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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.19813 of 2020 (O&M)
Date of decision: 19.09.2024

Kanwarjit Chopra
.....Petitioner
Versus
State of Haryana and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Lokesh Vohra, Advocate
for the petitioner.
Mr. Ravi Dutt Sharma, DAG, Haryana.

NAMIT KUMAR J. (Oral)

1. The petitioner has invoked the jurisdiction of this Court by filing the instant petition under Articles 226/227 of the Constitution of India, seeking a writ of certiorari, for quashing the order dated 29.09.2020 (Annexure P-4), whereby the claim of the petitioner seeking seniority over and above Babu Ram and Mittar Pal, has been rejected. Further a writ of mandamus has been sought for directing the respondents to fix the seniority of the petitioner with effect from the date, when he was selected as Clerk by the Staff Selection Board, Haryana i.e. 24.08.1982.
2. The undisputed facts of the case are that the petitioner initially joined the Irrigation Department, Haryana on 07.02.1980 as Clerk on adhoc basis and thereafter, in pursuance of the advertisement

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published by the Subordinate Services Selection Board, Haryana (hereinafter to be referred as 'the Board'), he applied for appointment against the post of Clerk in Haryana Civil Secretariat. He was selected by the Board and vide letter dated 27.08.1982, the Board forwarded the list of selected candidates including the petitioner to the Chief Secretary for the purpose of issuing appointment letter. On receipt of recommendations of the Board, the Chief Secretary vide letter dated 14.09.1982, appointed the petitioner to the post of Clerk in Haryana Civil Secretariat (Annexure P-1). In pursuance to the said appointment, he joined on 01.10.1982 and thereafter, he was further promoted to the post of Assistant and retired as such on 30.04.2011. After his retirement, he was given the benefit of deemed date of promotion as Deputy Superintendent w.e.f. 03.03.2011, by fixing his pay notionally. Respondents No.5 and 6 namely Babu Ram and Mittar Pal, were promoted as Clerks from the post of Peon on 10.09.1982 and 13.09.1982, respectively. They have also retired from service on attaining the age of superannuation on 31.12.2011 and 30.09.2013, respectively. A representation dated 02.11.2005 (Annexure P-2), was submitted by the petitioner along with other 14 Clerks, claiming seniority as Clerks with effect from the date of recommendations of the Board i.e. 27.08.1982, however, the said representation was filed by respondent No.1 vide order dated 27.03.2006 (Annexure P-3). It appears that the petitioner had submitted some other representation claiming seniority from 27.08.1982, the date when his name was recommended

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by the Board and the said claim has been rejected by respondent No.1 vide order dated 29.09.2020 (Annexure P-4), which has been impugned in the present writ petition.

3. The case set up by the petitioner in the present petition is that since the date of recommendation by the Board for his appointment as Clerk in Haryana Civil Secretariat i.e. 27.08.1982 is prior to the date of promotion of respondents No.5 – Babu Ram and 6 – Mittar Pal, therefore, in terms of instructions dated 16.03.1962, he be declared senior to them.

4. Per contra, learned State counsel has refuted the claim made in the petition on the ground that the instructions dated 16.03.1962 cannot be made applicable in the case of the petitioner as the same is being contrary to the service rules. He further submits that petitioner's claim for granting seniority over and above respondents No.5 and 6, who were at the top of seniority list after being promoted as Clerks on 10.09.1982 and 13.09.1982 respectively lacks merit as both had already been confirmed on the posts of Clerks and Assistants according to the seniority which was determined more than three decades earlier, as per which petitioner was junior to them. He also submits that there has been delay of more than 20 years in filing the petition and as such the same is liable to be dismissed.

5. I have heard learned counsel for the parties and perused the record.

6. To appreciate the above said claim of the petitioner, the

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service particulars of the petitioner as well as respondents No.5 and 6, in a tabulated form, are given below:-

Names	Date of appointment as Clerk	Date of recommendation by the Board	Date of promotion from the post of Peon to the post of Clerk
Kanwarjit Chopra (Petitioner)	14.09.1982 (Joined on 01.10.1982)	27.08.1982	-----
Babu Ram (Respondent No.5)	-----	-----	10.09.1982
Mittar Pal (Respondent No.6)	-----	-----	13.09.1982

7. From the above, it is clear that although the date of recommendation of the petitioner is prior to the date of promotion of respondents No.5 and 6, however, the date of appointment of the petitioner and date of joining is later than the date of promotion of respondents No.5 and 6. And whereas the petitioner is claiming seniority from the date of recommendation by the Board in terms of the Instructions dated 16.03.1962.

