IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 15th OF JUNE, 2023

WRIT PETITION No. 11235 of 2023

BETWEEN:-

1. **ARJUN VIDYAPEETH HIGHER SECONDARY SCHOOL THROUGH ITS PRINCIPAL PIPARIYAKALAN TEHISL BARHI DISTRICT KATNI (MADHYA PRADESH)**

2. **SHRIKANT SHUKLA S/O LATE SHRI BRIJENDRA PRASAD SHUKLA, AGED ABOUT 62 YEARS, PRINCIPAL ARJUN PEETH HIGHER SECONDARY SCHOOL PIPARIYAKALAN TEHSIL BARHI DISTRICT KATNI (MADHYA PRADESH)**

3. **MANOJ KUMAR DWIVEDI S/O LATE SHRI R.N. DWIVEDI, AGED ABOUT 51 YEARS, LECTURER ARJUN VIDYAPEETH HIGHER SECONDARY SCHOOL PIPARIYAKALAN TEHSIL BARHI DISTRICT KATNI (MADHYA PRADESH)**

4. **MUKESH KUMAR DWIVEDI S/O SHRI INDRAMANI PRASAD DWIVEDI, AGED ABOUT 46 YEARS, OCCUPATION: UPPER DIVISION TEACHER ARJUN PEETH HIGHER SECONDARY SCHOOL PIPARIYAKALAN TEHSIL BARHI DISTRICT KATNI (MADHYA PRADESH)**

5. **SUDHA KURMAVANSHI D/O SHRI RAM KUMAR KURMAVANSHI, AGED ABOUT 44 YEARS, OCCUPATION: UPPER DIVISION TEACHER ARJUN PEETH HIGHER SECONDARY SCHOOL PIPARIYAKALAN TEHSIL BARHI DISTRICT KATNI (MADHYA PRADESH)**

6. **SINDHU KHAMPARIYA D/O SHRI KAMLA PRASAD, AGED ABOUT 48 YEARS, OCCUPATION: UPPER DIVISION TEACHER ARJUN PEETH HIGHER SECONDARY SCHOOL PIPARIYAKALAN TEHSIL BARHI**

DISTRICT KATNI (MADHYA PRADESH)

7. PRAVEEN KUMAR DWIVEDI S/O SHRI RAMKINKAR DWIVEDI, AGED ABOUT 46 YEARS, OCCUPATION: TEACHER ARJUN PEETH HIGHER SECONDARY SCHOOL PIPARIYAKALAN TEHSIL BARHI DISTRICT KATNI (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI SHIVAM MISHRA - ADVOCATE)

AND

1. STATE OF MADHYA PRADESH, THROUGH THE PRINCIPAL SECRETARY, SCHOOL EDUCATION DEPARTMENT, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)

2. THE COMMISSIONER, PUBLIC INSTRUCTIONS MADHYA PRADESH BHOPAL, DISTRICT BHOPAL (MADHYA PRADESH)

3. THE DISTRICT EDUCATION OFFICER, JABALPUR, DISTRICT JABALPUR (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI MOHAN SOUSARKAR – GOVERNMENT ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

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

> "I) A writ order or direction thereby quashing the order dated 19/01/2023 (Annexure-P/1) issued by respondent No.1.
>
> II) A writ order or direction in the nature of mandamus thereby directing the respondents to take over the petitioner institution with effect from and grant all consequential benefits from the date of absorption as have been extended to

> all other institutions who were also in the list of 61 institutions along with the petitioner institution including arrears of salary to the petitioner, continuity in service from the date of taking over and all other future benefits.
>
> III) Any other appropriate writ, order or direction which the Hon'ble court may deem just and proper in the nature and circumstances of the case."

2. The facts necessary for disposal of the present petition in short are that in the year 2001, a decision was taken by the State Government to take over several private institutions and accordingly, applications were invited from desirous institutions. The list of institutions to be taken over by the Government was forwarded by respondent No.1 to respondent No.2 and the name of the petitioner – institution was also included in the list which was sent along with letter dated 10/11/2001. Thereafter, the respondent No.1 issued an order dated 21/03/2002 thereby cancelling the earlier orders/ directions issued in relation to taking over of the institutions and fresh directions were issued and it was stated in order dated 21/03/2002 that the private institutions will not be taken over by the Government and they will be placed under the control of Jila Panchayat/ local body. Again the petitioner - institution expressed its willingness for placing the petitioner - institution under the control of Jila Panchayat. In pursuance to the letter dated 24/06/2002, the inspection of the petitioner - institution was carried out and the petitioner - institution was declared eligible and fit for taking over. By order dated 22/03/2002, 54 institutions were taken over by the State Government and were placed under the administrative control of Jila Panchayat/ local body but the petitioner - institution was not included in the said list.

