



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CWP-24089-2024**Date of decision : 23.09.2024**

Jagbir

....Petitioner

V/S

The Gram Panchayat Panchgaon and others

....Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Gaurav Sharma, Advocate for the petitioner.

Mr. Saurabh Mohunta, D.A.G., Haryana.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has invoked the jurisdiction of this Court by filing the instant petition under Article 226 of the Constitution of India, seeking a writ of certiorari, quashing the order dated 30.05.2017 (Annexure P-1), whereby the petitioner was removed from service. Further a writ of mandamus, directing the respondents to appoint the petitioner back on the post of Tubewell Operator at Water Works No.2, Village Panchgaon, Tehsil Badhra, District Charkhi Dadri.

2. It has been pleaded in the petition that the petitioner was working as Tubewell Operator at Water Works No.2, Village Panchgaon, Tehsil Badhra, District Charkhi Dadri since 2007 and in a meeting held on 30.05.2017 by the Gram Panchayat Panchgaon, the petitioner was removed from service without giving any proper notice or inquiry and even after the order of removal, the petitioner had worked diligently from 01.07.2017 to 21.12.2021 on the said post. It has

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further been stated that in the meanwhile, the petitioner had filed a civil suit for declaration bearing No.212 of 2017 titled as 'Jagbir Vs. Gram Panchayat Panchgaon and others' before the learned Civil Judge (Senior Division), Charkhi Dadri, to the effect that the petitioner/plaintiff being part time worker employed by the respondents/defendants is entitled to receive his minimum wages @ Rs.4050/- per month w.e.f. 02.06.2014 for operation of the Tubewell of Water Works No.2 at Village Panchgaon and the respondents/defendants are liable to pay the balance amount of minimum wages @ Rs.1378/- per month to him from 02.06.2014 till 31.07.2015; @ Rs.2050/- per month from 01.08.2015 till 28.02.2017 and @ Rs.4050/- per month from 01.03.2017 to 30.06.2017 and thereafter from 01.07.2017 for every month the salary/minimum wages @ Rs.4050/- per month and suit for mandatory injunction to the effect that the respondents/defendants are liable to be directed to pay the balance amount of salary/minimum wages accordingly with interest @ 18% per annum and continue to pay this amount of salary/minimum wages i.e. Rs.4050/- every month regularly from 01.07.2017 onwards. The said suit was partly decreed vide judgment and decree dated 05.09.2023 by granting the following relief :-

“23. In view of my above findings the suit of plaintiff is hereby partly decreed to the effect that plaintiff is entitled to receive his minimum wages of salary at the rate of Rs.4050/- per month w.e.f. 02.06.2014 for operation of the Tubewell of water works no.2 at village Panchgaon for supplying the drinking water for the villagers of Panchagaon and defendants are liable to pay the balance amount of salary/minimum wages @ Rs.1378/- per month to the plaintiff from 02.06.2014 till 31.07.2015 and at the rate of Rs.2050/- per month from 01.08.2015 till 28.02.2017, at the rate of Rs.4050/- per month from



01.03.2017 to 30.06.2017. The defendant no.1 may conduct enquiry whether the plaintiff worked as tubewell operator after 01.07.2017 and if he is found having worked as such after 01.07.2017, then defendant no.1 shall continue to pay salary/minimum wages @ Rs.4050/- for the said period of the work to the plaintiff and defendants are directed to credit the salary amount of the plaintiff to his SB account no.1219001700049297 with Punjab National Bank B/o Badhra, IFSC Code PUNB0121900 and in case of their default to pay this difference of wages within 3 months, the defendant no.1 shall also give interest @ 9% per annum on calculated amount till realization. File be consigned to record room after due compliance.”

Now, the present petition has been filed by impugning the order dated 30.05.2017, whereby the petitioner has been removed from service.

3. Learned counsel for the petitioner submits that the impugned order dated 30.05.2017, whereby the petitioner was removed from service, has been passed without giving any notice to the petitioner and the respondents had appointed one Sombir in his place without publishing any advertisement for the vacant post after the expulsion of the petitioner. He submits that the complaint dated 02.02.2022 made by the petitioner through C.M. Window is still pending in the office of B.D.P.O., Badhra. He further submits that the petitioner has also made an application dated 19.12.2023 to the Sarpanch and thereafter, legal-cum demand notice dated 06.08.2024 was sent to the respondents, however, no action has been taken on the same.

