



2024:DHC:8992



\$~112

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

%

Date of Decision: 06th November, 2024

+ W.P.(C) 15485/2024

RAMA KRISHNA PUBLIC SCHOOL

.....Petitioner

Through: Mr. Pramod Gupta, Mr. Harsh Jaiswal
and Mr. Osheen Baht, Advocates.

versus

DIRECTORATE OF EDUCATION & ANR.

.....Respondents

Through: Mr. Yeeshu Jain, Additional Standing
Counsel with Ms. Jyoti Tyagi, Advocate for DoE.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)****CM APPL. 64982/2024**

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 15485/2024 and CM APPL. 64981/2024

3. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India laying a challenge to order dated 02.06.2015 passed by Directorate of Education ('DoE'), whereby Petitioner has been directed to pay salary and other allowances to Respondent No.2 as per 5th and 6th Central Pay Commissions' recommendations along with arrears, treating Respondent No.2 as Art and Craft Teacher.
4. Facts to the extent necessary are that Respondent No.2 filed a writ petition in this Court being W.P.(C.) 7974/2014 praying *inter alia* for directions to the School/Petitioner herein to fix her pay after giving benefit



2024:DHC:8992



of pay revisions as per the 5th and 6th CPC recommendations. As per Respondent No.2, she was working on the post of TGT (Hindi, Art and Craft). By order dated 09.12.2014, the writ petition was disposed of directing DoE to consider the case of the Petitioner therein and the reply of the School and after granting personal hearing to both sides, pass a speaking order. Impugned order dated 02.06.2015 has been passed by DoE pursuant to the said directions of this Court. As the order indicates Respondent No.2 and the School were both heard by DoE before the order was passed and it is recorded in the order that perusal of the service book of Respondent No.2 reveals that she was appointed on probation on 01.09.2005 although the appointment letter indicates that she was appointed on 05.07.2004. On the basis of the appointment letter, DoE concluded that Respondent No.2 should be treated as Art and Craft Teacher from 05.07.2004 and since no termination order was produced by either side, DoE held that services of Respondent No.2 cannot be treated as terminated and in this backdrop directed payment of salary to her after giving benefit of the pay revisions under the 5th and 6th CPC. It is this order which is impugned by the School in the present writ petition.

5. Issue notice.
6. Counsels as above accept notice on behalf of DoE.
7. Mr. Jain and Ms. Jyoti Tyagi, learned counsels at the outset take a preliminary objection to the maintainability of this writ petition on the ground of delay and laches since the order under challenge was passed on 02.06.2015. It is argued that the impugned order was passed by DoE pursuant to directions of this Court in W.P.(C.) 7974/2014 and after hearing the representative of the School and Respondent No.2. Therefore, the School



2024:DHC:8992



was completely aware of the order when the same was passed. Copy of the order was also endorsed to the Manager/Principal of the School and there is no denying the fact that the same was received by the School soon after the order was passed. Moreover, after the DoE passed the order, Respondent No.2 filed a writ petition in this Court being W.P.(C.) 655/2017 seeking implementation of order dated 02.06.2015 and School not only appeared in the matter but also filed the counter-affidavit. School has taken no steps to challenge the order from 2015 or even from 2017 knowing fully well that Respondent No.2 has sought enforcement/implementation of the impugned order and therefore, the School cannot be permitted to assail the order at this stage after a delay of more than 9 years from the date the impugned order was passed. It is also argued that there is not a whisper in the writ petition to explain the inordinate delay and in fact the writ petition as drafted shows that the Petitioner is oblivious of the delay.

8. Mr. Pramod Gupta, learned counsel for the Petitioner *per contra* submits that the petition is not barred by delay and laches and seeks to controvert the objection that there is no explanation for the delay and draws the attention of the Court to paragraphs 35 and 36 of the writ petition under the heading “Effect of not assailing of illegal order of DDE dated 02.06.2015”, wherein it is stated that mere non-challenge of illegal order would not result in acquiescence and make the order enforceable and in this context relies on the judgments of the Supreme Court in ***Bharathidasan University and Another v. All-India Council for Technical Education and Others, (2001) 8 SCC 676; Chandigarh Administration and Another v. Jagjit Singh and Another, (1995) 1 SCC 745; and Shree Bhagwati Steel Rolling Mills v. Commissioner of Central Excise and Another, (2016) 3***

