THE HIGH COURT OF MADHYA PRADESH
WP-24199-2021
Smt. Munni Bai Vs. State of MP and ors.

Gwalior, Dated: 10-11-2021

Shri S.K. Sharma, Counsel for the petitioner.

Shri Sanjay Kumar Sharma, Counsel for the State.

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

> "(i) That, respondents may kindly be directed to consider the case of petitioner for giving the benefit of service as has been given to the private respondent no. 4 & 5.
> (ii) That, respondents may also be directed to extend the all service benefit from the date on which benefit has been given to the juniors.
> (iii) That, any other relief which this Hon'ble High Court may deem fit, with cost of the petition."

2. It is submitted by the counsel for the petitioner that by order dated 01.12.1990, the petitioner was appointed as a Cook on daily wager for a period of 89 days, whereas respondent No. 5 was appointed as daily wager on 27.07.1994 and respondent No. 4 was appointed on 10.03.1992 on the post of Peon/Cook/Waterman. It is submitted that the respondents by adopting the method of pick and choose put the respondent No. 5 in regular service thereby paying him all benefits from 01.04.1997 and since the petitioner is a lady and was not aware of the fact that the respondent No. 5 has been considered, did not raise any objection. However, the respondent No. 4 filed a writ petition before this Court, which has been decided by order dated 27.10.2016. It is submitted that the petitioner was

regularized by order dated 24.10.2009 and at the same time, respondent No. 4, who is placed at serial No. 12 and is junior to the petitioner, now is being reconsidered for extending the benefit of regularization from the date from which respondent No. 5 was given the benefit, i.e., year 1997. Immediately after coming to know about the said fact, petitioner made a representation, but no heed has been paid and, accordingly, the present petition has been filed.

3. Since the relief clause was vague and, therefore, counsel for the petitioner was repeatedly asked to amend the relief clause and take a specific stand. However, it was repeatedly replied by Shri S.K. Sharma that unless and until the petitioner is reconsidered, she would not get the benefit of seniority, promotion and monetary benefits. Again Shri S.K. Sharma was asked to clarify that from which date the petitioner is seeking reconsideration, then again a very vague reply was given. Thereafter, Shri S.K. Sharma was directed to argue the matter in a chronological manner. Thereafter, Shri Sharma submitted that respondent No. 5, who was appointed on the post of Peon subsequent to the appointment of the petitioner, was regularized on the post of Peon vide order dated 01.04.1997 and since the respondent No. 4 was discriminated and, accordingly, on a petition filed by him, coordinate Bench of this Court by order dated 27.10.2016 passed in W.P. No.3219/2006 has directed the

respondents to re-consider the case of the respondent No. 4 by convening a screening committee for his regularization from the same date from which the respondent No. 5 was considered and was found fit. Therefore, in case, if the respondent No. 4 is granted the benefit, although he too was regularized along with the petitioner by order dated 24.10.2009, but he would get the benefit w.e.f. 01.04.1997 and, therefore, the petitioner is also entitled for the same consideration.

4. When a counsel for the petitioner was directed to argue on the question of delay and laches, then he submitted that the Court should not adopt ***negative attitude*** in the matter.

5. It is further submitted that in fact, the promotion is a recurring cause of action and under no circumstance, it can be said that the claim regarding promotion can be rejected on the ground of delay and laches. To buttress his contention, counsel for the petitioner has relied upon the order dated 20.10.2013 passed by the Division Bench of this Court in the case of **Ajay Pal Singh Bhadoriya Vs. State of MP (W.P. No.80/2012)**.

6. Heard the learned counsel for the petitioner.

7. The submission that this Court should not ***adopt negative attitude*** was shocking. However, later on, counsel for the petitioner submitted that he should not have used certain words and he tendered

his apology.

8. It is the case of the petitioner that the petitioner was given benefit of regularization by order dated 24.10.2009 and since the similarly situated person namely Rajendra Singh Yadav has been granted the benefit of reconsideration for his regularization w.e.f. 01.04.1997 the date on which respondent No. 5 was regularized, therefore, she is also entitled for the said relief.

