



2024:DHC:8382



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 16th October, 2024*

+ W.P.(C) 14246/2024

RAM BABU

.....Petitioner

Through: Mr. Mohd. Faisal, Advocate.

versus

NEW INDIA ASSURANCE COMPANY LIMITED
& ANR.

.....Respondents

Through: Mr. JPN Shahi, Advocate for
Respondent No.1.Mr. Jatin Singh, Mr. Keshav Sehgal, Mr. Kshitij
Joshi and Mr. Aryan Kumar, Advocates for
Respondent No. 2/UOI.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India directing the Respondents to determine the seniority of the Petitioner from the date of offer of appointment i.e. 24.07.1992 as well as a direction to grant him promotion as Senior Assistant from the year 1999 or from the date of eligibility, whichever is earlier.

2. Facts to the extent necessary are that the Petitioner who belongs to Scheduled Caste category was selected and offered appointment to the post of Assistant (Typist) on 24.07.1992 by Respondent No. 1 after successfully



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passing the written test and skill test. Petitioner was referred for medical examination and it was found that he had been suffering from some depressive illness since 1987 but had recovered. Yet, the Petitioner was not appointed and he preferred W.P.(C.) No. 5045/1993 in this Court. By an order dated 08.07.1993, Court directed Respondent No. 1 to grant provisional appointment to the Petitioner and place him under probation for 2 years. Pursuant thereto, Petitioner was appointed vide letter dated 08.09.1994 and placed on probation of 2 years from 12.09.1994, subject to fulfilling the medical fitness norms.

3. It is averred that Petitioner's service was confirmed on 16.09.1996 w.e.f. 14.09.1996. In 2008, Respondent No. 1 introduced a new promotion policy called Promotion Policy for Supervisory, Clerical and Subordinate Staff, 2008. Petitioner claims that he was entitled to promotion as per the promotion policy of Respondent No. 1 as he satisfied the eligibility criteria for promotion to the cadre of Senior Assistant in consonance with Paragraph 14 of the said Policy. Despite eligibility from 2008 to 2017, Petitioner was not promoted despite passing the requisite test for promotion. On 16.06.2017, Petitioner applied for promotion as Scale-I officer as per the Policy but was again not considered *albeit* he was given promotion as a Senior Assistant under paragraph 25A as one time promotion in his lifetime. Petitioner retired on superannuation on 28.02.2023 and thereafter gave a representation on 20.09.2023 requesting for reservation in promotion and seniority from the date of his appointment.

4. Issue notice.

5. Counsels, as above, accept notice on behalf of the Respondents and take a preliminary objection to the maintainability of this writ petition on



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ground of delay and laches. It is submitted that by this writ petition, Petitioner seeks ante-dating of his seniority from 24.07.1992 and consequential promotion as Senior Assistant from 1999 or date of eligibility, whichever is earlier and this writ petition filed after an inordinate delay of 32 years, cannot be entertained as this would lead to unsettling of settled seniority of other employees. There is no explanation in the writ petition to justify the inordinate delay in approaching the Court.

6. Broadly understood, the case of the Petitioner is that he had cleared the written and skill test in 1992 and was offered appointment on 24.07.1992 but his actual appointment was delayed upto 12.09.1994 for no fault of the Petitioner and therefore, he should be given the benefit of seniority from the date of the offer letter i.e. 24.07.1992. Petitioner seeks promotion under paragraph 14 of the 2008 Promotion Policy on the ground that he was eligible since 1999 itself but was illegally deprived of the promotion till 2017 and even in that year, he was promoted under paragraph 25A as a one time promotion in his life. It is palpably clear that the claim for seniority goes back to 24.07.1992 and the petition has been filed after 32 years. Similarly, the claim for promotion goes back to 1999 which is 25 years back. In my view, Respondents are right in their submissions that the writ petition is barred by delay and laches and there is no explanation worth a mention to explain the inordinate delay. By Petitioner's own showing in the writ petition, he represented for the first time in 2017 but there was no response from the Respondents. Petitioner retired on 28.02.2023 but till the said date admittedly Petitioner did not take recourse to any legal remedy. He made another representation on 19.09.2023, post his retirement but even thereafter waited for over a year to file the present writ petition. There can



be no doubt that if the Petitioner succeeds and his seniority is ante-dated to 24.07.1992, it may adversely impact the settled seniority of several employees, none of whom are parties here. It is no longer *res integra* that settled seniority cannot be unsettled after a long period of time. Doctrine of delay and laches is a well-recognised and accepted doctrine when it comes to entertaining writ petitions under Article 226 of the Constitution of India and this Doctrine applies with greater vigor to matters relating to seniority and promotion as this has an impact on third parties, who in the meantime have moved up the ladder in seniority and/or promoted. In one of the earliest decisions in ***R.S. Makashi and Others v. I.M. Menon and Others, (1982) 1 SCC 379***, the Supreme Court observed as follows:

