2023 STPL(Web) 19 HP
HIGH COURT OF HIMACHAL PRADESH

(HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, JUDGE AND HON'BLE MR. JUSTICE SATYEN VAIDYA, JJ.)

MEENA DEVI

Petitioner

VERSUS

H.P. STATE ELECTRICITY BOARD LTD. & ANR.

Respondents

CWPOA No. 4829 of 2020-Decided on 6.7.2023

Service Law

Service Law - Maternity Leave – Belatedly representation – Approach the authorities after 15 years – Held: when belatedly representation in regard to a stale or dead claim is considered and decided in compliance to the directions of the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing afresh cause of action for reviving "stale or dead claim or time barred dispute", more especially when the court while directing the consideration of the representation has not at all adverted to the merits of the case, as is the factual situation obtaining in the instant case. Petition barred by delay and laches – Dismissed.

(Para 1, 2, 21)

Advocate(s): For the petitioner : Mr. R.L. Chaudhary, Advocate.
For the respondents : Mr. Lakshay Thakur, Advocate.

JUDGMENT

Tarlok Singh Chauhan, J. (Oral)-The petitioner was engaged as a sweeper on daily wage basis in the office of respondent No.2 on 21.7.1997 and worked as such till 24.1.1998. The petitioner gave birth to a child on 18.1.1998 and prior to that she submitted an application on 7.1.1998 for sanctioning of maternity leave, on account of her delivery. However, the leave was not sanctioned and rather the services of the petitioner were ordered to be terminated. Unfortunately, the petitioner kept mum, for over a decade and eventually approached this Court by way CWP No. 11355 of 2011, which came to be disposed of on 1.1.2013 by passing the following order:

> "Petitioner has already made representations for the redressal of his grievance vide Annexures P1 and P2. However, the same have not been decided till date.
>
> 2. Consequently, the present petition is disposed of with a direction to respondent No.1 to decide the representation made by the petitioner by passing a speaking order within a period of three months from today. The pending application(s), if any, are also disposed of. No costs."

2. In compliance to the directions passed by this Court, the respondents-Board considered and decided the case of the petitioner and held that since the petitioner had failed to raise her grievance within the reasonable time and, in fact, approached the authorities after 15 years, therefore, her claim was not maintainable at the belated stage.

3. Aggrieved by the consideration order, the petitioner has filed the instant petition for grant of following substantive reliefs:-

> "i) That the impugned order dated 18.4.2013 (Annexure A-5) passed by the respondents may kindly be quashed and set aside;
>
> ii) That the respondent Board may kindly be directed to reengage/reinstate the applicant in service against the post of daily wage sweeper from the due date with all consequential benefits, since the services of the applicant were terminated intentionally and deliberately on account of her delivery and maternity leaves were not sanctioned and thereafter, junior persons, namely, Kamal Raj, Uma Devi and Revati Ram were engaged and direction of the higher officer dated 16.12.2003 (Annexure A-6) to reinstate the applicant was ignored."

4. Learned counsel for the petitioner vehemently argued that since the decision impugned herein had been taken pursuant to the directions passed by this Court, the claim of the petitioner could not be rejected on the ground of delay and laches.

5. We have heard learned counsel for the parties and gone through the record of the case minutely.

6. At the outset, we may notice that the consideration order(Annexure A-5) has been passed by the respondents long time back on 18.4.2013, whereas the instant petition has been filed on 13.7.2018. The writ petition on the face of it is barred by delay and laches, as the cause of action, which accrued to the petitioner was more than 2 ½ decades back.

7. Having gone through the petition, we find that the petitioner has not at all explained the delay in filing the instant petition.

8. The Hon'ble Supreme Court in R & M Trust versus Koramangala Residents Vigilance Group and others , (2005) 3 Supreme Court Cases 91, has held that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution; delay defeats equity and delay cannot be brushed aside without any plausible explanation. It is apt to reproduce para 34 of the judgment herein:

> "34. There is no doubt that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution. We cannot disturb the third-party interest created on account of delay. Even otherwise also why should the Court come to the rescue of a person who is not vigilant of his rights?"