**SCC 643.**

9. Since a preliminary objection has been raised on behalf of DoE that the writ petition is barred by delay and laches, I may first consider this objection as this would go to the root of the matter. Stand of the DoE is that Petitioner was well aware of the impugned order in 2015 itself when the same was passed and has also been contesting W.P.(C.) 655/2017 filed by Respondent No.2, seeking enforcement of order dated 02.06.2015 and cannot be permitted to assail the order after an inordinate delay of over 9 years and that too in the absence of any explanation for the delay. Broadly understood, case of the Petitioner is that the impugned order is without jurisdiction, as DoE lacks the jurisdiction to pass the order in light of the termination of Respondent No.2 and the order being illegal and *non est* in the eyes of law can be assailed at any point in time.

10. Heard learned counsels for the parties.

11. Delay and laches is a recognized doctrine. “Laches” is derived from French language and means remissness and slackness. The Supreme Court in *Union of India and Others v. N. Murugesan and Others*, (2022) 2 SCC 25, has held that laches involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right and therefore, must stand in the way of the party getting relief or remedy and I may profitably quote two passages from the said judgment as under:-

“21. The word “laches” is derived from the French language meaning “remissness and slackness”. It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in



the way of the party getting relief or remedy.

22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.”

12. In ***Chairman, State Bank of India and Another v. M.J. James, (2022) 2 SCC 301***, the Supreme Court observed as follows:-

“36. What is a reasonable time is not to be put in a straitjacket formula or judicially codified in the form of days, etc. as it depends upon the facts and circumstances of each case. A right not exercised for a long time is non-existent. Doctrine of delay and laches as well as acquiescence are applied to non-suit the litigants who approach the court/appellate authorities belatedly without any justifiable explanation for bringing action after unreasonable delay. In the present case, challenge to the order of dismissal from service by way of appeal was after four years and five months, which is certainly highly belated and beyond justifiable time. Without satisfactory explanation justifying the delay, it is difficult to hold that the appeal was preferred within a reasonable time. Pertinently, the challenge was primarily on the ground that the respondent was not allowed to be represented by a representative of his choice. The respondent knew that even if he were to succeed on this ground, as has happened in the writ proceedings, fresh inquiry would not be prohibited as finality is not attached unless there is a legal or statutory bar, an aspect which has been also noticed in the impugned judgment. This is highlighted to show the prejudice caused to the appellants by the delayed challenge. We would, subsequently, examine the question of acquiescence and its judicial effect in the context of the present case.

xxx

xxx

xxx

38. In *Ram Chand v. Union of India* [*Ram Chand v. Union of India, (1994) 1 SCC 44*] and *State of U.P. v. Manohar* [*State of U.P. v. Manohar, (2005) 2 SCC 126*] this Court observed that if the statutory authority has not performed its duty within a reasonable time, it cannot justify the same by taking the plea that the person who has been deprived of his rights has not approached the appropriate forum for relief. If a statutory authority does not pass any orders and thereby fails to comply with the statutory



mandate within reasonable time, they normally should not be permitted to take the defence of laches and delay. If at all, in such cases, the delay furnishes a cause of action, which in some cases as elucidated in Union of India v. Tarsem Singh [Union of India v. Tarsem Singh, (2008) 8 SCC 648 : (2008) 2 SCC (L&S) 765] may be continuing cause of action. The State being a virtuous litigant should meet the genuine claims and not deny them for want of action on their part. However, this general principle would not apply when, on consideration of the facts, the court concludes that the respondent had abandoned his rights, which may be either express or implied from his conduct. Abandonment implies intentional act to acknowledge, as has been held in para 6 of Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. [Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409 : 1979 SCC (Tax) 144] Applying this principle of acquiescence to the precept of delay and laches, this Court in U.P. Jal Nigam v. Jaswant Singh [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] after referring to several judgments, has accepted the following elucidation in Halsbury's Laws of England : (Jaswant Singh case [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500], SCC pp. 470-71, paras 12-13)

“12. The statement of law has also been summarised in Halsbury's Laws of England, Para 911, p. 395 as follows:

‘In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

- (i) acquiescence on the claimant's part; and*
- (ii) any change of position that has occurred on the defendant's part.*

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.’

13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the



occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?"

