

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 12th OF JUNE, 2023
WRIT PETITION No. 7335 of 2023**

BETWEEN:-

**SANTOSH KUMAR SHRIVASTAVA S/O
LATE SHRI BAL MUKUND
SHRIVASTAVA, AGED ABOUT 72
YEARS, OCCUPATION: RETIRED
STENOTYPIST R/O H.X.-19 KANHA
KUNJ-I KOLAR ROAD BHOPAL
(MADHYA PRADESH)**

.....PETITIONER

(BY MS. POOJA GUPTA - ADVOCATE)

AND

- 1. THE STATE OF MADHYA
PRADESH THROUGH
ADDITIONAL CHIEF
SECRETARY WATER
RESOURCES DEPARTMENT
VALLABH BHAWAN BHOPAL
(MADHYA PRADESH)**
- 2. ENGINEER-IN-CHIEF WATER
RESOURCE DEPARTMENT
BHOPAL (MADHYA PRADESH)**
- 3. CHIEF ENGINEER BODHI (WRD)
BHOPAL (MADHYA PRADESH)**
- 4. DISTRICT TREASURY OFFICER
BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI NAVEEN DUBEY – 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 against the order dated 18.04.1987 passed by Chief Engineer, Bodhi (WRD) Bhopal in File No.3324751.

2. It is the case of the petitioner that he was appointed as Steno Typist on 11.04.1975. He passed Hindi Shorthand and Typewriting Examination of 100 WPM conducted by the Board of Shorthand and Typewriting Examination on 21.03.1982 and he got the 100 WPM certificate on 02.08.1982. The respondents by circular dated 18.04.1987 held that the person, who has obtained certificate in Steno Typist in 100 WPM and who has worked for seven years on the post of Steno Typist, will be given *Kramonnati* on the pay scale of Rs.740-1180 on the same post from 18.02.1983. As per the circular dated 18.02.1983, it was stated that the person, who has passed the 100 WPM shorthand examination and completed seven years on the post of Steno Typist will be promoted in the pay scale of Rs.740-1180 without restrictions of vacancies. It is the case of the petitioner that the respondents by order dated 29.10.1988 had promoted one Smt. Lalita Soner to the post of Stenographer from the post of Steno Typist on the pay scale of Rs.1290-40-1450-50-2050 w.e.f. 27.08.1988. Since the petitioner was aggrieved by the said order, therefore, he made multiple representations and prayed for consideration of his case for promotion to the post of Stenographer but till date no response has been given by the respondents and accordingly, the present petition has been filed seeking the following relief:

- “1. A writ in the nature of mandamus to the respondent to consider the representation of the petitioner.
2. To provide the promotional benefit and other

consequential benefit to the petitioner from the 18.02.1983 till date.

3. To provide the petitioner all retirements benefits on the basis of the promotion to the post of Stenographer w.e.f 18.02.1983.
 4. To pass such other order as may deem fit under the circumstances of the case.”
3. Heard the learned counsel for the petitioner.
 4. Column 4 of the writ petition reads as under:

“4. DELAY, IF ANY, IN FILING THE PETITION AND EXPLANATION THEREOF:

The petitioners declare that there is no delay in filing the present petition before the Hon’ble High Court.”

5. Thus, in the said column the petitioner has claimed that there is no delay in filing the present petition. From the plain reading of this petition, it is clear that the petitioner is seeking consideration of his case to the post of Stenographer from 18.02.1983. The present petition has been filed on 27.03.2023. It is fairly conceded by the counsel for the petitioner that the petitioner has retired in the year 2011. Accordingly, the counsel for the petitioner was directed to argue on the question of delay and laches.
6. By referring to the judgment passed by the Supreme Court in the case of **Union of India and others Vs. Tarsem Singh** reported in **(2008) 8 SCC 648**, it is submitted that if the wrong is recurring/successive in nature then the continuing wrong can be entertained despite delay. It is further submitted that in case, if the petitioner is granted promotion w.e.f. 18.02.1983, he will be entitled for up-gradation of his pay. It is further submitted that since the petitioner has already retired, therefore, it is not necessary for him to implead all those juniors, who were granted promotion.

7. Heard the learned counsel for the petitioner.
8. Since the petitioner is seeking consideration of his case for promotion w.e.f.18.02.1983 that means this petition has been filed after 40 years with no explanation of delay and laches. Furthermore, the petitioner has retired in the year 2011 and this petition has been filed 12 long years after the date of his superannuation. A person can be granted promotion only on a vacant post. The delay in the cases of promotion is to be dealt with seriously and cannot be bypassed in a casual manner. Whosoever claims equity must enforce his claim within a reasonable time. Even if it is directed that the case of the petitioner be considered for his promotion, then it may affect the seniority of those, who had been promoted in the meantime or have been directly recruited. The delay is significant in matters of promotion and the court cannot come to the rescue of those persons, who were sleeping over their rights.
9. 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:-

“11. There cannot be any doubt whatsoever that keeping in view the equal protection clause contained in Article 14 of the Constitution of India as also Article 16 thereof, all the employees should be treated equally. Equality clause, however, must be enforced in legality and not illegality.