9. The submission made by the counsel for the petitioner is misconceived and misleading.

10. Copy of order dated 27.10.2016 passed in the case of Rajendra Singh Yadav Vs. State of MP in W.P. No.3219/2006 has been placed on record. Undisputed fact is that Rajendra Singh Yadav and the petitioner were regularized by order dated 24.10.2009, whereas the respondent No. 4 had filed a writ petition in the year 2006. Thus, it is clear that the respondent No. 4 by filing a writ petition in the year 2006 must have claimed his regularization and, accordingly, it is mentioned in the order passed in the case of Rajendra Singh Yadav that the State had filed an application for dismissal of the writ petition on the ground that the case of the petitioner was considered and by order dated 22.10.2009 he has been regularized on the post of Waterman. Under these circumstances, coordinate Bench of this Court held that the respondent has not clarified as to why his case

was not considered for regularization prior to the date of regularization of respondent No. 5 and other persons and thus, it is clear that Rajendra Singh Yadav had approached the Court at the time when he was still working as daily wager and had sought the prayer for regularization.

11. It is the case of the petitioner that by order dated 01.12.1990 she was appointed as daily wager on the post of Cook and now she has approached this Court in the year 2021, i.e., after 31 years. Further, the petitioner was regularized by order dated 24.10.2009 and now she has approached this Court after 12 years seeking reconsideration of her case for regularization w.e.f. 01.04.1997.

12. A moot question for consideration is as to whether the promotion is a recurring cause of action or delay and laches is fatal to the claim of the petitioner.

13. So far as the order relied upon by the counsel for the petitioner is concerned, it is completely not reasoned order. Except by saying that because promotion is a recurring cause of action, nothing has been considered as to how the delay and laches will not be a ground to dismiss the petition.

14. It is well established principle of law that the delay and laches defeats equity.

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.
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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. *Shri 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 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."

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:
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> "In determining whether there has been such delay as to amount to laches, the chief points to be considered are:
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> (*i*) acquiescence on the claimant's part; and
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> (*ii*) any change of position that has occurred on the defendant's part.
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> 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*.)

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*.)

18. In *Shiv Dass* v. *Union of India* this Court held: (SCC p. 277, paras 9-10)

> "*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.

The Supreme Court in the case of **State of Uttaranchal v. Shiv Charan Singh Bhandari** reported in **(2013) 12 SCC 179** has held as under :

> **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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> **28.** 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.

The Supreme Court in the case of **C. Jacob v. Director of Geology and Mining** reported in **(2008) 10 SCC 115 has** held as under :

> "**10.** 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."

The Supreme Court in the case of **Union of India v. M.K. Sarkar** reported in **(2010) 2 SCC 59** has held as under :

> "**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."

The Supreme Court in the case of **State of Orissa v. Pyarimohan Samantaray** reported in **(1977) 3 SCC 396** has held as under :

> **6.** It would thus appear that there is justification for the argument of the Solicitor-General that even though a cause of action arose to the petitioner as far back as 1962, on the rejection of his representation on November 9, 1962, he allowed some eleven years to go by before filing the writ petition. There is no satisfactory explanation of the inordinate delay for, as has been held by this Court in

> *Rabindra Nath Bose* v. *Union of India* the making of repeated representations, after the rejection of one representation, could not be held to be a satisfactory explanation of the delay. The fact therefore remains that the petitioner allowed some 11 years to go by before making a petition for the redress of his grievances. In the meantime a number of other appointments were also made to the Indian Administrative Service by promotion from the State Civil Service, some of the officers received promotions to higher posts in that service and may even have retired. Those who continued to serve could justifiably think that as there was no challenge to their appointments within the period prescribed for a suit, they could look forward to further promotion and higher terminal benefits on retirement. The High Court therefore erred in rejecting the argument that the writ petition should be dismissed because of the inordinate and unexplained delay even though it was "strenuously" urged for its consideration on behalf of the Government of India.

