



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 3922 of 2025

Nirmala Keshav Dhanokar

vs.

State of Maharashtra and others.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Saurav Rajurkar, Advocate for petitioner.

Mr. J. Y. Ghurde, AGP for respondent nos.1 and 3.

Mr. Kalyan Chiwarkar, Advocate for respondent no.5.

CORAM :- ANIL S. KILOR and MRS. VRUSHALI V. JOSHI, JJ.

DATE :- 4th AUGUST, 2025

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Heard learned counsel for the parties.

2. In the present writ petition, it is the case of the petitioner that he has been denied promotion to the post of 'Head Master' though he was the senior most eligible Assistant Teacher in respondent no.5-School.

3. Admittedly, the present petition came to be filed a month before the date of petitioner's superannuation. The benefit which he has claimed became due in the year 2012. This shows that the petition came to be filed after 13 years of huge and inordinate delay. The explanation given for the same is that he repeatedly approached the Authority including Higher Authorities and there was a ray of hope that his grievance will be resolved. However, on finding that no cognizance was taken by the Authorities, as a last resort, he approached this Court.

4. Even if the case of the petitioner is accepted ignoring the delay, as regards the denial of promotion and the reliefs sought in the present petition is granted, it will have double adverse effect on the public exchequer. Firstly, a person, who was not, according to the petitioner,

eligible to be promoted to the post of 'Head Master' has received all the monetary benefits and also he will be entitled for other consequential benefits after his retirement as per his last pay he has drawn. At the same time, if the petition is allowed and the prayer of the petitioner is accepted to grant him notional benefit, it will certainly make him entitle for higher amount of pension than the amount now fixed, because the pay-scale which the petitioner lastly drawn, would drastically change and it will have the effect on the calculation of the pensionary benefits. In that case, it will be additional financial burden on the public exchequer and this would be because of the fault of the petitioner, who did not approach the Court at the earliest opportunity.

5. Thus, considering the period lapsed in filing the present writ petition, i.e. 13 years and since now the petitioner stood superannuated, we are of the opinion that on the point of delay and laches, particularly when the same has not been properly explained, the petition may not be entertained.

6. The Honourable Supreme Court of India in the case of *Rishibhai Jagdishchandra Pathak vs. Bhavnagar Municipal Corporation* in **Civil Appeal No.4134 of 2022 (arising out of SLP (Civil) No.2946 of 2020)** with connected appeals **decided on 18.05.2022**. has observed thus:

“9. The doctrine of delay and laches, or for that matter statutes of limitation, are considered to be statutes of repose and statutes of peace, though some contrary opinions have been expressed. The courts have expressed the view that the law of limitation rests on the foundations of greater public interest for three reasons, namely, (a) that long dormant claims have more of cruelty than justice in them; (b) that a defendant might have lost the evidence to disapprove a stale claim; and (iii) that persons with good causes of action (who are able to enforce them) should pursue them with reasonable diligence. Equally, change in de facto position or character, creation of third party rights over a period of time, waiver, acquiesce, and need to ensure certitude in dealings, are equitable public policy considerations why period of limitation is prescribed by law. Law of limitation does not apply to writ petitions, albeit the discretion vested with

*a constitutional court is exercised with caution as delay and laches principle is applied with the aim to secure the quiet of the community, suppress fraud and perjury, quicken diligence, and prevent oppression. Therefore, some decisions and judgments do not look upon pleas of delay and laches with favour, especially and rightly in cases where the persons suffer from adeptness, or incapacity to approach the courts for relief. However, other decisions, while accepting the rules of limitation as well as delay and laches, have observed that such rules are not meant to destroy the rights of the parties but serve a larger public interest and are founded on public policy. There must be a lifespan during which a person must approach the court for their remedy. Otherwise, there would be unending uncertainty as to the rights and obligations of the parties. Referring to the principle of delay and laches, this Court, way back in *Moons Mills Ltd. v. M.R. Mehar*, President, Industrial Court, Bombay and Others, **[AIR 1967 SC 1450]** had referred to the view expressed by Sir Barnes Peacock in *The Lindsay Petroleum Company AND. Prosper Armstrong Hurd, Abram Farewell, and John Kemp*, **[(1984) LR 5 PC 221]** in the following words:*