9. The Hon'ble Supreme Court in S.D.O. Grid Corporation of Orissa Ltd. and others versus Timudurt Oram, 2005 AIR SCW 3715 and Srinivasa Bhat (Dead) by L.Rs. & Ors. versus A. Sarvothama Kini (Dead) by L.Rs. & Ors ., AIR 2010 Supreme Court 2106, has also discussed the same principle. It would be profitable to reproduce para 9 of the judgment in Timudurt Oram's case (supra) herein:

> "9. In the present case, the appellants had disputed the negligence attributed to it and no finding has been recorded by the High Court that the GRIDCO was in any way negligent in the performance of its duty. The present case is squarely covered by the decision of this Court in Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and others (supra), 1999 AIRSCW 3383 : AIR 1999 SC 3412. The High Court has also erred in awarding compensation in Civil Appeal No. ..... of 2005 (arising out of SLP (C) No. 9788 of 1998). The subsequent suit or writ petition would not be maintainable in view of the dismissal of the suit. The writ petition was filed after a lapse of 10 years. No reasons have been given for such an inordinate delay. The High Court erred in entertaining the writ petition after a lapse of 10 years. In such a case, awarding of compensation in exercise of its jurisdiction under Article 226 cannot be justified."

10. It would also be apt to reproduce herein para 39 of the judgment rendered by the Hon'ble Supreme Court in Bhakra Beas Management Board versus Kirshan Kumar Vij & Anr., AIR 2010 Supreme Court 3342:

> "39. Yet, another question that draws our attention is with regard to delay and laches. In fact, respondent No. 1's petition deserved to be dismissed only on that ground but surprisingly the High Court overlooked that aspect of the mater and dealt with it in a rather casual and cursory manner. The appellant had categorically raised the ground of delay of over eight years in approaching the High Court for grant of the said relief. But the High Court has simply brushed it aside and condoned such an inordinate, long and unexplained delay in a casual manner. Since, we have decided the matter on merits, thus it is not proper to make avoidable observations, except to say that the approach of the High Court was neither proper nor legal.

11. The Hon'ble Apex Court has considered the same issue and point in Delhi Administration and Ors. versus Kaushilya Thakur and Anr., AIR 2012 Supreme Court 2515. It is apt to reproduce para 10 of the judgment herein:

> "10. We have heard Shri H.P. Raval, learned Additional Solicitor General and Shri Rishikesh, learned counsel for respondent No.1 and perused the record. In our view, the impugned order as also the one passed by the learned Single Judge are liable to be set aside because,
>
> > (i) While granting relief to the husband of respondent No. 1, the learned Single Judge overlooked the fact that the writ petition had been filed after almost 4 years of the rejection of an application for allotment of 1000 sq. yards plot made by Ranjodh Kumar Thakur. The fact that the writ petitioner made further representations could not be made a ground for ignoring the delay of more than 3 years, more so because in the subsequent communication the concerned authorities had merely indicated that the decision contained in the first letter would stand. It is trite to say that in exercise of the power under Article 226 of the Constitution, the High Court cannot entertain belated claims unless the petitioner offers tangible explanation State of M.P. v. Bhailal Bhai (1964) 6 SCR 261.

(ii) The claim of Ranjodh Kumar Thakur for allotment of land was clearly misconceived and was rightly rejected by the Joint Secretary (L&B), Delhi Administration on the ground that he was not the owner of land comprised in khasra No. 70/2. A bare reading of Sale Deed dated 12.7.1959 executed by The Apex Court in a latest case titled as Shri Hari Chand in favour of Ranjodh Kumar Thakur shows that the former had sold land forming part of khasra Nos. 166, 167 and 168 of village Kotla and not khasra No.70/2. This being the position, Ranjodh Kumar Thakur did not have the locus to seek allotment of land in terms of the policy framed by the Government of India. The payment of compensation to Ranjodh Kumar Thakur in terms of the award passed by the Land Acquisition Collector and the enhanced compensation determined by the Reference Court cannot lead to an inference that he was the owner of land forming part of Khasra No.70/2. In any case, before issuing a mandamus for allotment of 1000 square yards plot to the writ petitioner, the High Court should have called upon him to produce some tangible evidence to prove his ownership of land forming part of Khasra No.70/2. Unfortunately, the learned Single Judge and the Division Bench of the High Court did not pay serious attention to the stark reality that Ranjodh Kumar Thakur was not the owner of land mentioned in the application filed by him for allotment of 1000 square yards land."