The Supreme Court in the case of **State of Orissa v. Arun Kumar Patnaik** reported in **(1976) 3 SCC 579** has held as under :

> **14.** It is unnecessary to deal at length with the State's contention that the writ petitions were filed in the High Court after a long delay and that the writ petitioners are guilty of laches. We have no doubt that Patnaik and Mishra brought to the court a grievance too stale to merit redress. Krishna Moorthy's appointment was gazetted on March 14, 1962 and it is incredible that his service-horoscope was not known to his possible competitors. On November 15, 1968 they were all confirmed as Assistant Engineers by a common gazette notification and that notification showed Krishna Moorthy's confirmation as of February 27, 1961 and that of the other two as of May 2, 1962. And yet till May 29, 1973 when the writ petitions were filed, the petitioners did nothing except to file a representation to the Government on June 19, 1970 and a memorial to the Governor on April 16, 1973. The High Court made light of this long and inexplicable delay with a casual remark that

the contention was "without any force". It overlooked that in June, 1974 it was setting aside an appointment dated March, 1962 of a person who had in the meanwhile risen to the rank of a Superintending Engineer. Those 12 long years were as if writ in water. We cannot but express our grave concern that an extraordinary jurisdiction should have been exercised in such an abject disregard of consequences and in favour of persons who were unmindful of their so-called rights for many long years.

The Supreme Court in the case of **BSNL v. Ghanshyam Dass** reported in **(2011) 4 SCC 374** has held as under :

26. On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others.

27. In *Jagdish Lal* v. *State of Haryana*, the appellants who were general candidates belatedly challenged the promotion of Scheduled Caste and Scheduled Tribe candidates on the basis of the decisions in *Ajit Singh Januja* v. *State of Punjab*, *Union of India* v. *Virpal Singh Chauhan* and *R.K. Sabharwal* v. *State of Punjab* and this Court refused to grant the relief saying: (*Jagdish Lal case*, SCC pp. 562-63, para 18)

"*18*. … this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or Article 32 of the Constitution. It is not necessary to reiterate all the catena of precedents in this behalf. Suffice it to state that the appellants kept sleeping over their rights for long and elected to wake up when they had the impetus from *Virpal Chauhan* and *Ajit Singh* ratios. But *Virpal Chauhan* and *Sabharwal* cases, kept at rest the promotion already made by that date, and declared them as valid; they were limited to the question of future promotions given by applying the rule of reservation to all the persons prior to the date of judgment in *Sabharwal case* which required to be examined in the light of the

> law laid in *Sabharwal case*. Thus earlier promotions cannot be reopened. Only those cases arising after that date would be examined in the light of the law laid down in *Sabharwal case* and *Virpal Chauhan case* and equally *Ajit Singh case*. If the candidate has already been further promoted to the higher echelons of service, his seniority is not open to be reviewed. In *A.B.S. Karamchari Sangh case* a Bench of two Judges to which two of us, K. Ramaswamy and G.B. Pattanaik, JJ. were members, had reiterated the above view and it was also held that all the prior promotions are not open to judicial review. In *Chander Pal* v. *State of Haryana* a Bench of two Judges consisting of S.C. Agrawal and G.T. Nanavati, JJ. considered the effect of *Virpal Chauhan*, *Ajit Singh*, *Sabharwal* and *A.B.S. Karamchari Sangh* cases and held that the seniority of those respondents who had already retired or had been promoted to higher posts could not be disturbed. The seniority of the petitioner therein and the respondents who were holding the post in the same level or in the same cadre would be adjusted keeping in view the ratio in *Virpal Chauhan* and *Ajit Singh*; but promotion, if any, had been given to any of them during the pendency of this writ petition was directed not to be disturbed."

The Supreme Court in the case of **State of T.N. v. Seshachalam** reported in **(2007) 10 SCC 137** has held as under :

> "**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."

