IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 4th OF OCTOBER, 2023

WRIT PETITION No. 9218 of 2023

BETWEEN:-

1. **RAJENDRA SINGH KACHWAHA S/O RATAN SINGH OCCUPATION: RETD. GOVT. EMPLOYEE, R/O SATAYI ROAD, NEAR NAGAR PALIKA GOAL MARKET CHHATARPUR, DISTRICT CHHATARPUR (MADHYA PRADESH)**

2. **SHRIRAM NAGAR S/O SHRI NANDRAM NAGAR, AGED ABOUT 63 YEARS, OCCUPATION: RETD. GOVT. EMPLOYEE, R/O 176, PEPTECH CITY, DERI ROAD, CHHATARPUR, DISTRICT CHHATARPUR (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI BRAMHA NAND PANDEY- ADVOCATE)

AND

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

2. **COMMISSIONER, SCHOOL EDUCATION, SATPURA BHAWAN, BHOPAL (MADHYA PRADESH)**

3. COMMISSIONER DPI, BHOPAL (MADHYA PRADESH)

4. COLLECTOR CHHATARPUR, DISTRICT CHHATARPUR (MADHYA PRADESH)

5. DISTRICT EDUCATION OFFICER, CHHATARPUR, DISTRICT CHHATARPUR (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 Constitution of India has been filed seeking the following reliefs:-

> (i) This Hon'ble Court may kindly be please to call the entire record pertaining to the subject matter and after kind perusal of it, issue the appropriate writ or writs and quash the impugned order bearing no. No./Estd-2/Court Case/Disposal/2023/1593 dated 20/03/2022 passed by respondent no. 5 (Annexure P/16) and direct to the respondents to grant the benefit of First Time Bound Increment after the completion of 12 year of the service of petitioners along with arrears with the interest of 12% in the interest of justice.
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> (ii) Any other relief this Hon'ble Court thinks fit looking to the facts and circumstances of the case may also awarded including the cost of petition.

2. It is the case of the petitioners that they were appointed in the Department of Panchayat and Social Services State of Madhya Pradesh by order dated 04.11.1982 and 16.04.1985 respectively. On 21.07.1994, the Department of Social Welfare issued an order according to which the persons who were working under Adult Education Project were permitted to be absorbed in School Education Department. On 06.06.1998, the School Education Department granted sanction for absorption of surplus employees working in Adult Education Project on the post of Teacher, Lower Division Clerk, Upper Division Clerk and Peon. On 18.09.2002, the Department of Public Instructions issued an order and granted sanction for absorption of surplus employee of Adult Education Scheme. Accordingly, by order dated 05.10.2002, respondent No. 5 issued an order and petitioners were appointed as Upper Division Teacher at Government Nehru Higher Secondary School, Maharajpur and Government Higher Secondary School, Ganj District Chhatarpur. On 08.04.2003, respondent No. 3 issued a letter to all the District Education Officer mentioning therein that the benefit of *Kramonnati* Scheme cannot be extended to the employees who have been absorbed in the School Education Department because they were surplus in their parent department and, therefore, it was requested that further action may be taken in accordance with the directions issued by GAD on 19.05.1999. Accordingly by order dated 22.06.2004, it was directed by General Administrative Department that the surplus employees who have been absorbed in a different department under the orders of the State Government shall be entitled for counting of their service in the parent department for the purposes of grant of *Kramonnati*. It is the case of petitioners that by ignoring the order dated 22.06.2004, respondents have granted 2nd and 3rd *Kramonnati* to the petitioners. However, they

have not granted 1st *Kramonnati* to petitioners. The petitioners were all the time making representation for grant of 1st *Kramonnati* after 12 years of their service but no action was taken. Therefore, petitioners filed Writ Petition No.24864/2022 before this Court and this Court without commenting on the merits of the case directed the respondents to decide the representation by passing a speaking order within a period of 60 days. It is submitted that by the impugned order dated 20.03.2022, the claim of petitioners has been rejected. However, it is the case of petitioners that respondents have not considered the case of petitioners positively and the rejection order has been issued on flimsy grounds.

3. *Per contra*, it is submitted by counsel for the State that petitioners were working on the post of Supervisor in Panchayat and Social Welfare, Directorate of Madhya Pradesh in the pay scale of Rs.4000-6000/-. However, they were absorbed on the post of UDT which was carrying the pay scale of Rs.5000-8000/-. Since, petitioners have already got a higher pay scale on account of their absorption, therefore, it is incorrect to say that petitioners were not granted the benefit of first time pay scale/ *Kramonnati*.