“30. In these circumstances, we consider that the High Court was wrong in overruling the preliminary objection raised by the respondents before it, that the writ petition should be dismissed on the preliminary ground of delay and laches, inasmuch as it seeks to disrupt the vested rights regarding the seniority, rank and promotions which had accrued to a large number of respondents during the period of eight years that had intervened between the passing of the impugned Resolution and the institution of the writ petition. We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 22, 1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition insofar as it related to the prayer for quashing the said Government Resolution should have been dismissed.”

7. In ***Malcom Lawrence Cecil D’Souza v. Union of India and Others, (1976) 1 SCC 599***, the Supreme Court held as follows:

“9. Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to



result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.”

8. In ***Shiba Shankar Mohapatra and Others v. State of Orissa and Others, (2010) 12 SCC 471***, the Supreme Court referred to several earlier decisions on the issue of entertaining the petition disputing long settled seniority and the principles that emerge are that once the seniority has been fixed and remains in existence for a reasonable time, any challenge to the same should not be entertained. Fence-sitters cannot be allowed to raise a dispute or challenge at a belated stage. Claim for seniority at a belated stage should be rejected as it seeks to disturb the vested rights of other persons in respect of seniority, rank and promotion, which have accrued to them during the intervening period. Courts exercising public law jurisdiction should not encourage agitation of stale claims where rights of third party crystallise in the interregnum. Relevant paragraphs are as follows:

“18. The question of entertaining the petition disputing the long-standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in Ramchandra Shankar Deodhar v. State of Maharashtra [(1974) 1 SCC 317 : 1974 SCC (L&S) 137] considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110] , wherein it has been observed that the principle on which the court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under : (Tilokchand case [(1969) 1 SCC 110] , SCC p. 115, para 7)

“7. ... The party claiming fundamental rights must move the Court before other rights come into existence. The action of courts cannot



harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court.”

19. *This Court in Ramchandra Shankar Deodhar case [(1974) 1 SCC 317 : 1974 SCC (L&S) 137] also placed reliance upon its earlier judgment of the Constitution Bench in Rabindranath Bose v. Union of India [(1970) 1 SCC 84] , wherein it has been observed as under : (Rabindranath Bose case [(1970) 1 SCC 84] , SCC p. 97, para 33)*

“33. ... It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years.”

20. *In R.S. Makashi v. I.M. Menon [(1982) 1 SCC 379 : 1982 SCC (L&S) 77] this Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees. The Court referred to its earlier judgment in State of M.P. v. Bhailal Bhai [AIR 1964 SC 1006] , wherein it has been observed that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under Article 226 of the Constitution can be measured. The Court observed as under : (R.S. Makashi case [(1982) 1 SCC 379 : 1982 SCC (L&S) 77] , SCC pp. 398-400, paras 28 & 30)*

“28. ... ‘33. ... we must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years. ...’ [Ed. : As observed in Rabindranath Bose v. Union of India, (1970) 1 SCC 84, p. 97, para 33.]

30. *... The petitioners have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the court with the challenge against the seniority principles laid down in the Government Resolution of 1968. ... We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of 22-3-1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition insofar as it related to the prayer for quashing the said Government Resolution should have been dismissed.”*



21. *The issue of challenging the seniority list, which continued to be in existence for a long time, was again considered by this Court in K.R. Mudgal v. R.P. Singh [(1986) 4 SCC 531 : 1987 SCC (L&S) 6 : AIR 1986 SC 2086] . The Court held as under : (SCC pp. 532 & 536, paras 2 & 7)*

“2. ... A government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. ...

7. ... Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the government servants created by writ petitions filed after several years as in this case. It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the government servants there would also be administrative complications and difficulties. ... In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches.”