The Supreme Court in the case of **Ghulam Rasool Lone v. State of J&K** reported in **(2009) 15 SCC 321** has held as under:

> **22.** If at this late juncture the petitioner is directed to be promoted to the post of Sub-Inspector even above Abdul Rashid Rather, the seniority of those who had been promoted in the meantime or have been directly recruited would be affected. The State would also have to pay the back wages to him which would be a drainage of public funds. Whereas an employee cannot be denied his promotion in terms of the rules, the same cannot be granted out of the way as a result whereof the rights of third parties are affected. The aspect of public interest as also the general administration must, therefore, be kept in mind while granting equitable relief.
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> **23.** We understand that there would be a heart burning insofar as the petitioner is concerned, but then he is to thank himself therefor. If those five persons, who were seniors to Hamiddulah Dar filed writ petitions immediately, the High Court might have directed cancellation of his illegal promotion. This Court in *Maharaj Krishan Bhatt* did not take into consideration all these aspects of the matter and the binding decision of a three-Judge Bench of this Court in *Govt. of W.B.* v. *Tarun K. Roy*. The Division Bench of the High Court, therefore, in our opinion was right in opining that it was not necessary for it to follow *Maharaj Krishan Bhatt*.

The Supreme Court in the case of **P.S. Sadasivaswamy v. State of T.N.,** reported in **(1975) 1 SCC 152** has held as under :

> "**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."

15. Thus, it is held that in case of promotion, the delay and laches assumes importance. If a person was sitting over his/her right, thereby allowing the situation to change drastically, then he has to suffer for his own lethargy. A person may feel aggrieved that the similarly situtated person has been granted promotion, but then, the person who was sleeping over his right, is reponsible for burning his heart. Delay defeats equity. Further more, merely because a vigilant employee was agitating his cause and got the relief, then the judgment passed in the case of vigilant employee would not amount to giving rise to any cause of action in favor of those persons who were sleeping over their rights. Further more, repeated representations do not extend the period of limitation, and even if, the Court has directed for deciding the representation, still an old and stale case cannot be reopened, because a decision on the delayed representation would not give rise to any fresh cause of action.

16. Thus, it is clear that by keeping silent for number of years, if a person allows drastic changes to take place, then delay and laches are good enough to reject the claim of the aspirant for his consideration for promotion. The petitioner in paragraph 4 of the writ petition has mentioned as under:-

> "(4) **Delay, if any, in filing the petition and explanation therefor**:
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> That, the subject matter challenge in the petition

> is of recurring cause and this Hon'ble Court in identical matter decided the grievance hence there is no delay in filing of the petition."

17. The case of the petitioner is that in identical matter, this Court has granted relief to some other employees. It is well established principle of law that passing of an order in favour of the similarly situated employee would not give rise to any fresh cause of action, but the original cause of action would be the first cause of action. If a person was sleeping over his rights, then he cannot all of a sudden wake up and claim that some favourable orders have been passed in favour of the similarly situated persons who were vigilantly prosecuting their *lis* and, therefore, they should also be given the same relief specifically in the case of promotion with extension of certain benefits with retrospective effect.

18. Furthermore, this Court had also come to a conclusion that the order passed by the coordinate Bench of this Court in the case of Rajendra Singh Yadav cannot be said to be identical in nature because Rajendra Singh Yadav had approached this Court at a time when he was still working as a daily wager and during the pendency of the said writ petition, his services were regularized in the year 2009, whereas this petitioner woke up only after 31 years of her services, i.e., from 01.10.1990, the date on which she was appointed as a daily wager, 24 years after the regularization of respondent No.

5, i.e., 01.04.1997, after 12 years, i.e., from the date of her regularization and after six years from the date when an order was passed in favour of Rajendra Singh Yadav.

19. Thus, by no stretch of imagination, it can be said that the petition does not suffer from delay and laches.

20. It is next contended by the counsel for the petitioner that since the petitioner has made a representation for reconsideration of her case, therefore, the respondents be directed to decide the said representation.

21. As already held by this Court that mere direction to decide the representation in stale, old and dead cases would not give rise to any fresh cause of action. Even otherwise, a decision on representation regarding stale, old and dead cases would also not give rise to any fresh cause of action and the cause of action has to be considered from the date on which it arose for the first time.

22. Viewed from any angle, this Court is of the considered opinion that this petition suffers from delay and laches and no relief can be granted to the petitioner.

23. Accordingly, the petition fails and is hereby **dismissed.**

(G.S. Ahluwalia)
Judge

Arun*