4. Pursuant to advance notice of the petition, learned State counsel has put in appearance and opposed the present petition on the ground that the present petition has been filed after a delay of more than 07 years. Therefore, the same may be dismissed on the ground of delay and laches and barred by doctrine of constructive res judicata. He



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further submits that the petitioner had earlier filed a civil suit which was partly allowed by the trial Court and the relief claimed in the present petition ought to have been sought in the said civil suit.

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

6. The present writ petition is liable to be dismissed on two counts i.e. delay and laches and constructive res judicata.

DELAY AND LACHES

7. The instant petition has been filed by the petitioner on 18.09.2024 impugning the order dated 30.05.2017 i.e. after a period of 07 years and 04 months. No satisfactory explanation for delay has been given in the petition except by stating that a complaint dated 02.02.2022 through C.M. Window was given by the petitioner and thereafter, the petitioner also wrote an application to the Sarpanch followed by legal-cum-demand notice dated 06.08.2024.

8. The Hon'ble Supreme Court in ***Yunus (Baboobhai) A Hamid Padvekar Vs. State of Maharashtra Through its Secretary and others : 2009 (2) SCT 24***, while referring to the issue of delay and latches, had held as follows:-

*“8. Delay or laches is one of the factors which is to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India, 1950 (in short the ‘Constitution’). In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in **Durga Prasad v. Chief Controller of***



Imports and Exports (AIR 1970 SC 769). Of course, the discretion has to be exercised judicially and reasonably.

9. What was stated in this regard by Sir Barnes Peacock in ***Lindsay Petroleum Company v. Prosper Armstrong Hurde etc. (1874) 5 PC 221*** at page 239 was approved by this Court in ***Moon Mills Ltd. v. Industrial Courts (AIR 1967 SC 1450)*** and ***Maharashtra State Transport Corporation v. Balwant Regular Motor Service (AIR 1969 SC 329)***, Sir Barnes had stated:

"Now the doctrine of laches in Courts of Equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, if founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

10. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation with Article 32 of the Constitution. It is apparent that what has been stated as regards that Article would apply, a fortiori, to Article 226. It was observed in ***R.N Bose v. Union of India (AIR 1970 SC 470)*** that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

11. It was stated in ***State of M.P. v. Nandlal (AIR 1987 SC 251)*** that the High Court in exercise of its discretion



does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its trail new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

12. In view of the aforesaid position we are not inclined to interfere in this appeal which is dismissed accordingly.”

9. Further the Hon'ble Supreme Court in ***State of Uttaranchal and another Vs. 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 revived even if such a representation has been decided either by the authority or 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 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 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.”

10. In ***Bharat Sanchar Nigam Limited Vs. Ghanshyam Dass (2) and others***, (2011) 4 SCC 374, a three-Judge Bench of the Hon’ble Supreme Court reiterated the principle stated in ***Jagdish Lal Vs. State of Haryana***, (1997) 6 SCC 538 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 07.07.1992.

11. In ***State of T. N. Vs. Seshachalam***, (2007) 10 SCC 137, the Hon’ble Supreme 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.”

12. In ***New Delhi Municipal Council Vs. Pan Singh and others***, (2007) 9 SCC 278, the Hon’ble Supreme 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.

13. 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 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]**”*

11. Similarly, in **Jagdish Lal & Ors. Vs. 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 redo 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.”*

14. The Co-ordinate Bench of this Court in **“Prem Nath and others Vs. State of Punjab and others”, 2018(2) SCT 687**, while



rejecting the claim of additional increments on acquisition of higher qualifications has held as under:-

“3. *It is the case set up on behalf of the petitioners that they had all been appointed before 19.02.1979 and had even improved/acquired higher qualifications before 19.02.1979 and as such there would be no difference between the employees working with the Punjab Government, holding corresponding post and the employees like the petitioners who have worked for Punjab Privately Managed Recognised Aided Schools. It is also the assertion made by counsel representing the petitioners that their claim would be covered in terms of decision dated 02.07.2013 rendered by this Court in a bunch of writ petitions including CWP No.8083 of 1989 titled as Radha Krishan Narang and others vs. State of Punjab and others.*

4. *Having heard counsel for the petitioners at length, this Court is of the considered view that the claim of the petitioners would not require any consideration on merits and the writ petition deserves to be dismissed on the sole ground of delay and laches.*

5. *Placed on record and appended at Annexure P-1 are the particulars of the petitioners. The tabulation at Annexure P-1 would show that all the petitioners stand retired on various dates between the years 1995 to 2012. Out of 32 petitioners in all, 22 petitioners superannuated more than 10 years back.*