12. There cannot furthermore be any doubt that Article 14 is a positive concept. The Constitution does not envisage enforcement of the equality clause where a person has got an undue benefit by reason of an illegal act. In *Panchi Devi v. State of Rajasthan* [(2009) 2 SCC 589 : (2009) 1 SCC (L&S) 408] this Court held: (SCC p. 591, para 9)

“9. ... Article 14 of the Constitution of India has a positive concept. Equality, it is trite, cannot be

claimed in illegality. Even otherwise the writ petition as also the review petition have rightly not been entertained on the ground of delay and laches on the part of the appellant.”

13. The Court in a given case may be inclined to pass similar order as has been done in the earlier case on the basis of equality or otherwise. The discretionary jurisdiction under Article 226 of the Constitution may, however, be denied on the ground of delay and laches.

14. It is now well settled that who claims equity must enforce his claim within a reasonable time. For the said proposition, amongst others, we may notice a decision of a three-Judge Bench of this Court in *Govt. of W.B. v. Tarun K. Roy* [(2004) 1 SCC 347 : 2004 SCC (L&S) 225] , wherein it has been opined: (SCC pp. 359-60, para 34)

“34. The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in *Debdas Kumar* [*State of W.B. v. Debdas Kumar*, 1991 Supp (1) SCC 138 : 1991 SCC (L&S) 841 : (1991) 17 ATC 261] . *The plea of delay, which Mr Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents.* Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom

who may be found to be entitled thereto by a court of law.” (emphasis supplied)

15. The question yet again came up for consideration before this Court in *NDMC v. Pan Singh* [(2007) 9 SCC 278 : (2007) 2 SCC (L&S) 398] wherein it has been observed: (SCC p. 283, para 16)

“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.”(underlining [Ed.: Herein italicised.] is mine)

(See also *Virender Chaudhary v. Bharat Petroleum Corpn.* [(2009) 1 SCC 297])

16. The said principle was reiterated in *S.S. Balu v. State of Kerala* [(2009) 2 SCC 479 : (2009) 1 SCC (L&S) 388] in the following terms: (SCC p. 485, para 17)

“17. It is also well-settled principle of law that ‘delay defeats equity’. The Government Order was issued on 15-1-2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala

preferred an appeal thereagainst, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage.”

19. It is beyond any cavil of doubt that the remedy under Article 226 of the Constitution of India is a discretionary one. For sufficient or cogent reasons a court may in a given case refuse to exercise its jurisdiction; delay and laches being one of them. While considering the question of delay and laches on the part of the petitioner, the court must also consider the effect thereof.

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* [*Maharaj Krishan Bhatt v. State of J&K*, (2008) 9 SCC 24 : (2008) 2

SCC (L&S) 783] 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* [(2004) 1 SCC 347 : 2004 SCC (L&S) 225] . 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* [*Maharaj Krishan Bhatt v. State of J&K*, (2008) 9 SCC 24 : (2008) 2 SCC (L&S) 783] .”

10. 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:-

“.....Not only Respondent 2 but also Respondents 3 and 4 who were the appellant's juniors became Divisional Engineers in 1957, apparently on the ground that their merits deserved their promotion over the head of the appellant. He did not question it. Nor did he question the promotion of his juniors as Superintending Engineers over his head. He could have come to the Court on every one of these three occasions. 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. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its

normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal.”

11. The Supreme Court in the case of **Gian Singh Mann v. High Court of P&H** reported in **(1980) 4 SCC 266** has held as under:-

“**3.** In regard to the petitioner's claim for promotion to the Selection Grade post in the Punjab Civil Service (Judicial Branch) with effect from November 1, 1966, and to a post in the Punjab Superior Judicial Service with effect from May 1, 1967 on the basis that a post had been reserved in each of the services for a member of the scheduled castes, it seems to us that the claim is grossly belated. The writ petition was filed in this Court in 1978, about eleven years after the dates from which the promotions are claimed. There is no valid explanation for the delay. That the petitioner was making successive representations during this period can hardly justify our overlooking the inordinate delay. Relief must be refused on that ground. It is not necessary, in the circumstances, to consider the further submission of the respondents that the provision on which the petitioner relies as the basis of his claim is concerned with the appointment only of members of the scheduled castes to posts in the Punjab Superior Judicial Service and not to recruitment by promotion to that service.”

