘doctrine of delay and laches’. The relevant portion of the judgement is reproduced herein:

“14. Article 32(2) of the Constitution confers a judicial power on the Court. Like all judicial powers, unless there is an express provision to the contrary, it must be exercised in accordance with fundamental principles of administration of justice. General principles of res judicata were accordingly applied by this Court in Daryoo v. State of UP and Amalgamated Caulfields Ltd v Janapada Sabha, Chindwara understand that one of the fundamental principles of administration of justice is that, apart from express provisions to the contrary, stale claims should not be given effect to. But what is a stale claim? It is not denied that the Indian Limitation Act does not directly apply to a petition





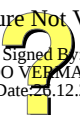
under Article 32. Both the English Courts and the American Courts were confronted with a similar problem. In the United States the Federal Courts of Equity solved the problem thus:

"Except, perhaps, where the statute by its express terms applies to suits in equity as well as to actions at law, or where the jurisdiction of law and equity is concurrent, the rule appears to be that Federal Courts sitting in equity are not bound by state Statutes of limitation. Nevertheless, except where unusual conditions or extraordinary circumstances render it equitable to do so, the Federal Courts usually act in analogy to the State statutes of limitation applicable to cases of like character." (Vol. 34, American jurisprudence, Limitation of Actions. Section 54)

15. In Courts of Admiralty, where the statutes of limitation do not control proceedings, the analogy of such statutes is ordinarily followed unless there is something exceptional in the case (ibid).

16. Story on Equity Jurisprudence states the legal position thus:

"It was, too, a most material ground, in all bills for an account, to ascertain whether they were brought to open and correct errors in the account recenti facto, or whether the application was made after a great lapse of time. In cases of this sort, where the demand was strictly of a legal nature, or might be cognizable at law, courts of equity governed themselves by the same limitations as to entertain such suits as were prescribed by the Statute of Limitations in regard to suits in courts of common law in matters of account. It therefore, the ordinary limitation of such suits at law was six years, courts of equity would follow the same period of limitation. In so doing they did not act in cases of this sort (that is, in matter of concurrent jurisdiction) so much upon the ground of analogy to the Statute of Limitations, as positively in obedience to such statute. But where the





demand was not of a legal nature, but was purely equitable or where the bar of the statute was inapplicable courts of equity had another rule, founded sometimes upon the analogies of the law, where such analogy existed, and sometimes upon its own inherent doctrine, not to entertain stale or antiquated demands, and not to encourage laches and negligence. Hence, in matters of account, although not barred by the Statute of Limitations, courts of equity refused to interfere after a considerable lapse of time, from considerations of public policy, from the difficulty of doing entire justice, when the original transactions had become obscure by time, and the evidence might have been lost, and from the consciousness that the repose of titles and the security of property are mainly promoted by a full enforcement of the maxim, vigilantibus, non dormientibus jura subveniunt. Under peculiar circumstances, however, excusing or justifying the delay, courts of equity would not refuse their aid in furtherance of the rights of the party, since in such cases there was no pretence to insist upon laches or negligence, as a ground for dismissal of the suit and in one case carried back the account over a period of fifty years." (Third Edn. p. 224, Section 529)

17. In England, as pointed out by Bachawat, J. the Court of Chancery acted on the analogy of Statute of Limitation (vide Halsbury, Vol. 14, p. 647, Article 1190)

18. It seems to me, however, that the above solution is not quite appropriate for petitions under Article 32. A delay of 12 years or 6 years would make a strange bed-fellow with a direction or order or writ in the nature of mandamus, certiorari and prohibition. Bearing in mind the history of these writs I cannot believe that the Constituent Assembly had the intention that five Judges of this Court should sit together to enforce a fundamental right at the instance of a person, who had without any reasonable explanation slept over his rights for 6 or 12 years. The history of these writs both in England and the USA convinces me that the