(emphasis added)

22. *While deciding K.R. Mudgal case [(1986) 4 SCC 531 : 1987 SCC (L&S) 6 : AIR 1986 SC 2086] , this Court placed reliance upon its earlier judgment in Malcom Lawrence Cecil D'Souza v. Union of India [(1976) 1 SCC 599 : 1976 SCC (L&S) 115 : AIR 1975 SC 1269] , wherein it had been observed as under : (Cecil D'Souza case [(1976) 1 SCC 599 : 1976 SCC (L&S) 115 : AIR 1975 SC 1269] , SCC p. 602, para 9)*

“9. Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.”

(emphasis added)

23. *In B.S. Bajwa v. State of Punjab [(1998) 2 SCC 523 : 1998 SCC (L&S)*



611] this Court while deciding the similar issue reiterated the same view, observing as under : (SCC p. 526, para 7)

“7. ... It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition.”

(emphasis added)

24. *In Dayaram A. Gursahani v. State of Maharashtra [(1984) 3 SCC 36 : 1984 SCC (L&S) 341] , while reiterating the similar view this Court held that in absence of satisfactory explanation for inordinate delay of 8-9 years in questioning under Article 226 of the Constitution, the validity of the seniority and promotion assigned to other employee could not be entertained.*

25. *In P.S. Sadasivaswamy v. State of T.N. [(1975) 1 SCC 152 : 1975 SCC (L&S) 22] this Court considered the case where the petition was filed after a lapse of fourteen years challenging the promotion. However, this Court held that the aggrieved person must approach the Court expeditiously for relief and it is not permissible to put forward stale claim. The Court observed as under : (SCC p. 154, para 2)*

“2. ... A person aggrieved by an order promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion.”

The Court further observed that it was not that there was any period of limitation for the courts to exercise their powers under Article 226 nor was it that there could never be a case where the courts cannot interfere in a matter after certain length of time. It would be a sound and wise exercise of jurisdiction for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claim and try to unsettle settled matters.

26. *A similar view has been reiterated by this Court in Sudama Devi v. Commr. [(1983) 2 SCC 1] ; State of U.P. v. Raj Bahadur Singh [(1998) 8 SCC 685 : 1999 SCC (L&S) 252] and Northern Indian Glass Industries v. Jaswant Singh [(2003) 1 SCC 335] .*

27. *In Dinkar Anna Patil v. State of Maharashtra [(1999) 1 SCC 354 : 1999 SCC (L&S) 216] this Court held that delay and laches in challenging the seniority is always fatal, but in case the party satisfies the Court regarding delay, the case may be considered.*



28. In *K.A. Abdul Majeed v. State of Kerala* [(2001) 6 SCC 292 : 2000 SCC (L&S) 955] this Court held that seniority assigned to any employee could not be challenged after a lapse of seven years on the ground that his initial appointment had been irregular, though even on merit it was found that seniority of the petitioner therein had correctly been fixed.

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 the laches. The court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum. (Vide *Aflatoon v. Lt. Governor of Delhi* [(1975) 4 SCC 285 : AIR 1974 SC 2077] ; *State of Mysore v. V.K. Kangan* [(1976) 2 SCC 895 : AIR 1975 SC 2190] ; *Municipal Council, Ahmednagar v. Shah Hyder Beig* [(2000) 2 SCC 48] ; *Inderjit Gupta v. Union of India* [(2001) 6 SCC 637 : 2001 SCC (L&S) 1083] ; *Shiv Dass v. Union of India* [(2007) 9 SCC 274 : (2007) 2 SCC (L&S) 395] ; *A.P. SRTC v. N. Satyanarayana* [(2008) 1 SCC 210 : (2008) 1 SCC (L&S) 161] and *City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla* [(2009) 1 SCC 168]).

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 *K.R. 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.”

9. In *H.S. Vankani and Others v. State of Gujarat and Others*, (2010) 4 SCC 301, the Supreme Court held as follows:

“38. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority, etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instils confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the government servants



and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume a lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and government, driving the parties to acute penury. It is well known that the salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money-making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further, it also consumes a lot of judicial time from the lowest court to the highest resulting in constant bitterness among the parties at the cost of sound administration affecting public interest.

39. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action. Legal principles have been reiterated by this Court in Union of India v. S.K. Goel [(2007) 14 SCC 641 : (2009) 1 SCC (L&S) 873] , T.R. Kapoor v. State of Haryana [(1989) 4 SCC 71 : 1989 SCC (L&S) 636 : (1989) 11 ATC 844] and Bimlesh Tanwar v. State of Haryana [(2003) 5 SCC 604 : 2003 SCC (L&S) 737] . In view of the settled law the decisions cited by the appellants in G.P. Doval case [(1984) 4 SCC 329 : 1984 SCC (L&S) 767] , Prabhakar case [(1976) 2 SCC 890 : 1976 SCC (L&S) 367] , G. Deendayalan [(1997) 2 SCC 638 : 1997 SCC (L&S) 749] and R.S. Ajara [(1997) 3 SCC 641 : 1997 SCC (L&S) 851] are not applicable to the facts of the case.”