3. It is submitted that two institutions were wrongly included in the list of 54 institutions, and therefore Madhyamik Vidhyalaya Gangatwada, District Chhindwara and Janta Ashashkiya Uchchatar Madhyamik Vidhyalaya, Majhigawan, District Rewa were deleted. Thereafter, by order dated 30/03/2002, 09 other institutions were directed to be taken over and placed under the control of Jila Panchayat/ local body. After taking over these institutions, the respondent No.1 issued a letter dated 29/07/2002 whereby, the word "under the control of State Government" was deleted from order dated 22/03/2002 and 30/03/2002. The order dated 29/07/2002 was challenged before the Gwalior Bench of this Court which was registered as Writ Petition No.5306/2005 and by judgment dated 13/03/2007, the order dated 29/07/2002 was quashed. Since no orders were passed for taking over the petitioner - institution, therefore it approached the respondents No.1 and 2 to issue necessary orders for taking over of the petitioner - institution. However, by reply dated **21/05/2004** the petitioner was informed that the request made by the petitioner cannot be accepted as there is no provision for taking over the institution under the control of State Government. It is submitted that most probably the said order was issued in the light of order dated 29/07/2002 which was subsequently set aside in Writ Petition No.5306/2005. Subsequently, by order dated 05-06.10.2004, the entire proceedings for taking over of the institution were cancelled by the respondent No.1. The said order was also challenged in Writ Petition No.5306/2005 and the said order was also set aside. Writ Appeal No.534/2007 was also dismissed by order dated 05/08/2008. Civil Appeal No.2329/2010 was also dismissed by the Supreme Court by order dated 25/02/2015. After the dismissal of Civil Appeal, 44

institutions were taken over by the Government. However, the petitioner - institution has not been taken over. It is further submitted that the petitioner thereafter approached Vidhansabha Yachika Samiti, however the matter remained pending with the Yachika Samiti. The petitioner thereafter filed W.P. No.922/2023 seeking a direction to the Yachika Samiti to decide the petition of the petitioner. The said petition is pending adjudication but the petitioner does not wish to pursue the said petition due to various reasons including political leaning. It is submitted that certain institutions were taken over in the year 2016, however the claim of the petitioner has been rejected by order dated 19/01/2023 (Annexure-P/1) on the ground that the procedure for taking over of the private school has already come to an end.

4. Since this petition has been filed in the year 2023, therefore the counsel for the petitioner was directed to argue on the question of delay and laches.

5. It is submitted by the counsel for the petitioner that since the reasons assigned by the respondents in the impugned order dated 19/01/2023 are incorrect and the application filed by the petitioner has been decided recently by the said order, therefore the petition is within a period of limitation.

6. Heard the learned counsel for the petitioner.

7. The petitioner in paragraph 5.7 of the petition has specifically stated that by reply dated 21/05/2004 which has been filed as Annexure-P/14, the petitioner was informed that its institution cannot be taken over. Undisputedly, the petitioner did not challenge the said order.

8. Order dated 21/05/2004 reads as under:-

''मध्यप्रदेश शासन
स्कूल शिक्षा विभाग
मंत्रालय
वल्लभ भवन भोपाल–462004
क्रमांक 881/1213/20–3/04 भोपाल दिनांक 21.5.2004

प्रति,

प्राचार्य

अर्जुन विद्यापीठ हा. से. स्कूल,

पिपरिया, जिला कटनी, म.प्र.