underlying idea of the Constitution was to provide an expeditious and authoritative remedy against the inroads of the State. If a claim is barred under the Limitation Act, unless there are exceptional circumstances, prima facie it is a stale claim and should not be entertained by this Court. But even if it is not barred under the Indian Limitation Act, it may not be entertained by this Court if on the facts of the case there is unreasonable delay. For instance, if the State had taken possession of property under a law alleged to be void, and if a petitioner comes to this Court 11 years after the possession was taken by the State, I would dismiss the petition on the ground of delay, unless there is some reasonable explanation. The fact that a suit for possession of land would still be in time would not be relevant at all. It is difficult to lay down a precise period beyond which delay should be explained. I favour one year because this Court should not be approached lightly, and competent legal advice should be taken and pros and cons carefully weighed before coming to this Court. It is common knowledge that appeals and representations to the higher authorities take time, time spent in pursuing these remedies may not be excluded under the Limitation Act but it may ordinarily be taken as a good explanation for the delay.”

35. In ***Shiba Shankar Mohapatra v. State of Orissa***, (2010) 12 SCC 471, the Hon’ble Supreme Court observed that in cases where a seniority list has been fixed, circulated, and remains in existence for a reasonable period, the same shall not be entertained subsequently. The relevant portion of the judgement is reproduced herein:

29. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the court is guilty of delay and laches. The court exercising public law jurisdiction does not



encourage agitation of stale claims where the right of third parties crystallizes in the interregnum (Vide Aflatoon v. LL Governor of Delhi; State of Mysore v. V.K. Kangan, Municipal Council, Ahmednagar v. Shah Hyder Beglinder j Gupto v. Union of India; Shiv Dass v. Union of India A.P. SRTC v. N. Satyanarayano and City and industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwal.

30. Thus, in view of the above the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In KR. Mudgal, this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.

36. The Hon'ble Supreme Court in ***Union of India & Anr. v. Tarsem Singh (2008), 8 SCC 648*** observed in context to service matters that a stale and belated claim shall be preliminarily rejected solely on the ground of delay and laches. The relevant part of the said judgment is reproduced herein:

“5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing



source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

37. In reference to the cases discussed above it can be concluded that, the Courts exercising writ jurisdiction shall not encourage agitation of stale claims where the right of third parties crystallizes in the interregnum and that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion.

38. Furthermore, it is also clarified from the above-cited judicial dicta that there exists an exception to the rule of delay and laches that if the matter pertains to a continuous wrong but there also exists an exception to the exception stating that if the grievance related to an administrative order and affects the settled rights of third parties, no such claim shall be entertained.

39. Therefore, in light of the said position of law, this Court needs to determine whether the petitioner's case falls within the ambit of exceptions provided by the Hon'ble Supreme Court.



40. At this juncture it is imperative to deal with the aspect of the doctrine of acquiescence as applicable to the instant petition on considering the aspect where the petitioners have stayed silent for a long period of time and have sort the benefit of promotion under the challenged promotional scheme of 2012.

41. Thus, it is pertinent for this Court to refer to and highlight the yardstick followed by the Hon'ble Supreme Court and discuss the same in context to the matter at hand.

42. While dealing with a matter where the condition relating to seniority was not challenged immediately, the Hon'ble Supreme Court in ***M.P. Palanisamy v. A. Krishnan*, (2009) 6 SCC 428**, observed that they cannot disown the condition at a later stage. The relevant portion of the judgement is reproduced herein:

“28. As has already been stated, the contention of the appellants is that they had all the qualifications for holding the posts of Postgraduate Assistants when they were appointed under Rule 101) and their service was also without any breaks and they were ultimately regularised in the year 1988. Therefore, though the act of the State Government in regularising them was correct, the provision that their seniority will be below those who were selected by T.N. PSC in 1986, is not correct.

29. Ms Nalini Chidambaram, learned Senior Counsel appearing on behalf of the appellants, along with Ms Indu Malhotra and Mr. M.N. Krishnamani, learned Senior Counsel, firstly urged that when a candidate is appointed under Rule 10co/XT) on ad hoc basis and is subsequently regularised, then ordinarily, his seniority has to be reckoned from the date when he was first appointed, provided he has all the necessary qualifications for the job. There can be no dispute with this proposition generally, however, it must be



borne in mind that though the appellants herein had the necessary qualifications at the time of their initial appointment under Rule 10(a)(i)(1) and though they were subsequently regularised also, the regularisation was conditional regularisation, which was done way back in 1988. The condition regarding the seniority was explicit in the said regularisation, which is clear from a mere reading of GOMs No. 1813.