10. In ***State of Uttaranchal and Another v. Shiv Charan Singh Bhandari and Others***, (2013) 12 SCC 179, the Supreme Court was examining whether a claim petition filed before the Tribunal after a lapse of several years challenging the *ad-hoc* promotion of a junior employee could be entertained, when the Appellants could have assailed the same immediately after the *ad-hoc* promotion was conferred, but chose not to do so for 6 years till regular promotion took place. The only defence of the Appellants for approaching the Court belatedly was that they were making representations. The Supreme Court dismissed the appeals invoking the doctrine of delay and laches observing that there can be no cavil over the



fact that claim for promotion is based on concept of equality and the relief must be claimed within a reasonable time and even if a person has a case on merit, seniority should not be disturbed at the instance of one who sleeps over his right. Relevant passages are as follows:

“17. In C. Jacob v. Director of Geology and Mining [C. Jacob v. Director of Geology and Mining, (2008) 10 SCC 115 : (2008) 2 SCC (L&S) 961] 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: (SCC p. 123, para 10)

“10. 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.”

18. In Union of India v. M.K. Sarkar [(2010) 2 SCC 59 : (2010) 1 SCC (L&S) 1126] this Court after referring to C. Jacob [C. Jacob v. Director of Geology and Mining, (2008) 10 SCC 115 : (2008) 2 SCC (L&S) 961] has ruled that: (SCC p. 66, para 15)

“15. When a belated representation in regard to a ‘stale’ or ‘dead’ issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the ‘dead’ issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.”

19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not



arrest time.

20. *In Karnataka Power Corpn. Ltd. v. K. Thangappan [(2006) 4 SCC 322 : 2006 SCC (L&S) 791] the Court took note of the factual position and laid down that when nearly for two decades the respondent workmen therein had remained silent mere making of representations could not justify a belated approach.*

21. *In State of Orissa v. Pyarimohan Samantaray [(1977) 3 SCC 396 : 1977 SCC (L&S) 424] it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in State of Orissa v. Arun Kumar Patnaik [(1976) 3 SCC 579 : 1976 SCC (L&S) 468].*

22. *In BSNL v. Ghanshyam Dass (2) [(2011) 4 SCC 374 : (2011) 2 SCC (Civ) 268 : (2011) 1 SCC (L&S) 685] a three-Judge Bench of this Court reiterated the principle stated in Jagdish Lal v. State of Haryana [(1997) 6 SCC 538 : 1997 SCC (L&S) 1550] 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 7-7-1992 [Santosh Kapoor v. Union of India, OA No. 1455 of 1991, order dated 7-7-1992 (CAT)].*

23. *In State of T.N. v. Seshachalam [(2007) 10 SCC 137 : (2008) 1 SCC (L&S) 475], this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: (SCC p. 145, para 16)*

“16. ... 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.”

24. *There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in Ghulam Rasool Lone v. State of J&K [(2009) 15 SCC 321 : (2010) 1 SCC (L&S) 539].*

25. *In NDMC v. Pan Singh [(2007) 9 SCC 278 : (2007) 2 SCC (L&S) 398] the 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.

26. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in *P.S. Sadasivaswamy v. State of T.N.* [(1975) 1 SCC 152 : 1975 SCC (L&S) 22], wherein it has been laid down that: (SCC p. 154, para 2)

“2. ... A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.”

27. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer. As we perceive neither the Tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion.

28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the Tribunal and accepted by the High Court.”

