IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.19346 of 2026 .
Decided on : 2nd November, 2026

Ashok Kumar & Anr. **...Petitioners.**

Versus

Himachal Pradesh University ....**Respondent.**

Coram:

Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?[1]
For the Petitioners: Mr. Mandeep Chandel, Advocate.
For the respondent: Mr. Devender K. Sharma, Advocate.

Jyotsna Rewal Dua, Judge.

Notice. Mr. Devender K. Sharma, learned counsel appears and waives service of notice on behalf of the respondent.

2. From pleadings and submissions made for the parties, following factual position emerges;-

2(i). Respondent-University issued an advertisement bearing No. 3/1999 inviting applications for filling up posts of Laboratory Attendants in different departments, including Department of Chemistry, Physics, Education, Bio-Sciences (Plant Collector-cun-Mali), and Department of Bio-Sciences (Animal House Attendant). Both the petitioners applied. Petitioner No. 1 applied under the aforesaid advertisement for the post of

[1] Whether reporters of the local papers may be allowed to see the judgment?

Lab Attendant on 20.07.1999 and petitioner No. 2 applied on 23.07.1999. The recruitment process could not be processed further by the respondent-University.

2(ii). Respondent-University re-advertised the posts of Laboratory Attendants on 14.01.2002, clarifying therein that persons who had applied under Advertisement No. 3/1999 dated 21.06.1999 need not apply again. Candidatures of the petitioners were also considered for the post, but the process was not completed by the respondent-University.

2(iii). Posts of Laboratory Attendants were again advertised on 14.07.2005, with the stipulation that persons who had applied under Advertisement No. 3/1999, dated 21.06.1999 and advertisement No. 1/2002, dated 14.01.2002 need not apply again.

2(iv). In the interregnum, in accordance with provisions of Ordinance No. 35.8 of the respondent-University, the Executive Council of the university, vide its Resolution No. 22, in the meeting convened on 27.03.2004, approved the provisions for making appointments on contract basis. Consequently, amendments were carried out and notified on 27.04.2004. The unfilled posts of Laboratory Attendants advertised previously were again advertised on 13.08.2007 to be filled up on contract basis, with clarification that all those who had applied under

Advertisement No. 3/1999 dated 21.06.1999, Advertisement No. 1/2002 dated 14.01.2002, and No. 2/2005 dated 14.07.2005 need not to apply again; That candidature of such persons would be considered by the university. This process was also not taken to its logical conclusion.

2(v). The respondent-university readvertised the posts of Laboratory Attendants on 22.05.2009 to be filled up on contract basis, again clarifying that all those who had previously applied under Advertisement Nos. 3/1999, 1/2002, 2/2005 and 1/2007 need not apply again. Their candidature would be considered by the university. This advertisement was taken to its logical conclusion. Applications of the petitioners were also considered. The recruitment process was completed and the petitioners were appointed on contract basis on 12.08.2010 and 22.02.2011, respectively. Appointment letters were issued to the petitioners on 09.08.2010 (petitioner No. 1) and 07.02.2011 (petitioner No. 2). The appointment letters clearly stipulated that petitioners' appointments were on contract basis, governed by Act, Statutes & Ordinances of the University and rules & regulations made thereunder. Several other conditions were also imposed therein. Petitioners accepted their such appointments without any demur or protest and continued to serve on contract basis. Services of the petitioners were regularised by the

respondent-University on 27.04.2016 (Annexure P-4). The regularisation was pursuant to the recommendations of the Screening Committee in its meeting convened on 27.04.2016, constituted under Notification dated 15.10.2014. Petitioners accepted their regularisation in the aforesaid manner and continued to serve as regular employees of the respondent-University. 15 years after their contractual appointments and 9 years after serving the respondent-University on regular basis, they preferred representations on 28.03.2025 (Annexure P-6), seeking regularisation of their services from the date of their initial appointment i.e. 12.08.2010 and 22.02.2011 respectively, with all consequential benefits. Hearing no response from the respondent-University, petitioners preferred CWP No. 9994/2025 (petitioner No. 1) and CWP No. 9992/2025 (petitioner No. 2). The writ petitions were disposed of on 21.06.2025 with directions to the respondents to decide the abovementioned representations of the petitioners in accordance with law within six weeks.

