

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**WP (C) No. 579/2020
CM No. 1217/2020**

Reserved On: 6th of October, 2023.
Pronounced On: 12th of October, 2023.

Mohd. Rustum Sheikh, Age: 35 Years
S/o Assadullah Sheikh
R/o Gantamulla Payeen, District Baramulla.

... **Petitioner(s)**

Through: -
Mr M. A. Khan, Advocate.

V/s

1. **High Court of Jammu & Kashmir,**
Through Principal Secretary to Chief Justice,
Srinagar/ Jammu.
2. Principal District and Sessions Judge, Baramulla.
3. Munsiff, Boniyar.

... **Respondent(s)**

Through: -
Mr Shah Aamir, Advocate.

CORAM:

**Hon'ble Mr Justice Tashi Rabstan, Judge
Hon'ble Mr Justice Rahul Bharti, Judge**

(JUDGMENT)

(Tashi Rabstan-J):

01. The petitioner, through the medium of the instant petition, seeks the grant of following relief(s) in his favour:

“(a) Writ, order or direction in the name of Mandamus commanding the respondents to re-employ him and also release in his favour back wages for he has been illegally dealt with; and

(b) Any other order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be also passed in favour of the petitioner.”

02. The petitioner claims that in terms of communication No. 7510/AC dated 8th of September, 2006, one Shri Himmat Singh Bloria, the then Accounts Officer of the High Court of Jammu & Kashmir and Ladakh,

addressed to the Munsiff, Judicial Magistrate 1st Class, Boniyar (Uri), made a request to process the case of the engagement of the petitioner and for obtaining sanction of the competent authority in this behalf. Thereafter, the petitioner is stated have been engaged as a Sweeper on part time basis on a consolidated monthly payment of Rs. 350/- in the Court of Munsiff, Boniyar vide order No. 500 dated 27th of November, 2006 on the following conditions:

- i. That the payments are of purely contingent character drawn on contingent bills and may be withdrawn at any time at discretion of the department;
- ii. That the allowance will not count for leave and pension;
- iii. That the work to be done is really necessary; and
- iv. That the allowance does not get to a menial or inferior servants in permanent employ in receipt of a monthly rate of pay.”

Accordingly, the petitioner is stated to have joined the aforesaid duties on 9th of February, 2007. It is contended that the petitioner is continuously working as a Daily Wager in terms of his engagement.

03. The petitioner states that he moved a representation dated 26th of April, 2007 endorsed to the respondent No.3 for enhancing the remuneration of Rs.350/- to Rs.2100/- per month, as was being paid to other similarly situated Sweepers working in different Courts. It is contended that the respondent No.3, vide communication dated 29th of November, 2008, while forwarding the application of the petitioner for regularization of his services and payment of wages as a full-time Daily Wager, informed the respondent No.2 that the petitioner is working as a Daily Wager on full time basis as Sweeper and Chowkidar. This representation, in original, was, thereafter, submitted by the respondent No.2 to the Principal Secretary to Hon'ble the Chief Justice, High Court of Jammu & Kashmir for consideration, but despite that the grievance of the petitioner was not redressed even after lapse of considerable period of time. It is pleaded that, thereafter, the Munsiff, Boniyar informed the petitioner to perform his duties only twice a week, instead of performing the same regularly. This

process is stated to have continued for a long time and, while the said process was going on, the Munsiff concerned informed the petitioner that his services are no more required and, therefore, he can do his job independently anywhere else. In these circumstances, the petitioner claims to have requested the Munsiff, Boniyar that he cannot restrain the petitioner to perform his duty in view of the fact that his engagement order has been issued by the High Court. Ultimately, in the month of July, 2013, the petitioner was not allowed to mark his attendance, though the respondents did not issue any formal order for restraining the petitioner from performing his duty. The petitioner claims to have filed various representations before the competent authorities from time to time for seeking the redressal of his grievance, however, the same did not yield any response, constraining the petitioner to approach this Court through the medium of the present writ petition seeking a writ of mandamus, thereby commanding the respondents to re-employ him and also for releasing his back wages.

04. Reply has been filed on behalf of the respondents, wherein it has been admitted that the petitioner was initially engaged as a Sweeper on part time basis on a consolidated monthly payment of Rs.350/- in the Munsiff, Court Boniyar vide order dated 27th of November, 2006 and the Petitioner, accordingly, joined on the said engagement on 9th of February, 2007. It is averred that the monthly consolidated wages were being paid to the petitioner up to November, 2010, whereafter the petitioner did not attend his duties and, resultantly, another person, namely, Imtiyaz Ahmad Lone was engaged as a Sweeper initially on a monthly consolidated wages of Rs.400/-, whereafter, his wages were enhanced to the tune of Rs.2000/- per month. It is also submitted that the said Sweeper is being paid the wages for the days he actually works as per the prevailing rates of Daily Wagers in view of Government order No. 842 dated 21st of January, 1998.