4. Heard learned counsel for parties.

5. The *Kramonnati* Scheme came into force in the month of April, 1999, and prior thereto there was no such provision. The petitioners were appointed in the Department of Panchayat and Social Welfare, Directorate by order dated 04.11.1982 and 16.04.1985. Since, the *Kramonnati* Scheme came into existence in the year, 1999, therefore, at the most, it can be said that petitioners became eligible for 1st *Kramonnati* in the year, 1999 but they did not raise any claim. However, the services of petitioners were absorbed in District Education Department by order dated 05.10.2002. Accordingly, counsel for

petitioners were directed to address this Court on the question of delay and laches as well as to point out that on what date petitioners had ever claimed 1st *Kramonnati* for the first time? In an arrogant manner, it was replied by counsel for petitioners that in the first round of litigation, the Co-ordinate Bench of this Court while disposing of the petition by order dated 28.11.2022 passed in W.P. No. 24864/2022 had not asked any question with regard to delay and laches, therefore, this Court cannot ask such a question. Furthermore, it is submitted that since the none grant of 1st *Kramonnati* is a recurring cause of action, therefore, there is no question of any delay and laches. It is further submitted that petitioners were constantly making representations and they approached this Court for the first time by filing W.P. No. 24864/2022 on 31.10.2022, therefore, the question of delay and laches does not arise. The manner in which the reply was given by counsel for petitioners was unexpected. However, his contention shall be considered in the law laid down by the Supreme Court.

6. So far as the submission that this Court by directing respondents to consider the representation of the petitioners in W.P. No. 24864/2022 has given new cause of action is concerned, the said submission is misconceived.

7. 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."

8. 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."

9. 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."

10. 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."

11. 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
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> Chagla, C.J. observing as follows: (SCC OnLine Bom : AIR p. 203, para 2)
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> > "*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... ."

12. Thus, it is clear that successive representations do not give rise to a new cause of action.

13. 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."

14. Thus, it is clear that even if any direction is given by the Court to decide the representation in an old/stale and dead case, still the said direction will not give rise to a fresh cause of action and even if such a representation is decided, the said decision on the representation will also not give rise to new cause of action. Therefore, counsel for petitioners is incorrect in submitting that since a Co-ordinate Bench of this Court by order dated 28.11.2022 passed in W.P. No. 24864/2022 had given a fresh cause of action to the petitioners is misconceived and is liable to be rejected.

15. Thus, it is clear that petitioners have approached the High Court for the first time on 31.10.2022 by filing W.P. No. 24864/2022 i.e. after 23 long years of the date of first cause of action. It is not out of place to mention here that the petitioners have already retired much prior to filing of writ petition and they accepted the 2nd and 3rd *Kramonnati* without any protest.

16. Be that whatever it may be.

17. Now the first question for consideration is as to whether the absorption of petitioners in School Education Department was in accordance with law or not?

18. The petitioners have filed a copy of appointment order dated 04.11.1982 passed in respect of petitioner No. 1. It is clear that the appointment of petitioner No. 1 was under integrated Adult Education Project and Ruler Functional Literacy Scheme. Thus, it is clear that petitioner No. 1 was appointed under scheme and not against any substantive post of the department. It is well established principle of law that any appointment made under a scheme/project is co-terminus with the project.

19. A similar question of law had arisen in the case of **Executive Engineer Vs. Rajendra Koshta** which was decided by order dated 27.06.2023 passed in **M.P. No. 445/2019** and it has been held as under:-

> "12. The Supreme Court in the case of **Mohd. Abdul Kadir and Another Vs. Director General of Police, Assam and Others** reported in **(2009) 6 SCC 611** has held that if temporary or ad hoc engagement or appointment is in connection with a particular project or specific scheme, the ad hoc or temporary service of persons employed under the project or scheme would come to an end on completion / closure/ cessation of the project or scheme. Merely because the scheme was in operation for some decades or the employee concerned has continued on ad hoc basis for one or two decades would not entitle the employee to seek permanency or regularization. If any post is sanctioned with reference to the scheme, such sanction is of ad hoc or temporary post coterminous with the scheme and not of permanent post. On completion of project or discontinuance of the scheme, those who were engaged with reference to or in connection with such project or scheme cannot claim any right to continue in service nor seek regularization in some other project or service.

> **13.** A similar proposition of law has been laid down in the cases of **Bhagwan Dass and Others Vs. State of Haryana and Others** reported in **(1987) 4 SCC 634**, **Delhi Development Horticulture Employees Union Vs. Delhi Administration, Delhi and Others** reported in **(1992) 4 SCC 99**, **Hindustan Steel Works Construction Ltd. And Others Vs. Hindustan Steel Works Construction Ltd. Employees Union, Hyderabad and Another** reported in **(1995) 3 SCC 474, MD, U.P. Land Development Corporation and Another Vs. Amar Singh and Others** reported in **(2003) 5 SCC 388**, **Madhyamik Shiksha Parishad, U.P. Vs. Anil Kumar Mishra And Others** reported in **(2005) 5 SCC 122**, **Secretary, State of Karnataka and Others Vs. Uma Devi (3) And Others** reported in **(2006) 4 SCC 1**, **Indian Council of Medical Research And Others Vs. K. Rajyalakshmi** reported in **(2007) 2 SCC 332** and **Lal Mohammad And Others Vs. Indian Railway Construction Co. Ltd. And others** reported in **(2007) 2 SCC 513**.
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> **14.** Thus, it is clear that the respondent is not entitled for regularization as he was not appointed against any vacant and sanctioned post of Madhya Pradesh Urja Vikas Nigam but he was appointed in IREP and since IREP has come to an end in the year 2008, therefore, the respondent has lost all his rights with the cessation of the project. Merely because the respondent was reinstated in compliance of the orders passed by the Labour Court/Industrial Court/High Court/Supreme Court, would not make him entitle for his regularization."