8. The only question which arises for determination before this Court is as to whether the petitioner can be assigned seniority w.e.f. 27.08.1982, the date his name was recommended by the Board or from the date of joining as Clerk in Haryana Civil Secretariat on 01.10.1982.

9. Concededly, the services of the petitioner are governed by the Rules known as ‘Punjab Civil Secretariat (State Service Class-III) Rules, 1952. Rule 9 of the said Rules clearly stipulates that the seniority inter se of the members of the service holding the same class of posts shall be determined by the date of their substantive appointment to the

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post. On the other hand, the petitioner has placed reliance upon the Instructions dated 16.03.1962, issued by the Chief Secretary to Government of Punjab, which reads as under:-

“Copy of letter No. 946-GS-62/828, dated the 16th March, 1962, from Shri E.N. Mangat Rai, I.A.S., Chief Secretary to Government Punjab to all Heads of Department etc, etc.

Subject:- Determination of Seniority of the candidates recruited by the Board.

1. I am directed to invite a reference to Punjab Government Letter No.1028 No.1028-GII-57/27804, dated the 29th March, 1957 stating that the temporary appointment made without the recommendation of the S.S.S. Board is just a make shift arrangement and cannot, therefore count for seniority, which should in such cases, determined with reference to the date on which the recommendations of the Board are received. It has been represented to Government that the seniority of the candidates recommended by the Board should be determined with reference to the date of issue of the Boards letter and not from the receipt of their recommendation as in the letter case the letters are liable to the delayed in transit or mis-sent and diarized very late at destination thereby causing undue hardship to the candidates concerned, after carefully considering the matter it has been decided that the seniority of the candidates should be determined with reference to the date of issue of the Board recommendation.

2. It has also been decided that in the case of such officials as are recommended to another office for regular absorption; but are allowed to remain in their parent office

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in the interest of work or on the request of the official concerned, their seniority will be determining with reference to the dated of the Board's original recommendation of their regular absorption in other offices.

3. These instructions may be brought to the notice of all concerned. The receipt of this letter may also please to acknowledge.”

10. As per Rule 9, the seniority is to be determined from the date of substantive appointment to the post and not from the date of recommendation, therefore, the petitioner cannot be granted seniority w.e.f. 27.08.1982. Some similarly situated employees like the present petitioner, had approached this Court in the year 1988, seeking seniority w.e.f. 27.08.1982, by way of filing a petition i.e. **CWP No.6503 of 1988**, titled as **“Ram Niwas Verma and others vs State of Haryana”**, claiming the same relief as has been claimed in the present petition. The said petition was dismissed by this Court vide judgment dated 17.02.1994. The operative part of the said judgment, reads as under:-

“5. The learned Counsel appearing for the petitioners vehemently contended that Annexures P-2 to P-4 provide counting of seniority from the date of recommendations made by the Subordinate Services Selection Board and inasmuch as the petitioners names were so recommended on 27th of August, 1982, it should be from this date that their seniority should be reckoned with. It is further pleaded and argued by the learned Counsel that respondents Nos.2 to 60 were regularised in service vide order dated 14th January, 1983 from

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retrospective date on 24th August, 1982 and inasmuch as the names of the petitioners were recommended by the Subordinate Services Selection Board on 15th September, 1982, thus, petitioners could not be shown junior to respondent Nos.2 to 60.

*6. The cause of the petitioners has been opposed in two sets of identical written statements, one filed on behalf of respondent No.1 and the other by respondents 2 to 60. The defence as projected is that the instructions Annexures P-2 to P-4 do not apply at all to a person who is straightaway employed through the agency of Subordinate Services Selection Board and, in fact, such instructions are applicable to a case of person who had been appointed initially on **ad hoc** basis. In so far as the person who secures appointment direct through public service commission, it is further stated that the matter has to be dealt with, in accordance with the statutory rules known as the Punjab Civil Secretariat (States Service Class-II) Rules, 1952, Rule 9 thereof clearly stipulates that the seniority **inter se** of members of the service holding the same class of posts shall be determined by the date of their substantive appointment to the post.*