13. In **Chennai Metropolitan Water Supply & Sewerage Board and Others v. T.T. Murali Babu, (2014) 4 SCC 108**, the Supreme Court observed that the doctrine of delay and laches should not be lightly brushed aside and 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 a primary principle that when an aggrieved person, without adequate reason, approaches the Court at its own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the *lis* at a belated stage should be entertained or not. The Supreme Court observed: *"Be it noted, delay comes in the way of equity"* and *"law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."* In **Karnataka Power Corpn. Ltd. through its Chairman & Managing Director and Another v. K. Thangappan and Another, (2006) 4 SCC 322**, the Supreme Court held as follows:

"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.”*

14. 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.”

15. It will be apposite to refer to a recent judgment of the Supreme Court in the context of delay and laches in ***Mrinmoy Maity v. Chhanda Koley and Others, 2024 SCC OnLine SC 551***, where the Supreme Court observed that an applicant who approaches the Court belatedly or sleeps over his rights for a considerable period of time and wakes up from deep slumber ought not to be granted extraordinary reliefs by the writ Courts and I may quote:-

“9. Having heard rival contentions raised and on perusal of the facts



obtained in the present case, we are of the considered view that writ petitioner ought to have been non-suited or in other words writ petition ought to have been dismissed on the ground of delay and laches itself. An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.

10. *The discretion to be exercised would be with care and caution. If the delay which has occasioned in approaching the writ court is explained which would appeal to the conscience of the court, in such circumstances it cannot be gainsaid by the contesting party that for all times to come the delay is not to be condoned. There may be myriad circumstances which gives rise to the invoking of the extraordinary jurisdiction and it all depends on facts and circumstances of each case, same cannot be described in a straight jacket formula with mathematical precision. The ultimate discretion to be exercised by the writ court depends upon the facts that it has to travel or the terrain in which the facts have travelled.*

11. *For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court. This Court in the case of Tridip Kumar Dingal v. State of W.B., (2009) 1 SCC 768 has held to the following effect:*

“56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one



of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide State of M.P. v. Bhailal Bhai, [AIR 1964 SC 1006 : (1964) 6 SCR 261], Moon Mills Ltd. v. Industrial Court, [AIR 1967 SC 1450] and Bhoop Singh v. Union of India, [(1992) 3 SCC 136 : (1992) 21 ATC 675 : (1992) 2 SCR 969]). This principle applies even in case of an infringement of fundamental right (vide Tilokchand Motichand v. H.B. Munshi, [(1969) 1 SCC 110], Durga Prashad v. Chief Controller of Imports & Exports, [(1969) 1 SCC 185] and Rabindranath Bose v. Union of India, [(1970) 1 SCC 84]).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose."

xxx

xxx

xxx

14. *Having regard to the afore-stated principles of law enunciated herein above, when we turn our attention to facts on hand, it would not detain us for too long for accepting the plea of the appellant in affirming the order of the Learned Single Judge and dismissing the writ petition on the ground of delay and laches. We say so for reasons more than one, firstly, it requires to be noticed that the writ petitioner was a rival applicant along with the appellant herein for grant of LPG distributorship and she along with the appellant herein, were found to be eligible and the appellant herein was held to be successful by virtue of draw of lots. This factual aspect would reflect that the writ petitioner was aware of all the developments including that of the allotment of distributorship having been made in favour of the appellant herein way back in 2014, yet did not challenge and only on acceptance of the alternate land offered by the appellant in March, 2017 and permitting him to construct the godown and the showroom. Same was challenged in the year 2017 and thereby the writ*



petitioner had allowed his right if at all if any to be drifted away or in other words acquiesced in the acts of the Corporation and as such on this short ground itself the appellant has to succeed.....”

16. Applying the law laid down by the Supreme Court to the facts of the present case, this Court finds merit in the preliminary objection raised by DoE that the writ petition is barred by delay and laches. There is no trace of doubt that the impugned order is dated 02.06.2015 and was passed by DoE over 9 years ago. As the order reflects the School was duly represented before the DoE and made elaborate submissions and was indisputably aware of the passing of the order, as soon as the same was passed. The order was not challenged by the School. As the order granting the benefit of pay and allowances to Respondent No.2 after holding that she was never terminated, was not being implemented, she approached this Court and filed W.P.(C.) 655/2017 in this Court seeking enforcement of order dated 02.06.2015. Petitioner has appended to this writ petition copy of the reply filed by the School in the said writ petition on 13.10.2017 and again there is no doubt that the School was aware of the filing of this writ petition in 2017 itself. No steps were taken again to assail the order dated 02.06.2015 till the filing of this writ petition in October, 2024. The writ petition is clearly barred by delay and laches.