20. Thus, it is clear that if a person is appointed under a project, then his services are co-terminus with project. Merely because project had continued for decade would not confer any right on such employee to continue even after closure of project.

21. Thus, it is clear that the appointment of petitioner No. 1 was not against any regular, sanctioned and vacant post but it was under the

scheme and, therefore, he was wrongly treated as a regular employee in absence of the sanctioned strength.

22. So far as the appointment of petitioner No. 2 by order dated 16.04.1985 is concerned, it was made after due recruitment. However, he was found to be in surplus. Thus it is clear that even the appointment was on non-existing sanctioned post.

23. Be that whatever it may be.

24. Since, the claim of petitioners has not been cancelled on the ground that their absorption was illegally, therefore, there is no need to make any comment on the said aspect and, therefore, it is left.

25. It is contended by counsel for petitioners that as per the policy dated 19.04.1999, if a person who was working in the same pay scale for a period of 12 years or more, then he was entitled for 1st *Kramonnati*. It is the case of petitioners that because petitioners were surplus employees working in the Panchayat and Social Welfare Directorate, therefore, they were decided to be absorbed in the School Education Department. The petitioners were holding the post of Supervisor in the pay scale of Rs. 4000-6000/-. The absorption was to be made on the post of Teacher, Lower Division Clerk, Upper Division Clerk and Peon. The post of Supervisor was a Class-III post and accordingly, petitioners were required to be absorbed against any Class-III post. There was no Class-III posts in the School Education Department carrying the pay scale of Rs.4000-6000/-, therefore, petitioners were absorbed on the post of UDT which was carrying the pay scale of Rs.5000-8000/- and thus, it cannot be said that petitioners were given higher pay scale.

26. Considered the submissions made by counsel for petitioners.

27. Although, petitioners have not filed a copy of *Kramonnati*

Scheme dated 19.04.1999 but he had read out the same in the open Court. In the second part of the said scheme, it is clearly mentioned that if an employee remains in the same pay scale for a period of 12 years from the date of his appointment, then he will be entitled for first *Kramonnati*. The petitioners were surplus in their parent department i.e. Panchayat and Social Welfare Directorate and they were drawing the pay scale of Rs.4000-6000/-. Since, the State Government instead of terminating the services of petitioners as surplus employees decided to absorb their services in the School Education Department and according to the petitioners, no posts carrying the pay scale of Rs.4000-6000/- was available in the School Education Department, therefore, under compulsion, they were absorbed against the post of UDT, which was carrying higher pay scale of Rs.5000-8000/-.

28. It is not the case of petitioners that they were appointed on the post of UDT. In fact by default they were absorbed on the post of UDT carrying the higher pay scale of Rs.5000-8000/-, whereas; in the parent department, petitioners were drawing the pay scale of Rs.4000-6000/-. The petitioners themselves have relied upon the circular dated 22.06.2004 to claim that for the purposes of grant of *Kramonnati*, the services rendered by the surplus employees in the parent department are to be counted. Therefore, petitioners were entitled for 1st *Kramonnati* by considering their pay scale of Rs.4000-6000/-. They were absorbed in the School Education Department by default but it is once again held that for the purposes of calculating the period for 1st *Kramonnati,* not only the previous services rendered by the petitioners as a surplus employee is liable to be counted but the pay scale which the petitioners were getting as a surplus employee is also to be taken into consideration.

29. Under these circumstances, respondents did not commit any

mistake by holding that since petitioners were given the pay scale of Rs.5000-8000/- after their absorption in the School Education Department, therefore, it amounts to up-gradation of their pay scale. Once, petitioners were already granted the upgraded pay scale, then they were not entitled for the 1st *Kramonnati* after putting in 12 years of service in the same pay scale.

30. Under these circumstances, this Court is of the considered opinion that not only the present petition suffers from delay and laches but even otherwise, the petitioners have already got higher pay scale of Rs.5000-8000/- on account of their absorption in the School Education Department, therefore, they were rightly denied the benefit of 1st *Kramonnati* and the petitioners have already got the benefit of 2nd and 3rd *Kramonnati*. The benefits of 2nd and 3rd *Kramonnati* were accepted by the petitioners without any protest.

31. As no case is made out warranting interference, accordingly, the petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

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