7. After hearing the learned counsel for the parties and going through the record, this Court is of the considered view that there is no merit in the points raised in the petition which have been noticed above. Annexure P-2, the instructions dated 29th March, 1957 start with the subject of counting of purely temporary service for purposes of seniority and the same runs thus :-

"I am directed to say that according to the instructions contained in Finance Department letter No.8398-FR-56/6165 dated 14th September, 1965, a

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Government servant appointed locally in purely temporary capacity when absorbed in a regular post on the recommendation of the Subordinate Services Selection Board, is allowed the benefit of previous temporary service towards increment and leave. A question had arisen whether such Government servants should also be given the benefit of this temporary service for purposes of seniority. It has been decided that a temporary appointment made without the recommendation of the Board, is just a make shift arrangement and cannot therefore, count for seniority which should in such cases, be determined with reference to the date on which the recommendations of the Board are received."

*Annexure P-3, the instructions dated 15th March, 1962 are again with regard to the determination of seniority of the candidates recruited by the Board but who were earlier holding temporary/**ad hoc** appointments. It is true, in the case of such temporary or **ad hoc** employees the seniority was to count from the date of the issue of the recommendations for their regular absorption by the Subordinate Services Selection Board. Annexure P-4, the instructions dated 24th November, 1962 are also to the same effect. these instructions, thus, cannot come to the rescue of the petitioners.*

*8. Faced with this situation, learned Counsel for the petitioners Mr. R.P. Bali contends that there was no justification whatsoever for regularising **ad hoc** or temporary employees from retrospective date and that this decision of the respondents is discriminatory, thus, offending Article 14 of the Constitution of India. In **D. Rama Rao v. State of Andhra Pradesh, AIR 1988***

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*Supreme Court 857, the Supreme Court while dealing with the same situation held that when the regularisation is from a retrospective date but it is after the **ad hoc** appointment, the same cannot be said to be vitiated due to arbitrariness. The facts of D.Rama Rao's case (supra) reveal that in exercise of powers under Rule 23(a) of the General Rules, the services of the two respondents had been regularised retrospectively with effect from 19th May, 1961 and the order of regularisation had been passed by the Chief Engineer on 3rd May, 1967. While dealing with this matter, this is how the Supreme Court proceeded in the matter:-*

"In the instant case the date from which regularisation has been directed to take effect is not anterior to their appointment as Assistant Engineers. That being the position, regularisation is not vitiated on account of arbitrariness.

*At this stage Mr. R.P. Bali, learned Counsel for the petitioners states that out of the petitioners there are also persons who were initially given **ad hoc** appointments and were later regularised by the Subordinate Service Selection Board. No such pleadings have been made in this petition. However, if there may be any such petitioner, this judgment will have no adverse effect on him.*

For the reasons recorded above, this petition fails and is hereby dismissed leaving the parties to bear their own costs."

11. Similar issue has been considered by a Division Bench of this Court in "**Dr. Suresh Kumar Mangal and others vs State of Haryana and others**", 2009(1) SCT 621 and while interpreting similar Rule and similar Instructions, it has been held that the inter se seniority

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of the members of the service is required to be determined on the basis of the principle of continuous length of service and no significance is to be accorded to the date of recommendations made by the Commission as a principle for determining seniority of direct recruits. Once the Rules have been formed in pursuance of the powers under Proviso to Article 309 of the Constitution, then the Instructions on the same subject would not operate. The relevant portion from the said judgment is as under:-

*“7. A bare perusal of the Rule would show that inter se seniority of the members of the service is required to be determined on the basis of the principle of continuous length of service. It is further clear from the perusal of the rule that no significance is to be accorded to the date of recommendation made by the Public Service Commission as a principle for determining seniority of the direct recruits. For the direct recruits amongst themselves the order of merit determined by the Commission has to be regarded as final. Therefore for all intents and purposes the principle of continuous length of service as laid down in Rule 11 of the Rules has to be a guiding factor for determination of seniority. It is well settled principle of law that once the rules have been framed in pursuance of powers under proviso to Article 309 of the Constitution then the instructions on the same subject would not operate as has been held in the case of **Union of India v. Madras Telephone S.C. & S.T. Social Welfare, 2000(2) SCT 761 : (2000)9 SCC 71**. The same principles were laid down in the case of **K.K. Parmar v. H.C. High Court of Gujarat, 2006(3) SCT 140 : (2006)5 SCC 789**. All these principles of law are so well settled as to entertain any doubt since*

