THE HIGH COURT OF MADHYA PRADESH
WP No.2156/2020
Naresh Singh & Anr. vs. State of M.P. & Ors.

Gwalior, Dated :28/01/2020

Shri A.P.S. Sisodiya, Counsel for the petitioners.

Shri Ravi Gupta, Government Advocate for the State.

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:

> 7.1 That by issuance of a writ in the nature of Mandamus the Hon'ble High Court may be please to direct the Respondents to provide the promotion with them seniority to the petitioners with all consequential benefits from the date he eligible.
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> 7.2 Any other writ direction order as may be deemed fit in the circumstances may also be awarded along with the cost of litigation.

2. It is submitted by the counsel counsel for the petitioners that in the year 2009, the petitioners appeared in the departmental examination which was conducted for promotion to the post of Head Constable and they were declared pass by order dated 3.6.2009. Thereafter, the petitioners were sent for training for the post of Head Constable and were declared successful by communication dated 12.10.2009. However, thereafter no action was taken. On 14.1.2019, the Police Headquarters directed all the DIGs of different Range of M.P. to send the names of those persons who were declared pass in

the departmental examination conducted in the year 2012. However, the names of the petitioners were not sent. The petitioners are waiting for their promotion but no action has been taken and, accordingly, on 10.6.2019 they have made a representation which has not been decided so far. It is further submitted that by **order dated 31.1.2017** passed in **W.P.No.7583/2014(s) (Shivpal Bhadoriya & Ors. vs. State of M.P. & Ors.)** has allowed the cases of those petitioners who are similarly placed to the petitioners.

3. Heard the learned counsel for the petitioners.

4. It is fairly conceded by the counsel for the petitioners that so far as the order dated 31.1.2017 passed in the case of **Shivpal Bhadoriya (supra)** is concerned, that was in respect of the departmental examination which was conducted in the year 2012 whereas the petitioners had appeared in the departmental examination which was conducted in the year 2009. In clause 4 of the writ petition, the petitioners have submitted that there is no delay in filing the petition before this Court whereas according to the petitioners they were declared successful in the departmental examination which was conducted in the year 2009 and this petition has been filed on 23.1.2020 i.e. after more than 11 long years.

5. It is submitted by the counsel for the petitioners that since the

petitioners have made a representation on 10.6.2019 which has not been decided so far, therefore, non-decision of the representation would give fresh cause of action to the petitioners and thus this petition is within the period of limitation.

6. The Supreme Court in the case of **Union of India and others vs. C. Girija and others** by order dated 13.02.2019 passed in **Civil Appeal No. 1577/2019** has held as under:-

> **"13**. This Court again in the case of Union of India and Others Vs. M.K. Sarkar, (2010) 2 SCC 59 on belated representation laid down following, which is extracted below:-
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> > "15. 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."
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> **14.** Again, this Court in State of Uttaranchal and Another Vs. Shiv Charan Singh Bhandari and Others, (2013) 12 SCC 179 had occasion to consider question of delay in challenging the promotion. The Court further held that representations relating to a stale 15 claim or dead grievance does not give rise to a fresh cause of action. In Paragraph Nos. 19 and 23

following was laid down:-

> "19. 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.
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> 23. 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: (SCC p. 145, para 16)
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> > "16. … 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."

15. This Court referring to an earlier judgment in 16 P.S. Sadasivaswamy Vs. State of Tamil Nadu, (1975) 1 SCC 152 noticed 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. In Paragraph No. 26 and 28, following was laid down:-

> "26. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152, wherein it has been laid down that: (SCC p. 154, para 2)
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> > "2. … 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 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."
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> 28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even 17 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."

The Supreme Court in the case of **Karnataka Power Corpon. Ltd. Vs. K. Thangappan** reported in **(2006) 4 SCC 322** has held as under :

> "**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*. 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* (PC at p. 239) was approved by this Court in *Moon Mills Ltd.* v. *M.R. Meher* and *Maharashtra SRTC* v. *Shri Balwant Regular Motor Service*. 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* 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* 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.

The Supreme Court in the case of **M.P. Ram Mohan Raja Vs. State of T.N.** Reported in **(2007) 9 SCC 78** has held as under :-

"11. So far as the question of delay is concerned, no hard-and-fast rule can be laid down and it will depend on the facts of each case. In the present case, the facts stare at the face of it that on 8-10-1996 an order was passed by the Collector in pursuance of the order passed by the High Court, rejecting the application of the writ petitioner for consideration of the grant of mining lease. The writ petitioner sat tight over the matter and did not challenge the same up to 2003. This on the face of it appears to be very serious. A person who can sit tight for such a long time for no

justifiable reason, cannot be given any benefit."

