2024:CGHC:48436

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4414 of 2024

- Suresh Kumar Nag S/o. Late Shri Milluram Nag Aged About 60 Years Presently Posted As Ud/head Master Govt. Higher Middle School Bacheli, Block Dantewada, District - Dantewada, R/o. Ward No. 06, Village - Bacheli, Police Station - Bacheli, Tahsil - Bade Bacheli, District - Dantewada (C.G.) Pin 494553, Mo No. 6261287455

... Petitioner

versus

1. State Of Chhattisgarh Through The Secretary, The Schedule Caste And Schedule Tribe Development Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District - Raipur (C.G.), Pin 492002

2. The Commissioner The Schedule Caste And Schedule Tribe Development Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District - Raipur (C.G.) Pin 492002.

3. The Collector Tribal Development, In The Office Of The Collectorate Dantewada, Tahsil And District - Dantewada (C.G.) Pin 494449

4. The District Education Officer In The Office Of The District Education Officer, Collectorate Dantewada, Tahsil And District - Dantewada (C.G.) Pin 494449

5. The Assistant Commissioner Tribal Dantewada In The Office Of The Assistant Commissioner Tribal Dantewada, Collectorate - Dantewada, Tahsil And District - Dantewada (C.G.) Pin 494449

... Respondents

(Cause Title is taken from Case Information System)

For Petitioner : Mr. Vijay K. Deshmukh, Advocate
For State : Mr. Dilman Rati Minj, Government Advocate

Hon'ble Shri Justice Rakesh Mohan Pandey

Order on Board

09.12.2024

1. Learned counsel for the petitioner submitted that the petitioner was

promoted to the post of Headmaster (Untrained), Government Higher Middle School Bacheli on 30.11.2012. He further submitted that the petitioner completed 20 years of service in the year 2007 and completed 50 years of age in the year 2014 and according to the policy he was entitled to get promotion to the post of Lecturer immediately after completion of 50 years of age and 20 years of service, but the claim of the petitioner was not considered by the department. He also submitted that the respondent authority may be directed to consider the case of the petitioner for promotion to the post of Principal.

2. On the other hand, Mr. Dilman Rati Minj, Government Advocate, appearing for the State would submit that the petitioner is claiming promotion since 2018, this petition was filed in the year 2024, and thus, this petition is hit by delay and laches.

3. I have heard learned counsel for the parties and perused the documents placed on record.

4. The petitioner was promoted to the post of Headmaster (Untrained) in the year 2012. The circular was issued by the State Government on 22.11.1979 according to which the Headmaster would be entitled to promotion to the post of principal after completion of 20 years of service or 50 years of age. The petitioner joined the services in the year 1987, and thus, completed 20 years of services in the year 2007. He completed 50 years of age in the year 2014, meaning thereby, the petitioner was entitled to get promoted to the post of principal either in the year 2007 or in the year 2014, but this petition has been filed in the year 2024.

5. The Hon'ble Supreme Court in the matter of ***P.S. Sadasivaswamy vs. State of Tamil Nadu, (1975) 1 SCC 152***, while dealing with a similar issue in para 2 held as under:-

> ***"2.*** *……...One cannot sleep over the matter and come to the Court questioning that relaxation in the year 1971. There is the further fact that even after respondents 3 and 4 were promoted as Divisional Engineers over the head of the appellant he did not come to the Court questioning it. There was a third opportunity for him to have come to the Court when respondents 2 to 4 were again promoted as Superintending Engineers over the head of the appellant. After fourteen long years because of the tempting prospect of the Chief Engineership he has come to the Court. In effect he wants to unscramble a scrambled egg. It is very difficult for the Government to consider whether any relaxation of the rules should have been made in favour of the appellant in the year 1957. The conditions that were prevalent in 1957 cannot be reproduced now. In any case as the Government had decided as a matter of policy, as they were entitled to do, not to relax the rules in favour of any except overseas scholars t will be wholly pointless to direct them to consider the appellants' case as if nothing had happened after 1957. 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 bead should approach the Court at least within six months or at the most a year of such promotion. It is not that 'here 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 extra-ordinary 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."*

6. The Hon'ble Supreme Court in the matter of ***Bichitrananda Behera Vs. State of Orissa and others, 2023 Livelaw (SC) 883*****,** under relevant para 20 & 21 held as under:-

> ***"20.*** *On an overall circumspection, thus, in the present case the Respondent No.5 should have been non-suited on the ground of delay and laches, which especially in servicematters, has been held consistently to be vital, juxtaposed with the sign of acquiescence.To the mix, we add that the State has supported the factual circumstances concerning the appointment of the appellant, his continuance in service as also the Respondent No.5 having worked during the said period in another school viz. the Sri Thakur Nigamananda High School, Terundia. Notably, the Respondent No.5 does not, from the*

record before us, appear to have approached the authorities in the interregnum.

***21**. Profitably, we may reproduce relevant passages from certain decisions of this Court:*
(A) Union of India v Tarsem Singh, (2008) 8 SCC 648:
"To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition." (emphasis supplied)

(B) Union of India v N Murugesan, (2022) 2 SCC 2

"Delay, laches and acquiescence

20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue

to be taken note of by the court.

Laches

21. The word "laches" is derived from the French language meaning "remissness and slackness". It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.

22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.