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*1967 when the Constitution Bench had laid down the law in the case of **Sant Ram Sharma v. State of Rajasthan, AIR 1967 Supreme Court 1910.***

8. The instructions have only one object of determining batch seniority of direct recruit namely that the date of their recommendation would be the date which would determine their inter se seniority by freezing the order of merit as determinative principles. However, the instructions dated 24-11-1962 could not be made the basis for determining seniority of a member of service which include promotees. Even otherwise the date of recommendation by the Public Service Commission may not have any relationship to become a criteria for determining seniority, therefore the impugned order dated 01-12-2006 (P-15) is unsustainable in law and is declared ultra vires of Rule 11 of the Rules.

9. For all the reasons given above, the instant petition succeeds. The order dated 01-12-2006 (P-15) is hereby quashed. The petitioners deserve to rank senior to the private respondents on the basis of continuous length of service and are declared senior to them. We further direct respondents No. 1 and 2 to consider the petitioners for promotion to the next higher post of Principal Medical Officers/Civil Surgeons/Deputy Directors (Senior Scale) by treating them senior to the private respondents on the basis of continuous length of service. The needful shall be done within a period of three months from the date of receipt of copy of this order.”

12. The Hon’ble Supreme Court in “**Ganga Vishan Gujrati and others vs State of Rajasthan and others**”, 2019(4) SCT 332, has held that seniority cannot be granted to an employee from the date when

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he was not born in the cadre and the same has to be counted from the date of initial entry into service. Para 31 of the said judgment reads as under:-

*“31. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in **Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra, (1990) 2 SCC 715**. The principle was reiterated by this Court in **State of Bihar v. Akhouri Sachindra Nath, 1991(2) S.C.T 603 : 1991 Supp (1) SCC 334** and **State of Uttaranchal v. Dinesh Kumar Sharma, 2007(1) S.C.T. 393 : (2007) 1 SCC 683**. In **Pawan Pratap Singh v. Reeven Singh, 2011(2) S.C.T. 689 : (2011) 3 SCC 267**, this Court revisited the precedents on the subject and observed:*

"45. ... (i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other

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recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime."

*This view has been re-affirmed by a Bench of three judges of this Court in **P. Sudhakar Rao v. U. Govinda Rao, 2013(4) S.C.T. 185 : (2013) 8 SCC 693.**"*

13. Further the Hon'ble Supreme Court in "**Pawan Pratap Singh and others vs Reevan Singh and others**", 2011(2) SCT 689, has held that the cardinal principles for determination of seniority is that unless provided for in the Rules, seniority cannot relate back to a period prior to the date of incumbents' birth in the service/cadre. The operative portion from the said judgment, reads as under:-

"9. Now, in case the seniority between the

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appellants and the first respondent is to be determined outside the 1991 Rules, one has to go to the basic principles for determination of seniority. One cardinal principle for determination of seniority is that unless provided for in the rules, seniority can not relate back to a period prior to the date of the incumbents birth in the service/cadre.

*10. As a matter of fact this principle is fully dealt with in the main judgment in which reference is made to the decisions of this Court in **Ram Janam Singh v. State of UP, (1994) 2 SCC 622.; Uttaranchal Forest Rangers' Association (Direct Recruit) & Ors. v. State of UP & Ors., (2006) 10 SCC 346.; State of Bihar & Ors. v. Akhouri Sachindra Nath & Ors., 1991 Supp (1) SCC 334.** and the principle is summarized in sub-paragraphs (2) & (4) of paragraph 30 of the judgment.”*

14. To the same effect are the judgments of Hon’ble Supreme Court in “**Ashok Kumar Srivastava and others vs Ram Lal and others**”, 2008(1) SCT 644 and “**State of Jammu & Kashmir and others vs Javed Iqbal Balwan and others**”, 2009(2) SCT 594.

15. In all the above judgments, it has been authoritatively held that the seniority cannot be granted to an employee prior to the date when he is not born in the cadre, therefore, the claim of the petitioner seeking seniority from 27.08.1982, when his name was recommended by the Board cannot be accepted.