विषयः– अशा. अर्जुन विद्यापीठ उ.मा.वि. पिपरिया कलां जिला कटनी को जिला पंचायत/नगरीय निकायों के अधीन करने विषयक ।

संदर्भः– आपका पत्र क्रमांक, दिनांक निरंक।

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आपके द्वारा प्रस्तुत उपरोक्त विषयक आवेदन पत्र का अवलोकन करने का कष्ट करें। आपके द्वारा अर्जुन विद्यापीठ हा. से. स्कूल पिपरिया कलां विकास खण्ड बड़वारा, जिला कटनी को शासनाधीन करने तथा स्टाफ का शासनाधीन एवं संविलियन करने हेतु निवेदन किया है।

इस संबंध में अवगत कराया जाता है कि वर्तमान में किसी भी अशा. विद्यालय को शासनाधीन करने का प्रावधान नहीं है साथ ही बजट भी उपलब्ध न होने से उपरोक्तानुसार कार्यवाही किया जाना संभव नहीं है।

अवर सचिव
म.प्र. शासन, स्कूल शिक्षा विभाग''

9. Thus, the first as well as the last cause of action arose in the matter on 21/05/2004 and the petitioner did not challenge the same. Merely because the subsequent decision of the State Government not to take over the private school was set aside by order dated 13/03/2007 passed by Gwalior Bench of this Court in W.P. No.5306/2005, would not give rise to any fresh cause of action to the petitioner.

10. It is well established principle of law that if the petitioner was acting as a fence sitter then he cannot take advantage of any relief which was extended to another vigilant litigant.

11. 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 extraordinarypowers if there is such negligence or omission on the part ofthe 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 outin *Durga Prashad* v. *Chief Controller of Imports and Exports*. Of course, the discretion has to be exercised judicially andreasonably.
>
> **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 ona 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."

12. 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 inpursuance 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 along time for no justifiable reason, cannot be given any benefit.

13. 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 fundamentalright 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. *Balwant Regular Motor Service*. Sir Barnes had stated:

> "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 thenature 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.

14. 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.

15. 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:
>
> > (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."

16. 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.

17. 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 bea 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.

18. 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.

19. 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.

20. 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.
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> **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)
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>> "*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."

21. 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.
>
> **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*.

22. 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."

23. The Supreme Court in the case of **Administrator of Union Territory of Daman and Diu and others v. R.D. Valand** reported in **1995 Supp (4) 593** has held as under:-

> "**4.** We are of the view that the Tribunal was not justified in interfering with the stale claim of the respondent. He was promoted to the post of Junior Engineer in the year 1979 with effect from 28-9-1972. A cause of action, if any, had arisen to him at that time. He slept over the matter till 1985 when he made representation to the Administration. The said representation was rejected on 8-10-1986. Thereafter for four years the respondent did not approach any court and finally he filed the present application before the Tribunal in March, 1990. In the facts and circumstances of this case, the Tribunal was not justified in putting the clock back by more than 15 years. The Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way."

24. Since the petitioner has approached after 20 years of rejection of its claim for taking over of the institution, this Court is of the considered opinion that the petition suffers from delay and laches and

the same has not been explained.

25. It is well established principle of law that the old, stale and dead cases cannot be re-opened even if any representation is decided at a later stage and the said decision on the representation would not give rise to any fresh cause of action.

26. 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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> * * * *
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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.

27. 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."

28. 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."

29. 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."

30. The Supreme Court in the case of **Union of India and others v. Chaman Rana** reported in (**2018) 5 SCC 798** has held as under:-

> **"10.** Mere repeated filing of representations could not be sufficient explanation for delay in approaching the Court for grant of relief, was considered in *Gandhinagar Motor Transport Society* v. *Kasbekar* [*Gandhinagar Motor Transport Society* v. *Kasbekar*, 1953 SCC OnLine Bom 64 : AIR 1954 Bom 202], by Chagla, C.J. observing as follows: (SCC OnLine Bom : AIR p. 203, para 2)
>
> > "*2*. … Now, we have had occasion to point out that the only delay which this Court will excuse in presenting a petition is the delay which is caused by the petitioner pursuing a legal remedy which is given to him. In this particular case the petitioner did not pursue a legal remedy. The remedy he pursued was extra-legal or extra-judicial. Once the final decision of the Government is given, a representation is merely an appeal for mercy or indulgence, but it is not pursuing a remedy which the law gave to the petitioner. …".

31. Accordingly, no case is made out warranting interference.

32. The petition fails and is hereby **dismissed** on the ground of delay and laches.

(G.S. AHLUWALIA)
JUDGE

shubhankar