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

+ **W.P.(C) 11076/2024**

NEMWATI

.....Petitioner

Through: Mr. C.S. Parashar and Mr. Vaibhav
Negi, Advocates.

versus

GOVT OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Gaurav Dhingra and
Mr. Shashank Singh, Advocates for Respondent
No.1/GNCTD.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

09.08.2024

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1. This writ petition has been preferred by the Petitioner under Article 226 of the Constitution of India, seeking a direction to Respondent No.2/ Apeejay School to regularize and confirm the services of Petitioner w.e.f. February, 1994 and pay the difference of salary and other allowances at par with employees of the corresponding status in the Schools run by Respondent No.1 under Section 10(1) of Delhi School Education Act and Rules, 1973 ('DSEAR') including the grant of arrears of pay revisions under 5th, 6th and 7th Central Pay Commissions ('CPC').

2. As per the case set out by the Petitioner in the writ petition, Petitioner joined the School as an Aya (Maid) in February, 1993. On 21.11.1994, Petitioner was given a loan and the loan receipt according to her is evidence of the fact that she was employed with the School. It is stated that between



1994 to 1997, Petitioner repeatedly requested the School management to confirm and regularise her services and fix her pay in the appropriate pay scale on regularization.

3. It is averred that on 01.02.1997, the School management issued a letter appointing the Petitioner as a regular worker under the Industrial Disputes Act, 1947 w.e.f. 01.02.1997 on a minimum wage of Rs. 1,677/- per month. This action was to deprive the Petitioner of her statutory rights and benefits under DSEAR as also medical facilities and allowances. Being an illiterate person, Petitioner did not understand the import of this letter at that stage and on legal advice sent a legal notice on 15.06.2024 calling upon the School to regularize her services and pay her the emoluments as per Section 10(1) of DSEAR.

4. Issue notice.

5. Mr. Gaurav Dhingra, accepts notice on behalf of Respondent No.1/GNCTD and takes an objection to the maintainability of this petition on ground of delay and laches since the cause of action, if any, arose in 1997 and Petitioner has approached this Court in 2024 with not a whisper in the writ petition to explain the long delay of 27 years.

6. In response to this submission, learned counsel for the Petitioner submits that Petitioner is an illiterate person and had no understanding of her legal rights coupled with the fact that she did not have the financial resources to take recourse to legal proceedings.

7. Heard learned counsel for the parties and examined their submissions.

8. First and foremost, I may examine the preliminary objection on the maintainability of this writ petition, which according to Respondent No.1 is barred by delay and laches, as this would go to the root of the matter. From a



reading of the narrative in the writ petition, there is no doubt that the Petitioner was appointed on casual basis in February, 1993 and by her own averments in the writ petition, she was appointed as an employee entitled to minimum wages under the Minimum Wages Act, 1948 with rights flowing to a 'workmen' under the Industrial Disputes Act, 1947. Petitioner now claims regularization of her services w.e.f. 1994 and benefits of pay revisions under the Pay Commissions in consonance with Section 10(1) of DSEAR. There is admittedly no explanation in the writ petition worth a mention which can even remotely be construed as sufficient cause to condone delay and laches of 27 years in approaching this Court. Ignorance of legal rights or law is no excuse and if that is the ground sought to be taken by the learned counsel, the position remains the same even in 2024.

9. Law on the application of doctrine of delay and laches is no longer *res integra*. It is trite that delay defeats justice. Doctrine of laches in Courts of equity is neither an arbitrary or an abstract or a technical doctrine and the Supreme Court has repeatedly held that delay or laches is one of the factors which is to be borne in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. I may in this context refer to the observations of the Supreme Court in ***Karnataka Power Corpn. Ltd. through its Chairman & Managing Director and Another v. K. Thangappan and Another***, (2006) 4 SCC 322, as under:

“6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of 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*



Prashad v. Chief Controller of Imports and Exports [(1969) 1 SCC 185 : AIR 1970 SC 769] . Of course, the discretion has to be exercised judicially and reasonably.

7. *What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd [(1874) 5 PC 221 : 22 WR 492] (PC at p. 239) was approved by this Court in Moon Mills Ltd. v. M.R. Meher [AIR 1967 SC 1450] and Maharashtra SRTC v. Shri Balwant Regular Motor Service [(1969) 1 SCR 808 : AIR 1969 SC 329] . Sir Barnes had stated:*

“Now, the doctrine of laches in courts of equity is not an arbitrary or a 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, is 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 it relates to the remedy.”

8. *It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to 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 Rabindranath Bose v. Union of India [(1970) 1 SCC 84 : 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.*

9. *It was stated in State of M.P. v. Nandlal Jaiswal [(1986) 4 SCC 566 : 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 train 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.”

10. In ***Shiv Dass v. Union of India and Others*, (2007) 9 SCC 274**, the Supreme Court held as under:-

*“6. Normally, in the case of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India. 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 Prashad v. Chief Controller of Imports and Exports* [(1969) 1 SCC 185 : AIR 1970 SC 769] . Of course, the discretion has to be exercised judicially and reasonably.”*

11. It is settled that delay and laches in espousing a cause can come in the way of a litigant who is not vigilant, even if he has a good case on merits and Courts should be reluctant in entertaining stale claims of persons, who without any reasonable explanation approach the Court with an inordinate and gross delay. Courts in their discretionary power do not ordinarily assist the indolent or lethargic persons who sleepover their rights. If a litigant fails to satisfy the Court on the inordinate delay in approaching the Court, the Court will be well justified in rejecting the claim on delay and laches. It would be useful to allude to the observations of the Supreme Court in ***Chennai Metropolitan Water Supply and Sewerage Board and Others v. T.T.Murali Babu*, (2014) 4 SCC 108**, which are as follows:



“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinise whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons — who compete with “Kumbhakarna” or for that matter “Rip Van Winkle”. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.”

12. Tested on the anvil of the law laid down by the Supreme Court, in my view, there is merit in the preliminary objection raised by Mr. Gaurav Dhingra. Ordinarily, if the claim of the Petitioner was related to benefits of pay revisions under Pay Commissions' recommendations, the writ petition may have been entertained being a continuing cause of action *albeit*



restricting the arrears to three years prior to the filing of this writ petition. However, in the instant case, the claim of pay scales is a relief consequential to the claim of appointment as a regular employee with pay scales at par with regular employees of the corresponding status in Schools run by Government of NCT of Delhi under Section 10(1) of DSEAR. Therefore, the substantive relief is one for regular appointment w.e.f. 1994 and in the absence of any plausible and sufficient explanation for having slept over for 27 long years before approaching this Court, no relief can be granted at this belated stage.

13. The writ petition is accordingly dismissed on the ground of delay and laches.

JYOTI SINGH, J

AUGUST 9, 2024
B.S. Rohella