16. Apart from the above, the present petition is also liable to be dismissed on the ground of delay and laches. The only representation which has been placed on record with the writ petition

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for claiming seniority from the date of recommendation is dated 02.11.2005, which was submitted by the petitioner along with other 14 employees, however, the same has been filed by the Government vide letter dated 27.03.2006 (Annexure P-3), however, the said order was never challenged by the petitioner while he was in service. It appears that the petitioner had submitted some other representation, however, no details have been provided in the petition, on which the impugned order dated 29.09.2020, has been passed whereby the claim of the petitioner with regard to his seniority has been rejected by passing a speaking order. The only relief claimed in the present petition, which has been filed on 09.11.2020 i.e. after more than 09 years of his retirement i.e. 30.04.2011, is claiming seniority on the post of Clerk w.e.f. 27.08.1982.

17. In a recent judgment by the Division Bench of this Court in ***“Ram Kumar vs State of Haryana and others”***, 2022 (3) SCT 346, while rejecting the claim of the petitioner for counting of his ad hoc service, for the purpose of seniority/pension and regularization in service on completion of 02 years as per policy, held that the petition filed by him suffered from gross, inordinate and unexplained delay in approaching the High Court. In the said judgment, it has been held as under:-

“10. What we wish to emphasize, in particular, is that services of the appellant were regularized w.e.f. 01.04.1997. And, he was assigned a specific seniority position in the cadre. Whereafter, he continued to serve the department for nearly twenty five years, before attaining

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*the age of superannuation in January, 2022. Needless to assert that during all these years, he availed all admissible benefits, promotions, and retired as Inspector. Thus, it rather appears that institution of the petition by the appellant was speculative and an attempt to resurrect a stale and dead claim. The Supreme Court, in **New Delhi Municipal Council v. Pan Singh & Ors., 2007(9) SCC 278**, observed:*

*“15. There is another aspect of the matter which cannot be lost sight of. Respondents herein filed a Writ Petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the Writ Petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the Court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. See **Govt. of W.B. v. Tarun K. Roy And Others [(2004) 1 SCC 347]**, **Chairman, U.P. Jal Nigam & Anr. v. Jaswant Singh And Anr. [2006 (12) SCALE 347]** and **Karnataka Power Corpn. Ltd. through its Chairman & Managing Director and Another v. K. Thangappan and Another [(2006) 4 SCC 322]**”*

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11. Similarly, in **Jagdish Lal & Ors. v. State of Haryana & Ors., (1997) 6 SCC 538**, it was held by the Supreme Court:

“That apart, as this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or 32 of the Constitution. It is not necessary to reiterate all catena of precedents in this behalf. Suffice it to state that the appellant kept sleeping over their rights for long and elected to wake up when they had the impetus from *Vir Pal Chauhan* and *Ajit Singh’s* ratios..... Therefore, desperate attempts of the appellants to re-do the seniority had by them in various cadres/grades though in the same services according to 1974 Rules or 1980 Rule, are not amenable to judicial review at this belated stage....”

12. In the wake of the position as sketched out above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned single Judge. The appeal being bereft of merit is, accordingly, dismissed.”

18. The Hon’ble Supreme Court in **State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others, 2013(6) SLR 629**, while considering the issue regarding delay and laches and referring to earlier judgments on the issue, opined that repeated representations made will not keep the issues alive. A stale or a dead issue/dispute cannot be got revived even if such a representation has either been decided by the authority or got decided by getting a direction from the court as the issue regarding delay and laches is to be decided with reference to original cause of action and not with reference

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to any such order passed. Delay and 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, in a situation of that nature, will not be attracted as it is well known that law leans in favour of those who are alert and vigilant. Even equality has to be claimed at the right juncture and not on expiry of reasonable time. Even if there is no period prescribed for filing the writ petition under Article 226 of the Constitution of India, yet it should be filed within a reasonable time. An order promoting a junior should normally be challenged within a period of six months or at the most in a year of such promotion. Though it is not a strict rule, the courts can always interfere even subsequent thereto, but relief to a person, who allows things to happen and then approach the court and puts forward a stale claim and try to unsettle settled matters, can certainly be refused on account of delay and laches. Any one who sleeps over his rights is bound to suffer. An employee who sleeps like Rip Van Winkle and got up from slumber at his own leisure, deserves to be denied the relief on account of delay and laches. Relevant paragraphs from the aforesaid judgment are extracted below:

“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

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*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 another, (2008) 10 SCC 115**, 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.”

19. In this view of the matter, finding no merit, the present petition is dismissed.

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yakub

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No