The Supreme Court in the case of **Shiv Dass Vs. Union of India** reported in **(2007) 9 SCC 274** has 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*. Of course, the discretion has to be exercised judicially and reasonably.
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> **7.** What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Co.* v. *Prosper Armstrong Hurd*, PC at p. 239 was approved by this Court in *Moon Mills Ltd.* v. *M.R. Meher* and *Maharashtra SRTC* v. *Balwant Regular Motor Service*. Sir Barnes had stated:
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> > "Now the doctrine of laches in courts of equity is not an arbitrary or 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, if 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 relates to the remedy."
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> **8.** It was stated in *State of M.P.* v. *Nandlal Jaiswal* 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.**"**

The Supreme Court in the case of **Nadia Distt. Primary School Council Vs. Sristidhar Biswar** reported in **(2007) 12 SCC 779** has held as under :

> **"11.** In the present case, the panel was prepared in 1980 and the petitioners approached the court in 1989 after the decision in *Dibakar Pal*. Such persons should not be given any benefit by the court when

they allowed more than nine years to elapse. Delay is very significant in matters of granting relief and courts cannot come to the rescue of the persons who are not vigilant of their rights. Therefore, the view taken by the High Court condoning the delay of nine years cannot be countenanced.**"**

The Supreme Court in the case of **U.P. Jal Nigam Vs. Jaswant Singh** reported in **(2006) 11 SCC 464** has held as under :

"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."

The Supreme Court in the case of **Jagdish Lal Vs. State of Haryana** reported in **(1997) 6 SCC 538** has held as under :

"18. That apart, as this Court has repeatedly held,

the delay disentitles the party to the discretionary relief under Article 226 or Article 32 of the Constitution.**"**

The Supreme Court in the case of **NDMC Vs. Pan Singh** reported in **(2007) 9 SCC 278** has held as under :

> **"16.** There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. (See *Govt. of W.B.* v. *Tarun K. Roy*, *U.P. Jal Nigam* v. *Jaswant Singh* and *Karnataka Power Corpn. Ltd.* v. *K. Thangappan*.)
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> **17.** Although, there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily, writ petition should be filed within a reasonable time. (See *Lipton India Ltd.* v. *Union of India* and *M.R. Gupta* v. *Union of India*.)
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> **18.** In *Shiv Dass* v. *Union of India*-this Court held: (SCC p. 277, paras 9-10)
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> > "*9.* It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in *K.V. Rajalakshmiah Setty* v. *State of Mysore*. There is a limit to the time which can be considered

> reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In *State of Orissa* v. *Pyarimohan Samantaray* making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. (See also *State of Orissa* v. *Arun Kumar Patnaik*.)
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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. It would depend upon the fact of each case. 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. The High Court did not examine whether on merit the appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."
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> **19.** We, therefore, are of the opinion that it was not a fit case where the High Court should have exercised its discretionary jurisdiction in favour of the respondents herein.**"**

7. If the present facts are considered in the light of the judgments pronounced by the Supreme Court in the above mentioned cases, then it is clear that the cause of action arose in favour of the petitioners in the year 2009 when they were declared successful. When they were not granted promotion, then they did not challenge the non-action on the part of the State and maintained silence. Thereafter, another departmental examination was conducted in the year 2012. The

persons who were successful in the departmental examination conducted in the year 2012 challenged their non-promotion. Merely because the petition filed by the persons who were declared successful in the year 2012 has been allowed it would not mean that the petitioners are also entitled for the similar relief because grant of promotion is dependent upon various factors including the availability of the vacant post. Once the respondents without granting promotion to the persons who were declared successful in the departmental examination conducted in the year 2009 had decided to conduct a fresh departmental examination in the year 2012, then the cause of action had arisen for the last time in favour of the petitioner in the year 2012 itself. As the petitioners were sleeping over their rights, therefore, it cannot be said that there is no delay in the present petition.

8. So far as the question of making representation for the first time on 10.6.2019 is concerned, it is well established principle of law that merely because the representation has been made would not reopen the stale cases/claims/dead issues. This Court by directing the respondents to decide the representation cannot revive the dead cases and the judgment passed by the Supreme Court in case of **C. Girija (supra)**, it has been held that even if a representation is decided in

compliance of the Court's direction to consider the representation would not extend the period of limitation or erase the delay and latches.

9. Since this petition has been filed after 11 long years of denial of promotion to the petitioners, this Court is of the considered opinion that this petition suffers from delay and latches and is squarely covered by the judgment passed by the Supreme Court in the case of **C. Girija (supra).**

10. Accordingly, this petition fails and is hereby **dismissed** on the ground of delay and latches.

(G.S. Ahluwalia)
Judge

(alok)