05. We have heard the learned Counsel for the parties and have perused the pleadings on record.

06. Admittedly, the petitioner was engaged as a Sweeper in terms of Order No. 500 dated 27th of November, 2006 on part time basis on a

consolidated monthly wages of Rs. 350/- in Munsiff Court, Boniyar and, he, accordingly, joined the said duties on 9th of February, 2007. The petitioner appears to have made a representation before the respondents to the effect that he has been given lesser monthly wages than a similarly situated employee, namely, Imtiyaz Ahmad Lone, who too was engaged as a Sweeper and was initially being paid monthly wages of Rs.400/-, however, his monthly wages were enhanced to the tune of Rs.2,000/-. It is the stand of the respondents that the petitioner was allowed to discharge his duties as Sweeper in the Court of Munsiff, Boniyar till November, 2010, for which the respondents have released the wages in his favour in tune with his engagement. Thereafter, the petitioner was asked to perform duty only twice a week for some time and, subsequently, in the year 2013, the petitioner was restrained from performing his duty as Sweeper on daily-wage basis on the ground that the petitioner seems to have remained absent from duty and as such, in his place, one Imtiyaz Ahmad Lone has been engaged as Sweeper.

07. Learned counsel for the petitioner, when asked as to what prevented the petitioner to approach this Court at the relevant point of time when he was restrained to perform his duties as Sweeper in the year 2013, contended that the petitioner approached the respondents by filing a series of representations against his discontinuation as a Sweeper on daily wage basis, prior to filing of the instant writ petition in the year 2020.

08. Learned counsel appearing for the respondents has contended that a person seeking relief against the State under Article 226 of the Constitution of India, be it a citizen or otherwise, cannot get discretionary relief available thereunder, unless he/ she fully satisfies the Court that the facts and circumstances of the case clearly justify the laches and undue delay on his/ her part in approaching the Court for grant of such discretionary relief and, therefore, where the Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person, including the State, without considering his/ her blameworthy conduct, such a laches or undue delay, acquiescence or waiver, the relief so

granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his/ her legal right by the State.

09. The Hon'ble Supreme Court in case titled '**Sudhi Vishnu Panvalkar v. Bank of India**', reported as '**AIR 1997 SC 2248**', dismissed the writ petition which was filed after three years and six months upon passing of the impugned order therein.

10. In case titled '**Scooters India & Ors. v. Vijai E. D. Eldered**', reported as '**1998 (6) SCC 549**', the Hon'ble Apex Court has held that a writ petition, which has been filed six years after passing of the impugned order therein, was not maintainable.

11. In yet another case titled '**State of Orissa v. Zlochan Nayak**', reported as '**2003 (10) SCC 678**', it was held by the Hon'ble Apex Court that a writ petition filed after a gap of three years was not maintainable and, accordingly, dismissed the same on the grounds of delay and laches.

12. A similar view has been taken by the Hon'ble Apex Court in the case of '**Govt. of West Bengal v. Tarun K. Roy**', reported as '**2004 (1) SCC 347**', as well as in case titled '**Ghulam Rasool Lone v. State of Jammu & Kashmir**', reported as '**2009 (AIR) SCW 5260**', wherein the Hon'ble Supreme Court was of the view that the discretionary jurisdiction under Article 226 of the Constitution can be denied on the ground of delay and laches.

13. Even, in case titled '**Banda Development Authority v. Moti Lal Agarwal**', reported as '**(2011) 5 SCC 394**', the Hon'ble Apex Court held that even if the objection of delay and laches had not been raised by the other side, the High Court was duty bound to take cognizance of the long-time gap of nine years between the issue of declaration/ order and filing of the writ petition and, accordingly, declined the relief to the petitioner on the ground that he was guilty of laches.

14. It is the case of the petitioner that before approaching the High Court by filing a writ petition, he approached the Respondents by filing

various representations and, therefore, there is no delay and laches on his part for seeking the redressal of his grievance.

15. Filing of series of representations neither gives rise nor revives the cause of action, if it had already arisen in the past. The petitioner has admitted in the writ petition that he was denied to resume his duties as back as in the year 2013 and, as such, he was required to seek a declaration of his continuity or have a writ of mandamus issued for his reinstatement at the relevant point of time from the competent forum. He, however, did not do either, which leaves no room for doubt that the petitioner has slept over his rights and has allowed the grass to grow under his feet for a long duration of over seven years.

16. Taking into consideration the cumulative effect of the facts and circumstances of the case, coupled with the settled principles of law on the subject, we are satisfied that the claim of the petitioner is stale, highly belated, time-barred and the same cannot be entertained by this Court after a span of over seven years. Viewed, thus, the present writ petition fails and the same is, accordingly, **dismissed**, along with the connected CM(s). Interim direction(s), if any subsisting as on date, shall stand vacated.

(Rahul Bharti)
Judge

(Tashi Rabstan)
Judge

SRINAGAR

October 12th, 2023

"TAHIR"

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| i. | Whether the Judgment is reportable? | Yes. |
| ii. | Whether the Judgment is speaking? | Yes. |