2(vi). Pursuant to the aforesaid directions, respondent-University passed an order on 04.09.2025, declining to regularise the services of the petitioners from the date of their initial appointment on contract basis, in view of Himachal Pradesh Recruitment and Conditions of Service of Government Employees Act, 2024, adopted by the respondent-University.

CWP No. 16828 of 2025 instituted by the petitioners against the order dated 04.09.2025 was disposed of on 29.10.2025 with the observation that the respondents, while considering the case of the petitioners under the order dated 04.09.2025, had not decided their representations, rather the respondents had only considered the relief prayed for by the petitioners. Consequently, order dated 04.09.2025 (impugned therein) was quashed and set aside with directions to the respondent-University to consider the representations of the petitioners dated 28.03.2025 afresh in accordance with law within the period stipulated therein. Pursuant to the above directions, respondent-University considered the representations of the petitioners and rejected the same on 25.05.2026, giving occasion to the petitioner to institute this writ petition.

3. Heard and considered the case file.

4. The petitioners, though had applied under the Advertisement No. 3/1999 dated 21.06.1999, but the aforesaid advertisement could not be taken to its logical conclusion by the respondent-University. Subsequently also, the post of Laboratory Attendants in question had been readvertised many times by the respondent-University, but the recruitment process could not be finalised. In the interregnum, the Executive Council of the respondent-University, in

its meeting convened on 27.03.2004, approved the provisions for making appointments on contract basis. The petitioners' candidature was considered by the respondent-University under Advertisement No. 1/2009 dated 22.05.2009. Both the petitioners joined their duties on contractual basis on 12.08.2010 & 22.02.2011 respectively after accepting the terms and conditions of their appointment letters dated 09.08.2010 and 7.02.2011, respectively. No objection to any of the terms and conditions of the appointment letters was raised by the petitioners at the relevant time or even thereafter. Furthermore, contractual services of the petitioners were regularised by the respondent-University vide office order dated 27.04.2016. Such regularisation, as noticed earlier, was on the recommendations of the Screening Committee duly constituted by the respondent-University. Petitioners accepted the aforesaid office order as well, as also the dates of regularisation of their services and continued to discharge their duties as such. The representation preferred by them on 28.03.2025 (Annexure P-6) was admittedly the first ever objection raised by the petitioners seeking regular appointment from the dates of their contractual appointments. These representations were preferred 15 years after their contractual appointments and 9 years after regularisation of their services.

4(i). In the given facts and circumstances, principles of delay, laches and acquiescence get attracted against the claim of the petitioners. In ***Bichitrananda Behera Versus State of Orissa and others***[2]***,*** Hon'ble Apex Court held that delay and laches are vital in service matters and can be seen as acquiescence. Belated service related claim is to be rejected on the ground of delay and laches. Laches can be based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. Acquiescence implies active assent and is based upon the rule of *estoppel* in pais. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction, which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person. Hon'ble Apex Court observed that the claimant therein had delayed pursuing his claim for over 12 years despite being aware of the appointment of another person to the same post of Physical Education Trainer (PET). This prolonged inaction was held to amount to acquiescence, which effectively bars the claim because it implies consent through silence or failure to act. Hon'ble Apex Court explained that while laches refers to an unreasonable delay without active consent, both delay and laches serve the important purpose of preventing stale claims that disrupt settled rights and

[2]AIR 2023 SC 5064

administrative decisions. In service matters, these doctrines were held to play crucial roles as they protect the stability and finality of administrative decisions. Relevant portion of the judgment reads as under:-

> *"21. Profitably, we may reproduce relevant passages from certain decisions of this Court:*
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> *"(A) Union of India v Tarsem Singh, (2008) 8 SCC 648:*
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> *"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."*
>
> *(Emphasis supplied)*
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> *(B) .....*
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> *21-23. .....*

Acquiescence

24. We have already discussed the relationship between acquiescence on the one hand and delay and laches on the other.

25. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis."

