

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL DEFECTIVE No. - 647 of 2021
(In Writ A No. 5302 of 2021)

Shimla Devi

... Appellant

Through :-Mr. Lal Chandra Srivastava, Advocate

Vs.

State of U.P. through Principal Secretary Home Department
and others

... Respondents

Through :- Mr. Ankit Gaur, State Law Officer

Coram : Hon'ble Rajesh Bindal, Chief Justice
Hon'ble Piyush Agrawal, Judge

ORDER

Rajesh Bindal, CJ

1. The present intra-court appeal has been filed against the order dated July 7, 2021 passed by the learned Single Judge whereby the writ petition filed by the appellant was dismissed. The appellant had approached this Court by filing the writ petition seeking a direction to the respondents to consider and decide the appeal dated December 30, 1995 filed by her late husband, who was dismissed from service. The writ petition was dismissed on account of delay and laches.

2. The learned counsel for the appellant submitted that appellant is an illiterate lady. Late husband of the appellant was dismissed from service illegally merely on account of unauthorised absence. The family is practically starving. The only prayer made before the learned Single Judge was for disposal of statutory appeal filed by her late husband. The prayer being innocuous, interference of

this Court was required as the appellate authority had failed to discharge its duty.

3. After hearing the learned counsel for the appellant, we do not find any error in the order passed by the learned Single Judge. A perusal of the impugned order passed by the learned Single Judge shows that the late husband of the appellant was dismissed from service on account of his unauthorised absence of over 678 days, vide order dated December 21, 1990. The appeal was stated to have been filed against the order of dismissal more than 5 years thereafter on December 30, 1995 in case the same was filed at that time. There is nothing on record to show that the appeal was ever pursued by the late husband of the appellant till such time he was alive. The case of the appellant is that her husband died in the year 1999. It is also apparent from the record that the representation dated December 05, 1999 was filed by the appellant to the then Chief Minister of the State which was followed by another representation dated August 08, 2018. The aforesaid facts also, even if taken on their face value, show that late husband of the appellant and the appellant herself were moving at their own sweet will and not pursuing the remedy available to them at the relevant time. Firstly, there was huge delay in filing of appeal in case it was filed and secondly keeping mum for a period of about 25 years before this Court was approached.

4. The learned Single Judge has dismissed the writ petition on account of delay and laches.

5. Different facets of issue regarding delay and laches in filing the petition had been subject matter of consideration before Hon'ble the Supreme Court on number of occasions, wherein it has been consistently opined that the party can be denied relief if he sleeps over the matter.

6. In **State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others**¹, Hon'ble the Supreme Court, while considering the issue regarding delay and laches and referring to earlier judgments on the issue, opined that repeated representations made will not keep the issues alive. A stale or a dead issue/dispute cannot be got revived even if such a representation has either been decided by the authority or got decided by getting a direction from the court as the issue regarding delay and laches is to be decided with reference to original cause of action and not with reference to any such order passed. Delay and laches on the part of a government servant may even deprive him of the benefit which had been given to others. Article 14 of the Constitution of India, in a situation of that nature, will not be attracted as it is well known that law leans in favour of those who are alert and vigilant. Even equality has to be claimed at the right juncture and not on expiry of reasonable time. Even if there is no period prescribed for filing the writ petition under Article 226 of the Constitution of India, yet it should be filed within a reasonable time. Such an order promoting a junior should normally be challenged within a period of six months or at the most in a year of such promotion. Though it is not a strict rule, the courts can always interfere even subsequent thereto, but relief to a person, who allows things to happen and then approach the court and puts forward a stale claim and try to unsettle settled matters, can certainly be refused relief on account of delay and laches. Anyone who sleeps over his rights is bound to suffer. An employee who sleeps like Rip Van Winkle and got up from slumber at his own leisure, deserves to be denied the relief on account of delay and laches. Relevant paragraphs from the aforesaid judgment are extracted below:-

"13. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on

1 2013 (6) SLR 629

the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983. In *C. Jacob v. Director of Geology and Mining and another*, (2008) 10 SCC 115, a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus:-

"Every representation to the Government for relief, may not be replied on merits.

Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant

particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim."

14. In *Union of India and others v. M. K. Sarkar*, (2010) 2 SCC 59, this Court, after referring to *C. Jacob (supra)* has ruled that when a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time- barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a Court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In *Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another*, (2006) 4 SCC 322, the Court took note of the factual position and laid down that when nearly for two decades the respondent-

workmen therein had remained silent mere making of representations could not justify a belated approach.

16. In *State of Orissa v. Pyarimohan Samantaray*, (1977) 3 SCC 396, it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in *State of Orissa v. Arun Kumar Patnaik*, (1976) 3 SCC 579.

17. In *Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others*, (2011) 4 SCC 374, a three-Judge Bench of this Court reiterated the principle stated in *Jagdish Lal v. State of Haryana*, (1977) 6 SCC 538 and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

18. In *State of T. N. v. Seshachalam*, (2007) 10 SCC 137, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus:-

"... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant."

19. There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in *Ghulam Rasool Lone v.State of Jammu and Kashmir and another*, (2009) 15 SCC 321.

20. In *New Delhi Municipal Council v. Pan Singh and others*, (2007) 9 SCC 278, the Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

21. Presently, sitting in a time machine, we may refer to a two Judge Bench decision in *P. S. Sadasivasway v. State of Tamil Nadu*, (1975) 1 SCC 152, wherein it has been laid down that a person aggrieved by an order of promoting a junior over his head should approach the court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time, but it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers

under Article 226 in the case of persons who do not approach it expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters.

22. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged

before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time."

7. The aforesaid view was followed by Hon'ble the Supreme Court in **Union of India and others vs Chaman Rana**² and **Union of India and others vs. C. Girija and others**³.

8. In **Chennai Metropolitan Water Supply and Sewerage Board and others v. T. T. Murali Babu**⁴, Hon'ble the Supreme Court opined as under:-

"13. First, we shall deal with the facet of delay. In *Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others*, AIR 1969 SC 329, the Court referred to the principle that has been stated by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp*, (1874) 5 PC 221, which is as follows:-

"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

2 2018(5) SCC 798

3 2019 (3) SCALE 527

4 2014 (4) SCC 108

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 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."

14. In *State of Maharashtra v. Digambar*, (1995) 4 SCC 683, while dealing with exercise of power of the High Court under Article 226 of the Constitution, the Court observed that power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise

of such power, when he approaches it with unclean hands or blameworthy conduct.

15. In *State of M. P. and others etc. etc. vs. Nandlal Jaiswal and others etc. etc.*, AIR 1987 SC 251, the Court observed that it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. It has been further stated therein that if there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

16. Thus, the doctrine of delay and laches should not be lightly brushed aside. 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 the primary principle that when an aggrieved person, without adequate reason, approaches the court at his 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. 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. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. 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."

9. In **Bal Krishan vs. State of Punjab and others**⁵, wherein the petitioner, after rendering about 34 years of service, sought refixation of his pay from the date he joined service by filing a petition more than three years after his retirement, the court dismissed the writ petition on account of delay and laches only.

10. The issue regarding decision of a claim on a direction by the Court on the representation filed by a writ petitioner was also considered in **Union of India and others vs. M.K. Sarkar**⁶, wherein it was held that the issue of limitation or delay and laches is to be considered with reference to original cause of action and not with reference to an order passed in compliance to Court's direction. The Court's direction to consider representation or a decision given in compliance thereof, will not extend the limitation or erase the delay and laches.

11. In **Vijay Kumar Kaul and others vs. Union of India and others**⁷, Hon'ble the Supreme Court declined relief to the petitioners who were fence sitters as they had approached the Court after the issues raised by other employees were decided. Relief was declined on account of delay and laches.