“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 whereby 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 limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

10. *At the same time, the law recognises a ‘continuing’ cause of action which may give rise to a ‘recurring’ cause of action as in the case of salary or pension. This Court in M.R. Gupta v. Union of India and Others, [10 (1995) 5 SCC 628] has held that so long as the employee is in service, a fresh cause of action would arise every month when they are paid their salary on the basis of a wrong computation made contrary to the rules. If the employee’s claim is found to be correct on merits, they would be entitled to be paid according to the properly fixed pay-scale in future and the question of limitation would arise for recovery of the arrears for the past period. The Court held that the arrears should be calculated and paid as long as they have not become time-barred. The entire claim for the past period should not be rejected.*

11. *Relying upon the aforesaid ratio, this Court in the case of Union of India and Others v. Tarsem Singh [11(2008) 8 SCC 648] while referring to the decision in Shiv Dass v. Union of India and Others [12(2007) 9 SCC 274] quoted the following passages from the latter decision:*

“8...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.

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10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. ... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years.”

In Tarsem Singh (supra), reference was also made to Section 22 of the Limitation Act, 1963, and the following passage from Balakrishna Savalram Pujari Waghmare and Others v. Shree Dhyaneswar Maharaj Sansthan and Others, [13 AIR 1959 SC 798] which had explained the concept of continuing wrong in the context of Section 23 of the Limitation Act, 1908, corresponding to Section 22 of the Limitation Act, 1963, observing that:

“31...It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury.”

Accordingly, in Tarsem Singh (supra) it has been held that principles underlying ‘continuing wrongs’ and ‘recurring/successive wrongs’ have been applied to service law disputes. A ‘continuing wrong’ refers to a single wrongful act which causes a continuing injury. ‘Recurring/successive wrongs’ are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. Having held so, this Court in Tarsem Singh (supra) had further elucidated some exceptions to the aforesaid rule in the following words:

“To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the

grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

12. *In Tarsem Singh (supra), the delay of 16 years in approaching the courts affected the consequential claim for arrears and thus, this Court set aside the direction to pay arrears for 16 years with interest. The Court restricted “the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser”. Further, the grant of interest on arrears was also denied.*

13. *The aforesaid ratio in Tarsem Singh (supra) has been followed by this Court in State of Madhya Pradesh and Others v. Yogendra Shrivastava [(2010) 12 SCC 538] and Asger Ibrahim Amin v. Life Insurance Corporation of India [(2016) 13 SCC 797].*

14. *In the facts of the present case, it is accepted that the respondent-Corporation had accepted the interpretation rendered by the High Court of Gujarat to the Scheme whereby the appellants, on financial upgradation, would be entitled to the higher grade pay-scale of the next promotional post, which is Rs.5,000-8,000/- in the present case. As noted above, the impugned judgment of the Division Bench accepts the said position and grants the appellants the said pay-scale but restricts the benefit from the date of the judgment of the Single Judge in the Writ Petitions filed by the appellants, that is, with effect from 31st July 2018. The Division Bench should not have taken the date of the decision/judgment of the Single Judge for grant of*

the said benefit in view of the decision and ratio in Tarsem Singh (supra) which has been followed in several other decisions. That apart, the date of the decision of the Single Judge is a fortuitous circumstance. Only the date of filing of the writ petition is relevant while examining the question of delay and laches or limitation. The appellants would, in consonance with the case law referred to above, be entitled to the arrears for three years before the date of filing of the Writ Petitions.”

7. In the light of the above referred observations and having found inordinate delay in filing the present petition, the writ petition is dismissed. No order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(ANIL S. KILOR, J.)

Andurkar.