30. *It cannot be forgotten that this regularisation was all along accepted by the present appellants. Once they chose to accept the regularisation which was conditional, then it would have to be borne in mind that they have accepted the conditions also, it cannot be countenanced that only the favourable part of the GOMs was accepted by them and the unfavourable part was reject ed. If they had to do it, they had to challenge the GOMS immediately. They did not do it, instead they waited almost for six years, when for the first time, they came out with an original application wide OA No. 3617 of 1994. Again, when the matters were decided in the Writ Petitions Nos. 2911 and 3041 of 1998 on 24-3-1998 and the seniority prayed for on the basis of initial appointment was refused to them, they kept quiet, only to raise the same demand again in 2003 when the panel was prepared.*

31. *The panel is absolutely correct in the light of GOMS No. 1813, The appellants merely raised a lame plea that they did not challenge GOMs No. 1813, as they were expecting themselves to placed over and above the TN. PSC-selected candidates. Such could never be the position in the wake of plain language of GOMs No. 1813. This is one of the main reasons why the claim of the appellants has to be rejected. The aspect of conditional regularisation, therefore, had to be kept in mind.*

32. *The further sinister silence for about six years and thereafter, till 2003 in spite of adverse judgments, also goes*



against the appellants. The learned Senior Counsel for the appellants very heavily relied on the change of the Government's stand. It was pointed out that the Department had all along given the interpretation that the second condition in GOMs No. 1813 applied only when the candidates appointed under Rule 10(a)(i)(1) and the TN. PSC-selected candidates came in the same year. That may be so. However, the parties cannot be allowed to act on the impressions, when the original text of the GOMS says otherwise. There was nothing in the language of GOMs No. 1813 that the second condition would apply when the appointments of PG Assistants under Rule 10(a) and the TN. PSC-selected PG Assistants would be in the same year. That was wholly wrong. Even clarification by the Director of School Education had given a wrong position. That error could be perpetuated in our opinion, it was rightly corrected later on when the stand was taken that all these PG Assistants would be below the TN. PSC-selected PG Assistants This stand is correct, as though the appellants were fully qualified PG Assistants at the time of their initial appointment after 1981, the fact of the matter is that they never faced any competition They studiously and conveniently desisted from taking the examination, though it was made very clear to them that they would have to take the examination.

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38. The learned Senior Counsel pointed out that the said seniority list was never challenged by the present appellants and they only claimed the benefit of seniority, when the panel for promotions was prepared for the first time in 2003. Thus, right from 1988, when they were regularised, they accepted the second condition, obtained the regularisation and thereafter, for the first time chose to challenge the seniority list indirectly in 1994 and thereafter, directly in 2003. This, they could not do. The submission is undoubtedly, sound.

39. We cannot at this juncture, ignore the fact that the



appellants in their first attempt before the Tribunal, challenged only the first condition regarding the appointment and chose not to challenge the second condition. At that juncture, they had the full opportunity of challenging the second condition also. They conveniently interpreted GOMS No. 1813 in their favour, and in our opinion, wrongly, and ignored to challenge the second condition. This is not permissible. They could not thereafter turn back and challenge the second condition in the second or third round of litigation, it is for this reason also, that the claim of the appellants must fail.”

43. In ***P.S. Gopinathan v. State of Kerala***, (2008), 7 SCC 70, the Hon’ble Court observed that once the appellant has accepted his initial promotion which was termed as temporary, without any objections and was appointed on regular basis from a subsequent date, he was deemed to have acquiesced and estopped from challenging it later on. The relevant portion of the judgement is reproduced herein:

“33. The law of equitable estoppel by acquiescence has been clearly stated by Fry. J. in Wilmott v. Barber. It has been said therein that the acquiescence which will deprive a man of his legal rights should amount to fraud. A man is not to be deprived of his legal right unless he has acted in such a way as would make it fraudulent for him to set up those rights. What, then, are the elements or requisites necessary to constitute fraud of that description, are stated thus:

- (i) The plaintiff (i.e., the party pleading acquiescence) must have made a mistake as to his legal rights,*
- (ii) The plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of the mistaken belief;*
- (iii) The defendant, the possessor of the legal right must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff, if he does not know of it, he is in the same position, as the*



plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights;

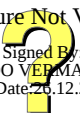
(iv) The defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights and

(v) The defendant the possessor of the legal right must have encouraged the plaintiff in his expenditure of money, or in the other acts which he has done, either directly or by abstaining from asserting his legal right, where all these elements exist, there is fraud of such a nature as will entitle the court to restrain the possessor of the legal right from exercising it, but nothing short of this will do.

These principles were followed and applied in many cases in India.

34. The appellant was appointed by the Governor by transfer/appointment order issued on 14-1-1992 and his seniority was to be considered as provided under Rule 6 of the Rules which says that the seniority of a person appointed shall be determined with reference to the date of the order of his first appointment to the category. Thus apparently when the order dated 14-1-1992 was issued by the Governor, it would be the first appointment for the determination of the seniority of the appellant. There is nothing in the order dated 14-1-1992 on the basis of which it can be treated to be an appointment on temporary basis made by the Governor. It is apparent from the posting order dated 29-2-1992 that the High Court, because of the integration of two services wef 1-1-1992 prior to the issuance of the order of appointment on 14-1-1992, has treated the order of appointment as a temporary one and, therefore, the posting order specifically mentioned that the appellant's appointment would be temporary without there being any probationary rights.

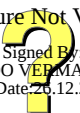
35. Thereafter on 21-2-1992, a fresh panel was prepared by the High Court for the purposes of transfer/promotion to Category (2): District and Sessions judge and the proposal





for promotion of the officers in that list has been accepted by the Governor by issuance of the order of appointment including that of the appellant on 15-7-1992. On 31-7-1992, the appellant's posting order was issued. Posting order clearly indicated that the appellant was working as a temporary District Judge and by virtue of the order issued on 15-7-1992 he shall be treated as permanent District Judge. While issuing the posting order of the appellant in pursuance of the order dated 14-1-1992, the High Court has committed a mistake in treating it to be an order of temporary appointment of the appellant when there was nothing to this effect in the appointment order. When the posting order was issued on 29-2-1992, the appellant was well aware of the order of his appointment dated 14-1-1992 whereby he was appointed on permanent basis on the post of District and Sessions Judge, yet when the posting order was issued treating him to be a temporary appointee which was inconsistent with the order dated 14-1-1992, the appellant did not raise any objection and readily accepting the posting order joined the service on 7-3-1992 as temporary Additional District judge. The posting order dated 29-2-1992 specifically mentioned that he has been posted as a temporary Additional District judge without any probationary rights and thus the appellant was well aware of the mistaken belief of the High Court in appointing and posting him as a temporary employee. As there was no objection and protest by the appellant a fresh panel prepared, recommended and fresh order of appointment of the appellant was issued by the Governor.

36. Again when the fresh appointment order was issued on 15-7-1992 by the Governor and the appellant was posted on 31-7-1992 treating his first appointment order as a temporary appointment, no protest was made by him, in view of the fact that the Governor issued an order dated 15-7-1992 even when order of 14-1-1992 was in existence, it is apparent that the appointing authority has also treated the first order dated 14-1-1992 as an order of appointment on



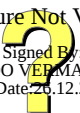


temporary basis. It is, therefore, apparent from the second appointment order that the appointing authority as well as the posting authority have all along treated the appellant as a temporary District Judge, but the appellant did not object on both occasions when he joined on 7-3-1992 and on 31-7-1992 of he being treated as temporary District judge. The act and action of the appellant in accepting his appointment as temporary one amounts to his assent to the temporary appointment and the appellant throughout till he raised an objection on 28-10-1992 has slept on his right of being appointed permanently on the post of District and Sessions Judge. By his conduct at the time of the issuance of the order by the High Court on 29-2-1992 and thereafter issuance of the second appointment order on 15-7-1992 with full knowledge of his own right and the act of the High Court which infringes it led the High Court to believe that he has waived or abandoned his right.