(C) Chairman, State Bank of India v M J James, (2022) 2 SCC 301:

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.

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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 1213).

"*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?"

39. Before proceeding further, it is important to clarify distinction between "acquiescence" and "delay and laches". Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. [See Prabhakar v. Sericulture Deptt., (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149. Also, see Gobinda Ramanuj Das Mohanta v. Ram Charan Das, 1925 SCC OnLine Cal 30 : AIR 1925 Cal 1107] In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, [See Vidyavathi Kapoor Trust v. CIT, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. [See Krishan Dev v. Ram Piari, 1964 SCC OnLine HP 5 : AIR 1964 HP 34] Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. [See "Introduction", U.N. Mitra, Tagore Law Lectures — Law of Limitation and Prescription, Vol. I, 14th Edn., 2016.] However, acquiescence will not apply if lapse of time is of no importance or consequence.

40. Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person. [See Vidyavathi Kapoor Trust v. CIT, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] Given the aforesaid legal position, inactive acquiescence on the part of the respondent can be inferred till the filing of the appeal, and not for the period post filing of the appeal. Nevertheless, this acquiescence

being in the nature of estoppel bars the respondent from claiming violation of the right of fair representation."

4(ii). In ***Marinmoy Maity Versus Chanda Koley & Ors.***[3], Hon'ble Apex Court held that an applicant who approaches the Court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from deep slumber ought not to be granted the extraordinary relief by the writ Courts. 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. Relevant portion from the decision is as under: -

"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

[3]AIR 2024 SC 2717

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 and others v. State of W.B and others. (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 SCC185] and Rabindranath Bose v. Union of India [(1970) 1 SCC 84].

58. There is no upper limit and there is no lower limit also 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."

4(iii) In ***State of Kerala and others vs. Vs. Krishnan N.V.***[4] in context of delay and laches in granting relief to the employees who sought promotion and regularization 11 years after retirement, the Hon'ble Apex Court held as under:-

"*8) Whether repeated representations can justify delay and laches in approaching the Tribunal/court? The law on this issue is well settled. Reference can be made to the judgment of this Court in State of U.P. V. Rajmati Singh, whereby dealing with the issue of delay and laches, it Was held as under:*

"12. In our considered view, the respondent like any vigilant citizen, especially given that she does not belong to economically or socially backward segments of the society, was expected to assert her rights before an appropriate forum within a reasonable time. Repeated representations neither give rise nor revive the cause of action, if it had already arisen in the past. The respondent's difficulties do not end there, given that her services were brought to an

[4]Civil Appeal No. 1890 of 2025 decided on 19.08.2025

> *end when she was denied to resume her duties in the year 1974. She was, thus, required to seek a declaration of her continuity or have a writ of mandamus issued for her reinstatement. She did not do either."*
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> *(9) Further reliance is placed on the judgment passed by this Court in State of Orissa vs. Laxmi Narayan Das therein as under:*
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> *"16. ...Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant "a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. .....A court is not expected to give indulgence to such indolent persons- who compete with Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."*
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> *(10) For the reasons mentioned above, the order passed by the Tribunal as well as the High Court cannot be sustained. The OA and the Writ Petition filed by the respondent deserve to be dismissed on account of huge delay in availing the remedy for redressal of his grievance.*

The ratio of above decisions is attracted to the facts of the instant case. Petitioners' claim made in the year 2025 of retrospective regularization from 19.08.2010 and 07.02.2011 is hopelessly barred by unexplained delay, laches and acquiescence. The petitioners' appointment on contractual basis was even otherwise on the basis of resolution passed by the Executive Council of the respondent-University in

its meeting convened on 27.03.2004. Relief prayed for by the petitioners may also adversely impact and unsettle, the settled rights of others as well. Relief as claimed for by the petitioners cannot be allowed to them at this stage.

In view of the above, instant petition is dismissed. Pending applications, if any, also stand disposed of.

Jyotsna Rewal Dua
Judge

2nd November, 2026.
(jai)