12. The Supreme Court in the case of **Union of India v. S.S. Kothiyal** reported in **(1998) 8 SCC 682** has held as under:-

“**3.** In our opinion, the admitted facts of this case alone are sufficient to reverse the judgment of the learned Single Judge as well as that of the Division Bench of the High Court. According to the version of Respondent 1 himself, his representation against non-promotion as Deputy Commandant was rejected on 10-6-1971, the second such

representation made on 19-8-1971 was rejected on 4-11-1974 and the third representation made on 12-4-1977 was rejected on 11-7-1977. It is obvious that on rejection of his representation in June 1971, there was no occasion for Respondent 1 to wait any longer to challenge his non-promotion and, therefore, the filing of the writ petition 8 years thereafter in December 1978, was highly belated and deserved to be rejected on the ground of laches alone in view of the settled principles relating to interference in service matters of this kind in exercise of the power of judicial review. The learned Single Judge as well as the Division Bench of the High Court completely overlooked this aspect. The fact that Respondent 1 waited for several years till he was actually promoted as Deputy Commandant in 1972 and even as Commandant in 1975 and more than three years elapsed even thereafter before he had filed the writ petition, is itself sufficient for the rejection of the writ petition.”

13. The Supreme Court in the case of **Nadia Distt. Primary School Council v. Sristidhar Biswas** 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 [Ed.: After disposal of the contempt petition in *Dibakar Pal case* on 23-6-1999.] in *Dibakar Pal* [C.O. No. 11154 (W) of 1989, decided on 13-3-1991] . 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.”

14. The Supreme Court in the case of **U.P. Jal Nigam v. 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.””

15. The Supreme Court in the case of **Jagdish Lal v. 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. 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* [*Union of*

India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] and *Ajit Singh* [(1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239 : JT (1996) 2 SC 727] ratios. But *Virpal Chauhan* [*Union of India v. Virpal Singh Chauhan*, (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] and *Sabharwal* [*R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] 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 [*R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] which required to be examined in the light of the law laid in *Sabharwal* case [*R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] . 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 [*R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] and *Virpal Chauhan* case [*Union of India v. Virpal Singh Chauhan*, (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] and equally *Ajit Singh* case [(1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239 : JT (1996) 2 SC 727] . 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. Karamchhari Sangh* case [*Akhil Bhartiya Soshit Karamchhari Sangh v. Union of India*, (1996) 6 SCC 65 : 1996 SCC (L&S) 1346] 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* [(1997) 10 SCC 474] a

Bench of two Judges consisting of S.C. Agrawal and G.T. Nanavati, JJ. considered the effect of *Virpal Chauhan* [*Union of India v. Virpal Singh Chauhan*, (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] , *Ajit Singh* [(1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239 : JT (1996) 2 SC 727] , *Sabharwal* [*R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] and *A.B.S. Karamchhari Sangh* [*Akhil Bhartiya Soshit Karamchhari Sangh v. Union of India*, (1996) 6 SCC 65 : 1996 SCC (L&S) 1346] 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* [*Union of India v. Virpal Singh Chauhan*, (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] and *Ajit Singh* [(1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239 : JT (1996) 2 SC 727] ; but promotion, if any, had been given to any of them during the pendency of this writ petition was directed not to be disturbed. Therein, the candidates appointed on the basis of economic backwardness, social status or occupation etc. were eligible for appointment against the post reserved for backward classes if their income did not exceed Rs 18,000 per annum and they were given accelerated promotions on the basis of reservation. In that backdrop, the above directions came to be issued. In fact, it did not touch upon Article 16(4) or 16(4-A). Therefore, desperate attempts of the appellants to redo the seniority had by them in various cadres/grades though in the same services according to the 1974 Rules or 1980 Rules, are not amenable to judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well.”

16. The Supreme Court in the case of **State of Uttarakhand 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.

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.”

17. So far as the up-gradation of the pay scale of the petitioner is concerned, unless and until he is granted promotion (may be on notional basis), he cannot be extended the benefit of higher pay scale. Unless and until there is a clear vacant post, the petitioner cannot be granted promotion. Therefore, this contention cannot be accepted. The State cannot be compelled to bear the financial burden of making payment of salary to two persons against one clear vacancy specifically when the petitioner was sleeping over his rights for 40 long years. Even otherwise, unless and until the person, who was promoted to the post of Stenographer is reverted back and a clear vacancy is created, it cannot be directed that the petitioner was entitled for promotion w.e.f. 18.02.1983 otherwise, it would result in

payment of salary to two different persons against one post.

18. Furthermore, according to the petitioner himself he was granted *Kramonnati* by order dated 07.05.1987/18.04.1987. The petitioner has not sought the quashment of this order. Although, in clause 1 of the writ petition the petitioner has projected that this petition has been filed against the order dated 18.04.1987 but the quashment of the same has not been claimed in clause 7 of the writ petition. *Kramonnati* is granted on account of stagnation. Thus, the petitioner was already granted the benefit of higher pay scale.

19. Since the petitioner has approached this Court after 40 long years from the date of cause of action and 12 long years after his superannuation, therefore, the stale, old as well as dead case cannot be reopened.

20. Accordingly, the petition is **dismissed** on the ground of delay and laches.

(G.S. AHLUWALIA)
JUDGE

Shanu