37. *Lord Campbell in Carcross v. Lorimer held that: (All ER p. 176 G-H)*

generally speaking if a party having an interest to prevent an act being done had full notice of its being done, and acquiesces it, so as to induce a reasonable belief that he consents to it and the position of the others is altered by their giving credit to his sincerity, he has no more right to challenge the act to their prejudice than he would have had if it had been done by his previous licence.

38. *The aforesaid facts clearly make out an acquiescence of the appellant in accepting order dated 14-1-1992 being treated as temporary appointment order on the post of District and Sessions judge and he cannot now be permitted to change his position and claim the permanent appointment from 14-1-1992 to claim seniority on the post. Besides this, the High Court has rightly held that in the absence of the challenge to the second appointment."*





44. Upon perusal of the cases discussed above, it can be concluded that as per the doctrine of acquiescence' a man shall not be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to asset up those rights.

45. Therefore, if a party having an interest to prevent an act being done had full notice of it being done, they do not have a right to challenge the act to their prejudice and it is an implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act.

46. The question that falls for consideration before this Court is whether the claim of the respondent was inordinately delayed, obsolete, stale, and is barred by the principle of delay and laches, and upon referral to the above stated paragraphs of the various cases, and applying the same to the present case, this Court is of a considered view, that the petitioners like any vigilant citizen, were expected to assert their rights before an appropriate forum within a reasonable time. Repeated representations neither give rise nor revive the cause of action, if it had already arisen in the past.

47. As per material on record, the petitioners have not challenged the validity of the promotional scheme approved by the BOD on 15th February, 2012 wherein a 'combined seniority list' and 'combined seniority posts' were proposed and approved by both the organizations, rather the instant petition challenges the scheme pertaining to the combined list and posts alone.

48. The material on record also suggests that the petitioners have



been promoted based on this very scheme and have not challenged the same by seeking any representation prior to the year 2020.

49. In light of the same, this Court is of the opinion that the petitioners cannot seek the ground of a 'continuous wrong' as they have slept on and choose to not challenge the scheme as being illegal and perverse to the laid down in this pretext.

50. Thus, the contention of the respondents that the instant petition shall be dismissed on the sole ground of delay and laches holds strength and therefore, in view of the law laid down by the Hon'ble Supreme Court in catena of cases, this Court is of a considered opinion that the instant petition suffers illegality on the account of delay and is liable to be dismissed on this ground alone.

51. On merits, another important aspect with respect to the fact that the petitioners have been promoted *via* the alleged illegal scheme of 2012 also attracts the doctrine of estoppel and acquiescence where the petitioner can be deemed to consent to an act. Thus, when acquiescence takes place, it presupposes knowledge against a particular act which flows till the passive acceptance.

52. Therefore, instead of taking any action against alleged illegality, despite adequate knowledge of its terms, and instead of choosing to continue by consciously ignoring it and thereafter, proceeding further, acquiescence does take place and the present case lies well within the parameters of the said doctrine.

53. In the instant case, the petitioners have been promoted from the post of Assistant Manager (T) to Deputy Manager (T) as a result of following the scheme, and therefore, the petitioners cannot approach



this Court alleging the promotional scheme to suffer illegality and not permissible in law as the same is barred by the doctrine of acquiescence.

54. Taking into consideration the cumulative effect of the facts in this case, coupled with the legal principles cited above, this Court is satisfied that the claim of the petitioners is time barred, and the same ought not to have been entertained by the Court after a span of over a decade.

CONCLUSION

55. It is hereby, held that there is no force in the arguments advanced by the petitioners, therefore, the present writ petition is liable to be dismissed since the same is not a fit case for interference under the extraordinary writ jurisdiction of this Court.

56. In view of the above discussions of facts and legal principles, this Court is of the view that the present petition is barred by the doctrine of delay and laches and also estoppel, as the instant petition is filled after a delay of 10 years and also having taken benefit of the challenged promotional scheme.

57. For all the aforesaid reasons, this Court does not find any merit in the instant petition, and the same stands dismissed.

58. Pending applications, if any, also stand dismissed.

59. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 20, 2023
gs/av/ryp

W.P.(C) 16086/2022

Page 27 of 27