12. The issue was further examined in **Prabhakar vs. Joint Director Sericulture Department and another**⁸. It was a case under the Industrial Disputes Act. In the aforesaid case the matter in dispute was regarding delay in raising the industrial dispute. The opinion expressed by the Court was that right not exercised for a long time is non-existent even if there is no limitation period prescribed. The litigant was non-suited on the doctrine of delay and laches as well as doctrine of acquiescence. Paragraph 38 of the judgment is extracted below:-

5 2013(2) RSJ 18, (P&H)

6 2010(2) SCC 59

7 2012 (7) SCC 610

8 (2015) 15 SCC 1

"38. Likewise, if a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while the act is in progress he cannot afterwards complain. This principle is based on the doctrine of acquiescence implying that in such a case party who did not make any objection acquiesced into the alleged wrongful act of the other party and, therefore, has no right to complain against that alleged wrong."

13. The Halsbury's Laws of England explains delay, laches and acquiescence as under:

"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."

14. In **State of Jammu & Kashmir vs. R. K. Zalpuri and others**⁹, Hon'ble the Supreme Court considered the issue regarding delay and laches in raising the dispute before the Court. It was opined that the issue sought to be raised by the petitioners therein was not required to be addressed on merits on account of delay and laches. The relevant paras thereof are extracted below:-

"27. The grievance agitated by the respondent did not deserve to be addressed on merits, for doctrine of delay and laches had already visited his claim like the chill of death which does not spare anyone even the one who fosters the idea and nurtures the attitude that he can sleep to avoid death and eventually proclaim "Deo gratias - thanks to God".

28. Another aspect needs to be stated. A writ court while deciding a writ petition is required to remain alive to the nature of the claim and the unexplained delay on the part of the writ petitioner. Stale claims are not to be adjudicated unless non-interference would cause grave injustice. The present case, need less to emphasise, did not justify adjudication. It deserves to be thrown overboard at the very threshold, for the writ petitioner had accepted the order of dismissal for half a decade and cultivated the feeling that he could freeze time and forever remain in the realm of constant present."

15. The aforesaid view was followed by Hon'ble the Supreme Court in **Union of India and others v. Chaman Rana**¹⁰.

16. Subsequently, a Constitution Bench of Hon'ble the Supreme Court in **Senior Divisional Manager, Life Insurance**

⁹ 2015 (15) SCC 602

¹⁰ (2018(5) SCC 798

Corporation v. Shree Lal Meena¹¹, considering the principle of delay and laches, opined as under:-

“36. We may also find that the appellant remained silent for years together and that this Court, taking a particular view subsequently, in *Sheel Kumar Jain v. New India Assurance Company Limited*, (2011)¹² SCC 197 would not entitle stale claims to be raised on this behalf, like that of the appellant. In fact the appellant slept over the matter for almost a little over two years even after the pronouncemtn of the judgment.

37. Thus, the endeavour of the appellant, to approach this Copurt seeking the relief, as prayed for, is clearly a misadventure, which is liable to be rejected, and the appeal is dismissed.”

17. Recently, in **Bharat Coking Coal Ltd. And othyers v. Shyam Kishore Singh**¹², the issue regarding the delay and laches, was considered by Hon'ble the Supreme Court and a petition filed belatedly, seeking change in the date of birth in the service record, was dismissed.

18. Reference can also be made to the Division Bench judgments of the Jammu and Kashmir High Court in **State of J&K and others v. S. Bhupinder Singh**¹³ and in **Farooq Ahmad v. State of J&K and others**¹⁴.

19. Keeping in view the authoritative enunciation of law, as referred to above, the present Special Appeal challenging the judgment and order passed by the learned Single Judge dated July 07,

¹¹ (2019)4 SCC 479

¹² Civil Appeal No.1009 of 2020, decided on 5.2.2020

¹³ LPASW No.192 of 2017, decided on 30.12.2017

¹⁴ LPA No.210 of 2019, decided on 21.8.2019

2021 whereby the writ petition seeking a direction to the respondents to consider and decide the appeal dated December 30, 1995 filed by her late husband, who was dismissed from service way back in the year 1990, was dismissed on the ground of delay and laches, deserves to be dismissed.

20. Ordered accordingly.

Allahabad
18.10.2021
Rakesh/Kuldeep

(Piyush Agrawal, J.)

(Rajesh Bindal, C.J.)

Whether the order is speaking :	Yes/No
Whether the order is reportable :	Yes/No