12. The Hon'ble Supreme Court in Chennai Metropolitan Water Supply and Sewerage Board and others versus T.T. Murali Babu, (2014) 4 Supreme Court Cases 108, has taken into consideration all the judgments and the development of law and held that delay cannot be brushed aside without any reason. It is apt to reproduce paras 13 to 17 of the judgment herein:

"13. First, we shall deal with the facet of delay. In Maharashtra SRTC v. Balwant Regular Motor Service,, AIR 1969 SC 329, the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Hurd, (1874) LR 5 PC 221, which is as follows: (Balwant Regular Motor Service case, AIR 1969 SC 329, AIR pp. 335-36, para 11)

"11. .....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 limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.' (Lindsay Petroleum Co. case, PC pp/ 239-40)"

14. In State of Maharashtra v. Digambar, (1995) 4 SCC 683, while dealing with exercise of power of the High Court under Article 226 of the Constitution, the Court observed that: (SCC p. 692, para 19)

"19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct."

15. In State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566 : AIR 1987 SC 251, the Court observed that : (SCC p. 594, para 24)

" 24. .....it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic."

It has been further stated therein that: (Nandlal Jaiswal case, (1986) 4 SCC 566 : AIR 1987 SC 251, SCC p. 594, para 24)

> "24. ..... If there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction."

Emphasis was laid on the principle of delay and aches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that 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 created to have attained finality. A court is not expected to give indulgence to such indolent persons-who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

13. The same principles have been laid down by this Court in LPA No. 48 of 2011 titled Shri Satija Rajesh N. vs. State of Himachal Pradesh and others decided on 26.8.2014.

14. Dealing with the question of delay, the Hon'ble Supreme Court in State of Jammu & Kashmir Versus R.K. Zalpuri and Kashmir, 2015(15) SCC 602 has observed as under:

> "20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwala and Others, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-
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> > "The Court while exercising its jurisdiction under Article 226 is duty- bound to consider whether:
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> > (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
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> > (b) the petition reveals all material facts;
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> > (c) the petitioner has any alternative or effective remedy for the resolution of the dispute;
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> > (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
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> > (e) ex facie barred by any laws of limitation;
> >
> > (f) grant of relief is against public policy or barred by any valid law; and host of other factors."
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> 21. In this regard reference to a passage from Karnataka Power Corpn. Ltd Through its Chairman & Managing Director & Anr Vs. K. Thangappan and Anr. would be apposite:- (SCC . 325 para 6)
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> > "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". After so stating the Court after referring to the authority in State of M.P. v. Nandalal Jaiswal restated the principle articulated in earlier pronouncements, which is to the following effect:- (SCC p. 326 para-9)

> "9. ...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".

22. In State of Maharashtra V Digambar a three judge bench laid down that:- (SCC p. 692 para 19)

> "19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct."

23. Recently in Chennai Metropolitan Water Supply and Sewerage Board & Ors. Vs. T.T. Murali Babu, it has been ruled thus: (SCC p.117 para 16)

> "16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis".

24. At this juncture, we are obliged to state that the question of delay and laches in all kinds of cases would not curb or curtail the power of writ court to exercise the discretion. In Tukaram Kana Joshi And Ors. Vs. Maharashtra Industrial Development Corporation & Ors[11] it has been ruled that:- (SCC pp. 359-60, para 12)

> "12. …...Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience".

And again:- (SCC p. 360 para 14)

> "No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a nondeliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide Durga Prashad v. Chief Controller of Imports and Exports, Collector (LA) v. Katiji, Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur, Dayal Singh v. Union of India and Shankara Coop. Housing Society Ltd. v. M. Prabhakar.)"