17. It needs to be noted that in the entire writ petition there is not a whisper of why the writ petition has been filed after an inordinate delay of over 09 years. In fact, significantly the writ Petitioner proceeds on an assumption that there is no delay and/or the doctrine of delay and laches will not apply to a writ petition which challenges an order allegedly illegal, without jurisdiction and *non est* in law. Despite vehemently arguing that the doctrine of delay and laches will be inapplicable to the present case since the



Petitioner is challenging an order allegedly without jurisdiction, learned counsel for the Petitioner has been unable to cite a single judgment to support the proposition propounded. The judgments relied upon by Mr. Gupta, as aforementioned, are wholly inapplicable to the issue of the writ petition being barred by delay and laches.

18. In ***Bharathidasan University (supra)***, the only question of law that arose for consideration before the Supreme Court was whether the Appellant University having its area of operation over certain Districts in the State of Tamil Nadu, should seek prior approval of AICTE to start a department for imparting a course or programme in technical education or a technical institution as an adjunct to the University itself to conduct technical courses of its choice and selection and in this context, the Supreme Court in paragraph 14, which is relied upon by Mr. Gupta, held as follows:-

“14. The fact that the Regulations may have the force of law or when made have to be laid down before the legislature concerned does not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make regulations is confined to certain limits and made to flow in a well-defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arises and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would, therefore, be a myth to state that Regulations made under Section 23 of the Act have “constitutional” and legal status, even unmindful of the fact that any one or more of them are found to be not consistent with specific provisions of the Act itself. Thus, the Regulations in question, which AICTE could not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind a university in the matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any university or any of its departments and constituent institutions.”



19. The aforesaid judgment has no applicability to the issue of delay and laches and learned counsel for the Petitioner is unable to point out any observation by the Supreme Court that an order which is *non est* can be challenged at any point in time. Similarly, the judgments in ***Chandigarh Administration (supra)*** and ***Shree Bhagwati Steel Rolling Mills (supra)***, do not aid the Petitioner as none of them deal with the issue of maintainability of a writ petition which is barred by delay and laches and this is demonstrably clear from reading of paragraph 8 of the judgment in ***Chandigarh Administration (supra)*** which is as follows:-

“8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law — indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law — but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course,



if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course —barring exceptional situations — would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises.)”

20. Paragraph 29 relied upon by the Petitioner in ***Shree Bhagwati Steel Rolling Mills (supra)*** captures the observations of the Supreme Court that Rules or Regulations which are in the nature of subordinate legislation which are ultra vires, are bound to be ignored by the Courts when the question of their enforcement arises and the mere fact that there is no specific relief sought for to strike down or declare them ultra vires would not stand in the Court’s way in not enforcing them. Paragraph 29 is extracted hereunder for ready reference:-

“29. *It would be seen that Shri Aggarwal is on firm ground because this Court has specifically stated that rules or regulations which are in the nature of subordinate legislation which are ultra vires are bound to be ignored by the courts when the question of their enforcement arises and the mere fact that there is no specific relief sought for to strike down or declare them ultra vires would not stand in the court's way of not enforcing them. We also feel that since this is a question of the very*



2024:DHC:8992



jurisdiction to levy interest and is otherwise covered by a Constitution Bench decision of this Court, it would be a travesty of justice if we would not allow Shri Aggarwal to make this submission.”

21. It is palpably clear that none of the judgments relied upon by Mr. Gupta on behalf of the Petitioner, deal with the issue of delay and laches in filing a writ petition after 09 years challenging an order which was within the knowledge of the Petitioner throughout. As noted above, not only there is an inordinate delay in challenging the impugned order, but at the same time there is not an iota of explanation for the delay. Following the law laid down by the Supreme Court that the writ Court should be conscious and alive to the primary principle that when an aggrieved person, without adequate reason, approaches the Court, at his own leisure or pleasure, the Court is under a legal obligation to scrutinize whether the *lis* at a belated stage should be entertained or not, I am of the considered view that this is a textbook case of delay and laches where the School has chosen to wake up from the slumber after nearly a decade and has not even cared to plead any justifiable cause for sleeping over all this while.

22. For all the aforesaid reasons, this Court upholds the preliminary objection raised by DoE that the writ petition is barred by delay and laches. Accordingly, the writ petition is dismissed with no order as to costs. Pending application also stands disposed of.

JYOTI SINGH, J

NOVEMBER 06, 2024/shivam