6. *There is no justification coming forth as regards the inordinate delay in having approached the Writ Court. There is also no explanation put forth by the petitioners as to why the claim raised in the instant petition was not agitated by the petitioners while they were in service. The entire thrust of the submissions advanced by counsel is that similarly situated employees had approached this Court and have been granted relief.*

7. *The issue regarding delay in invoking the extraordinary writ jurisdiction under Article 226 of the Constitution of India was considered by the Hon'ble Supreme Court in **Chairman, U.P. Jal Nigam and another v. Jaswant Singh and another (2006)11 SCC 464**. In such case, certain employees raised the issue that they were not liable to be retired at the age of 58 years but should be*



*permitted to continue in service till they attain the age of 60 years. Such employees were still in service when the writ petitions were filed. The writ petitions were ultimately allowed. Placing reliance upon such judgment, some of the employees, who had already superannuated, filed writ petitions seeking the same benefit. Even such petitions were allowed by the High Court in terms of following the earlier judgment. The judgment of the High Court was challenged before the Apex Court and wherein while referring to earlier judgments in **Rup Diamonds v. Union of India, (1989)2 SCC 356; “Jagdish Lal v. State of Haryana, (1997)6 SCC 538 and Government of West Bengal v. Tarun K. Roy, (2004)1 SCC 347**, it was opined that persons who approached the Court at a belated stage placing reliance upon the order passed in some other case earlier, can be denied the discretionary relief on the ground of delay and laches. The relevant observations made by the Supreme Court are contained in Paras 5, 6 and 16 of the judgment and are extracted here under:-*

*“5. So far as the principal issue is concerned, that has been settled by this court. Therefore, there is no quarrel over the legal proposition. But the only question is grant of relief to such other persons who were not vigilant and did not wake up to challenge their retirement and accepted the same but filed writ petitions after the judgment of this court in **Harwindra Kumar v. Chief Engineer, Karmik, (2005) 13 SCC 300**. Whether they are entitled to same relief or not? Therefore, a serious question that arises for consideration is whether the employees who did not wake up to challenge their retirement and accepted the same, collected their post-retirement benefits, can such persons be given the relief in the light of the subsequent decision delivered by this court?*

6. The question of delay and laches has been examined by this court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted



to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that about 9 writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 30.6.2005 and 31.7.2005. Two writ petitions were filed wherein no relief of interim order was passed. They were granted interim order. Thereafter a spate of writ petitions followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 and 2006 much after their retirement. Whether such persons should be granted the same relief or not?

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16. Therefore, in case at this belated stage if similar relief is to be given to the persons who have not approached the court that will unnecessarily overburden the Nigam and the Nigam will completely collapse with the liability of payment to these persons in terms of two years' salary and increased benefit of pension and other consequential benefits. Therefore, we are not inclined to grant any relief to the persons who have approached the court after their retirement. Only those persons who have filed the writ petitions when they were in service or who have obtained interim order for their retirement, those persons should be allowed to stand to benefit and not others.” [Emphasis supplied]

*8. The issue of delay was also dealt with by this Court in **Tarsem Pal vs. Punjab State Power Corporation Limited and others, 2013 (3)SLR 314**. In the case of Tarsem Pal(supra), the petitioner was serving as a Clerk with the respondent-Corporation and had retired on 31.03.2005. Claim in the writ petition was to grant to him the benefit of proficiency set up in the pay scale on completion of 23 years of service from the due date as per policy of the Corporation. During the service career, he had not agitated the claim for increments. For the first time, such claim had been made on 28.02.2005 i.e. just one month prior to superannuation. While non-suiting the petitioner on account of delay and laches it was held as follows:-*



“11. In the aforesaid judgments, it has been clearly laid down that discretionary relief in a writ jurisdiction is available to a party who is alive of his rights and enforces the same in court within reasonable time. The judgment in another case does not give a cause of action to file a writ petition at a belated stage seeking the same relief. Such petitions can be dismissed on account of delay and laches. As has already been noticed above in the present case as well, the petitioner joined service in the year 1965 and retired in the year 2005, but raised the issue regarding benefit of proficiency step up in the pay scale on completion of 23 years of service from the due date more than five years after his retirement referring to a judgment of this court and filed the petition claiming the same relief.

12. The petitioner retired from service on 31.3.2005 and the claim pertaining to the benefit of proficiency step up, which may be admissible to the petitioner during his service career, was sought to be raised more than five years after his retirement, the claim made at such a late stage deserves to be dismissed on account of delay and laches only. The petitioner could raise a grievance about the pay scales admissible to him or the last pay drawn by him within a reasonable time after his retirement. He cannot be permitted to raise the same at any time on the plea that the same is recurring cause of action.