11. I may also profitably refer to the judgment of the Supreme Court in ***Dr. Akshya Bisoi and Another v. All Institute of Medical Sciences and Others*, (2018) 3 SCC 391**, as under:

“19. The Court is confronted in the present case with a situation in which



recruitment to the post of Additional Professor was carried out in 2005. That was well over 12 years ago. The petitioners have instituted these proceedings under Article 32 in November 2017 to question the order of ranking made by the Selection Committee on 12-9-2005. There is no cogent explanation for this belated recourse to legal remedies. The petitioners cannot legitimately explain the delay on their part merely by contending that they were representing to the first respondent to remedy their grievances. The petitioners may have believed in good faith that the Aiiims administration would pay heed to their grievances. They had a sympathetic ear of the Union Ministry of Health and Family Welfare. But twelve years is too long a period, by any means, to not seek recourse to judicial remedies. As the narration of facts would indicate, the governing body had on 14-4-2012 decided to maintain the order of merit in terms of which the fourth respondent was ranked first, above the two petitioners. Even thereafter, a three-member committee was constituted by the governing body in October 2012 and a decision was once again taken on 19-7-2013 to maintain the order of seniority. This was reiterated on 12-5-2014 and 22-6-2016. The petitioners were thus aware of the consistent position which was adopted by the first respondent. The delay on their part in seeking recourse to their legal remedies must weigh against them. At this stage it would be manifestly unfair to unsettle the inter se seniority between the three Professors in the CTVS Department by reopening the recommendation made by the Selection Committee in 2005.

20. In holding that an unexpected delay on the part of the petitioners would disentitle them to relief, we place reliance on a judgment of this Court in *State of Uttaranchal v. Shiv Charan Singh Bhandari* [*State of Uttaranchal v. Shiv Charan Singh Bhandari*, (2013) 12 SCC 179 : (2014) 3 SCC (L&S) 32]. The learned Chief Justice, after adverting to the settled position of law in that regard, observed thus : (SCC pp. 185-86, paras 27-28)

“27. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. ... the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer. ...

28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the Tribunal and accepted by the High Court.”



There has to be an element of repose and a stale claim cannot be resuscitated.

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24. *In the present case, the record of the court indicates that while making its recommendations for appointment to the post of Additional Professor, the Selection Committee had borne in mind the performance of the candidates, their records as well as the opinion of the technical experts. The minutes of the meeting of 12-9-2005 indicate that the views of the technical experts were considered. To re-evaluate what took place well over twelve years ago would neither be feasible nor appropriate. The policy decision of 1997 indicates that the gradings given by all the members of the Selection Committee and the technical experts are to be placed before the Chairman of the Selection Committee and the final selection "may be made" on the basis of the gradings/markings given by the members of the Selection Committee and the technical experts. The Selection Committee which was constituted in 2005 considered the issue of selection and inter se ranking of the selected candidates. In making its final recommendation in regard to their order of merit, upon appointment as Additional Professors, the Selection Committee had due regard to relevant matters including the performance of the candidates, their records and the opinion of the experts. Hence, the ranking which has been assigned cannot be regarded as being in breach of the policy decision of 1997. It would be iniquitous to unsettle the position of seniority, over twelve years after the petitioners and the fourth respondent were selected as Additional Professors. Even thereafter, when each of them has been promoted as a Professor, it is the fourth respondent who has been ranked higher than the petitioners.*

25. *For the above reasons, we have come to the conclusion that the grant of relief would unsettle the inter se seniority between the petitioners and the fourth respondent well over twelve years since the recommendation of the Selection Committee for appointment as Additional Professors. This cannot be done. Some expressions of opinion in favour of the first petitioner in the departmental processes may have engendered a sense of hope. But that cannot furnish a legal ground to unsettle something that has held the field for long years. We close the proceedings with the expectation that these distinguished doctors will pursue their avocations at Aïms without rancour. Our decision on seniority is no reflection upon their distinguished service to a premier national institution."*

12. This position of law has been recently restated and reinforced by the Supreme Court in **Ajay Kumar Shukla and Others v. Arvind Rai and Others, (2022) 12 SCC 579**, and relevant passages are as follows:



“24. We may now discuss the law on the point regarding delay in approaching the court and in particular challenge to a seniority list. The learned Single Judge had placed reliance on a judgment of this Court in Shiba Shankar Mohapatra v. State of Orissa [Shiba Shankar Mohapatra v. State of Orissa, (2010) 12 SCC 471 : (2011) 1 SCC (L&S) 229] . Dr B.S. Chauhan, J., after considering the question of entertaining the petition despite long-standing seniority filed at a belated stage discussed more than a dozen cases on the point including Constitution Bench judgments [Ed. : The reference appears to be to Ramchandra Shankar Deodhar v. State of Maharashtra, (1974) 1 SCC 317 : 1974 SCC (L&S) 137 and Tilokchand Motichand v. H.B. Munshi, (1969) 1 SCC 110] and ultimately in para 30 observed that a seniority list which remains in existence for more than three to four years unchallenged should not be disturbed. It is also recorded in para 30 that in case someone agitates the issue of seniority beyond period of three to four years he has to explain the delay and laches in approaching the adjudicatory forum by furnishing satisfactory explanation. Para 30 is reproduced below : (SCC pp. 483-84)

“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 K.R. Mudgal [K.R. Mudgal v. R.P. Singh, (1986) 4 SCC 531 : 1987 SCC (L&S) 6] , 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.”