23. A defence of laches can only be allowed when there is no statutory bar. The question as to whether there exists a clear case of laches on the part of a person seeking a remedy is one of fact and so also that of prejudice. The said principle may not have any application when the existence of fraud is pleaded and proved by the other side. To determine the difference between the concept of laches and acquiescence is that, in a case involving mere laches, the principle of estoppel would apply to all the defences that are available to a party. Therefore, a defendant can succeed on the various grounds raised by the plaintiff, while an issue concerned alone would be amenable to acquiescence.

Acquiescence

24. We have already discussed the relationship between acquiescence on the one hand and delay and laches on the other.

25. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied

agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis." (emphasis supplied)

(C) Chairman, State Bank of India v M J James, (2022) 2 SCC 301:

"36. What is a reasonable time is not to be put in a straitjacket formula or judicially codified in the form of days, etc. as it depends upon the facts and circumstances of each case. A right not exercised for a long time is nonexistent. Doctrine of delay and laches as well as acquiescence are applied to non-suit the litigants who approach the court/appellate authorities belatedly without any justifiable explanation for bringing action after unreasonable delay. In the present case, challenge to the order of dismissal from service by way of appeal was after four years and five months, which is certainly highly belated and beyond justifiable time. Without satisfactory explanation justifying the delay, it is difficult to hold that the appeal was preferred within a reasonable time. Pertinently, the challenge was primarily on the ground that the respondent was not allowed to be represented by a representative of his choice. The respondent knew that even if he were to succeed on this ground, as has happened in the writ proceedings, fresh inquiry would not be prohibited as finality is not attached unless there is a legal or statutory bar, an aspect which has been also noticed in the impugned judgment. This is highlighted to show the prejudice caused to the appellants by the delayed challenge. We would, subsequently, examine the question of acquiescence and its judicial effect in the context of the present case.

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38. In Ram Chand v. Union of India [Ram Chand v. Union of India, (1994) 1 SCC 44] and State of U.P. v. Manohar [State of U.P. v. Manohar, (2005) 2 SCC 126] this Court observed that if the statutory authority has not performed its duty within a reasonable time, it cannot justify the same by taking the plea that the person who has been deprived of his rights has not approached the appropriate forum for relief. If a statutory authority does not pass any orders and thereby fails to comply with the statutory mandate within reasonable time, they normally should not be permitted to take the defence of laches and delay. If at all, in such cases, the delay furnishes a cause of action, which in some cases as elucidated in Union of India v. Tarsem Singh [Union of India v. Tarsem Singh, (2008) 8 SCC 648 : (2008)

2 SCC (L&S) 765] may be continuing cause of action.The State being a virtuous litigant should meet the genuine claims and not deny them for want of action on their part. However, this general principle would not apply when, on consideration of the facts, the court concludes that the respondent had abandoned his rights, which may be either express or implied from his conduct. Abandonment implies intentional act to acknowledge, as has been held in para 6 of Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. [Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409 : 1979 SCC (Tax) 144] Applying this principle of acquiescence to the precept of delay and laches, this Court in U.P. Jal Nigam v.Jaswant Singh [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] after referring to several judgments, has accepted the following elucidation in Halsbury's Laws of England : (Jaswant Singh case [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] , SCC pp. 470-71, paras 1213)

"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.'

13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if

the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?"

39. Before proceeding further, it is important to clarify distinction between "acquiescence" and "delay and laches". Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. [See Prabhakar v. Sericulture Deptt., (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149. Also, see Gobinda Ramanuj Das Mohanta v. Ram Charan Das, 1925 SCC OnLine Cal 30 : AIR 1925 Cal 1107] In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, [See Vidyavathi Kapoor Trust v. CIT, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. [See Krishan Dev v. Ram Piari, 1964 SCC OnLine HP 5 : AIR 1964 HP 34] Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. [See "Introduction", U.N. Mitra, Tagore Law Lectures — Law of Limitation and Prescription, Vol. I, 14th Edn., 2016.] However, acquiescence will not apply if lapse of time is of no importance or consequence.

40. Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay.

> *Acquiescence virtually destroys the right of the person. [See Vidyavathi Kapoor Trust v. CIT, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] Given the aforesaid legal position, inactive acquiescence on the part of the respondent can be inferred till the filing of the appeal, and not for the period post filing of the appeal. Nevertheless, this acquiescence being in the nature of estoppel bars the respondent from claiming violation of the right of fair representation."*

7. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. Remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons, such delay does not deserve any indulgence and on the said ground alone this Court deems it appropriate to dismiss this petition at the very threshold. The doctrine of delay and laches, or for that matter statutes of limitation are considered to be statutes of repose and statutes of peace. There must be a lifespan during which a person must approach the court for their remedy. Otherwise, there would be unending uncertainty as to the rights and obligations of the parties.

8. Considering the facts and circumstances of the present case in light of the judgments passed by the Hon'ble Supreme Court in the matters of ***P.S. Sadasivaswamy*** **(supra)** and ***Bichitrananda Behera*** **(supra),** it is quite vivid that the petitioner has approached this Court after a delay of 10 years and in para 7 of the writ petition, it has been stated that there is no delay in filing the instant petition. The petitioner utterly failed to explain the delay caused in filing the instant petition.

9. Taking into consideration the fact that the petitioner was not vigilant to

approach this Court to claim promotion to the next higher post immediately after acquiring eligibility criteria; the instant petition is liable to be and is hereby **dismissed** on the ground of delay and laches.

Sd/-
(Rakesh Mohan Pandey)
Judge

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