13. Considering the enunciation of law, as referred to above, in my opinion, the petitioner herein is not entitled to the relief prayed for and the petition deserves to be dismissed merely on account of delay and laches.”

*9. At this stage, counsel appearing for the petitioners would make an attempt to overcome the obstacle of delay by placing reliance upon a Full Bench Judgment of this Court in **Saroj Kumar vs. State of Punjab, 1998(3) SCT 664**. Counsel would argue that as per dictum laid down in Saroj Kumar's case(supra), matters of pay fixation involve a recurring cause of action and as such, writ petitions for such claim cannot be dismissed on the ground of delay and laches and the Court at the most, may restrict the arrears upto 38 months from the date of filing of the petition and*



disallow the arrears for the period for which even a suit had become time barred.

10. *The reliance placed by counsel upon the judgment in Saroj Kumar's case, is wholly misplaced. The observations and aspect of delay in Saroj Kumar's case, were in the light of the judgment of the Supreme Court in **M.R. Gupta vs. Union of India and others, 1995(4) RSJ 502**. In M.R. Gupta's case(supra), it had been categorically held that so long as an employee "is in service" a fresh cause of action arises every month when he is getting his monthly salary on the basis of a wrong calculation made contrary to rules. It was further held that the claim to be awarded the correct salary on the basis of a proper pay fixation "is a right which subsists during the entire tenure of service".*

11. **In the present case, however the petitioners choose not to agitate their claim while in service. It is much subsequent to their superannuation that they have woken up and seek to gain impetus from certain decisions that may have been rendered in the case of similarly situated employees.**

12. *Considering the dictum of law as laid down in Chariman, U.P. Jal Nigam's case (supra), **the petitioners herein are not entitled to any relief as prayed for and the petition deserves to be dismissed on the sole ground of delay and laches.***

13. *Ordered accordingly."*

15. The Division Bench of this Court in "**H.S. Gill vs Union of India and others**", 2016(2) SCT 477, has held that an employee cannot claim the revised pay scale after retirement once he has been receiving the pay scale granted by the employer for the last 09 years. The relevant portion from the said judgment, reads as under:-

"14. The petitioner is also not entitled to any relief on account of principle of delay and laches. He has been receiving the pay in the pay scale of Rs.6500-10500 right from his transfer to CSIO, Chandigarh i.e. 2.7.2002. For the first time, he moved the representation on 29.8.2011, so, he kept mum for about 9 years. Thus, the claim of the petitioner is highly belated and stale."



CONSTRUCTIVE RES JUDICATA

16. The relief which is claimed by the petitioner in the present writ petition was available to the petitioner when he filed a civil suit before the Civil Court at Charkhi Dadri and, therefore, the petitioner cannot be allowed to agitate the said matter in the present proceedings.

The Hon'ble Supreme Court in the judgment dated 02.02.2011 passed in Civil Appeal No.1215 of 2011 (arising out of Special Leave Petition (C) No.26391/10 in case ***M. Nagabhushana versus State of Karnataka and others : AIR 2011 SC (Civil) 483*** has explained the doctrine/principles of res judicata qua its applicability to the writ petitions and after considering the various judgments, has held that “the principles of constructive res judicata, as explained in explanation IV to Section 11 of the Civil Procedure Code, are also applicable to the writ petitions”.

The relevant paras of the said judgment explaining the doctrine/principles of res judicata, read as under:-

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14. The principles of Res Judicata are of universal application as it is based on two age old principles, namely, ‘interest reipublicae ut sit finis litium’ which means that it is in the interest of the State that there should be an end to litigation and the other principle is ‘nemo debet bis vexari, si constet curiae quod sit pro un aet eadem cause’ meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. This doctrine of Res Judicata is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a Court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.

15. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour



and pretence of law in as much as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of Res Judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of Res Judicata is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing Court for agitating on issues which have become final between the parties.

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30. In the premises aforesaid, it is clear that the attempt by the appellant to re-agitate the same issues which were considered by this Court and were rejected expressly in the previous judgment in All India Manufacturers Organisation (supra), is a clear instance of an abuse of process of this Court apart from the fact that such issues are barred by principles of Res Judicata or Constructive Res Judicata and principles analogous thereto.

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17. In view of the above, there is no merit in the present petition and the same is hereby dismissed, with no order as to costs.

23.09.2024

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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No