25. On the other hand, the Division Bench while shutting out the appellants on the ground of delay relied upon the following judgments of this Court:

(i) Dayaram Asanand Gursahani v. State of Maharashtra [Dayaram Asanand Gursahani v. State of Maharashtra, (1984) 3 SCC 36 : 1984 SCC (L&S) 341]

(ii) B.S. Bajwa v. State of Punjab [B.S. Bajwa v. State of Punjab, (1998) 2 SCC 523 : 1998 SCC (L&S) 611]

(iii) Malcom Lawrence Cecil D'Souza v. Union of India [Malcom Lawrence Cecil D'Souza v. Union of India, (1976) 1 SCC 599 : 1976 SCC (L&S) 115]

(iv) R.S. Makashi v. I.M. Menon [R.S. Makashi v. I.M. Menon, (1982) 1 SCC 379 : 1982 SCC (L&S) 77]

26. In Dayaram A. Gursahani [Dayaram Asanand Gursahani v. State of



Maharashtra, (1984) 3 SCC 36 : 1984 SCC (L&S) 341] , there was a delay of 9 years. In B.S. Bajwa [B.S. Bajwa v. State of Punjab, (1998) 2 SCC 523 : 1998 SCC (L&S) 611] , there was a delay of more than a decade. In Malcom Lawrence Cecil D'Souza [Malcom Lawrence Cecil D'Souza v. Union of India, (1976) 1 SCC 599 : 1976 SCC (L&S) 115] , the delay was of 15 years and in R.S. Makashi [R.S. Makashi v. I.M. Menon, (1982) 1 SCC 379 : 1982 SCC (L&S) 77] there was a delay of 8 years. In all these cases, this Court has recorded that the delay has not been explained. Shiba Shankar Mohapatra [Shiba Shankar Mohapatra v. State of Orissa, (2010) 12 SCC 471 : (2011) 1 SCC (L&S) 229] is a judgment of 2010, which has laid down that three to four years would be a reasonable period to challenge a seniority list and also that any challenge beyond the aforesaid period would require satisfactory explanation.”

13. The common thread that runs in all the aforementioned judgments is that settled seniority should not be reopened or disturbed and unsettled after a lapse of unreasonable period of time, as unsettling a long existing seniority at the instance of one or some employees has an adverse impact on the vested rights accrued in favour of others in the meantime. This law has developed on a sound rationale and first principles of entertaining a writ petition, which is a discretionary relief, that those who sit back and sleep over their rights cannot be given a premium for waking up from a deep slumber after years and be allowed to assert better rights of seniority over the others. It is settled that law comes to the rescue of the vigilant and not the indolent.

14. In view of the aforesaid judgments, even the claim for promotion to the post of Senior Assistant from 1999 cannot be entertained as the same is highly belated. It cannot be disputed that at this stage it is neither feasible nor possible to direct re-consideration of the Petitioner for promotion as that will entail considering others who may have been in the reckoning in 1999 and in all probability would have retired. Besides, this would impact the seniority of the said employees which cannot be permitted at this belated



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stage only because Petitioner has chosen to wake up after 25 years and file the present petition and thus this Court is not persuaded to entertain this writ petition.

15. Petitioner's counsel, at this stage, submits that he has been making representations from time to time. In *Shiv Charan Singh Bhandari (supra)*, the Supreme Court repelled the argument that making representations would extend limitation and/or serve as a defence to delay and laches. It was observed that the issue of limitation or delay and laches has to be considered with reference to original cause of action and even where the Court directs consideration of a representation relating to a stale or dead claim, it does not give rise to a fresh cause of action. Making repeated representations is not a satisfactory explanation of delay and if one chooses to sleep like Rip Van Winkle and gets up from the slumber at his own leisure for some reason which is fathomable to him, the reasoning cannot be countenanced in law.

16. Petition is accordingly dismissed as barred by delay and laches.

JYOTI SINGH, J

OCTOBER 16, 2024

B.S. Rohella/shivam