15. Similar reiteration of law can be found in a recent judgment of the Hon'ble Supreme Court in Union of India versus N. Murgesan, 2021 (12) Scale 77.

16. That apart, the issue of delay and latches came up recently before the Hon'ble Supreme Court in Surjeet Singh Sahni versus State of H.P. and others , 2022 (4) Scale 280. While considering the question of delay, the Hon'ble Supreme Court has observed as under:

> "4. At the outset, it is required to be noted that by way of writ petition under Article 226 of the Constitution of India as such the petitioner prayed for a specific performance of Clause 12 of the Sale Deed dated 19.09.2001. For the first time, the petitioner made a representation for allotment of 10% plot as per Clause 12 of the Sale Deed dated 19.09.2001 in the year 2010, i.e., after a period of 10 years from the date of execution of the Sale Deed. Therefore, as such if the suit would have been filed for specific performance, the same would have been barred by limitation. Despite the above, the petitioner filed a writ petition before the High Court and as observed hereinabove prayed for specific performance of Clause 12 of the Sale Deed dated 19.09.2001 being Writ Petition No.37443 of 2011, which was also filed after a period of 11 years from the date of execution of the Sale Deed. Therefore, as such when the earlier writ petition was filed in the year 2011 which was also barred by delay and latches, the High Court ought not to have entertained the same. Instead, the High Court entertained the said writ petition and directed the NOIDA to decide the representation of the petitioner, which as such was made after a period of 10 years, expeditiously and it gave the fresh blood to the litigation, which otherwise was barred by delay and latches. The High Court by passing the order dated 07.04.2017 as such did not realise and/or appreciated that the writ petition itself was required to be dismissed on the ground of delay and latches as the same was filed after a period of 11 years from the date of execution of the Sale Deed under which the right was claimed. We have come across number of such orders passed by the High Courts directing the authorities to decide the representation though the representations are made belatedly and thereafter when a decision is taken on such representation, thereafter it can be said on behalf of the petitioner that the fresh cause of action has arisen on rejection of the representation. Therefore, when such orders are passed by the High Courts either relegating the petitioner to make a representation and/or directing the appropriate authority to decide the representation, the High Courts have to consider whether the writ petition is filed belatedly and/or the same is barred by latches and/or not, so that in future the person who has approached belatedly may not contend that the fresh cause of action has arisen on rejection of the representation. Even in a case where earlier representation is rejected, the High Court shall decide the matter on merits.
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> 5. As observed by this Court in catena of decisions, mere representation does not extend the period of limitation and the aggrieved person has to approach the Court expeditiously and within reasonable time. If it is found that the writ petitioner is guilty of delay and latches, the High Court should dismiss it at the threshold and ought not to dispose of the writ petition by relegating the writ petitioner to file a representation and/or directing the authority to decide the representation, once it is found that the original writ petitioner is guilty of delay and latches. Such order shall not give an opportunity to the petitioner to thereafter contend that rejection of the representation subsequently has given a fresh cause of action.
>
> 6. Even otherwise on merits also, we are in complete agreement with the view taken by the High Court. The High Court has rightly refused to grant any relief which as such was in the form of specific performance of the contract. No writ under Article 226 of the Constitution of India shall be maintainable and/or entertainable for specific performance of the contract and that too after a period of 10 years by which time even the suit for specific performance would have been barred by limitation."

17. In view of the aforesaid exposition of law, the instant petition is clearly not maintainable, however learned counsel for the petitioner would argue that the petitioner has already made a representation to

respondent No.1 and, therefore, directions may please be issued to respondent No.1 to consider and decide the same. However, we are not inclined to accede to this request also in view of the law laid down by the Hon'ble Supreme Court in C. Jacob vs. Director of Geology and Mining and another (2008) 10 SCC 115 wherein it was held as under:

> "9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to `consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

18. The aforesaid legal position was thereafter reiterated by the Hon'ble Supreme Court in Union of India and others vs. M.K. Sarkar (2010) 2 SCC 59 by observing as under:-

> "The order of the Tribunal allowing the first application of the respondent without examining the merits, and directing the appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. 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. Moreover, a court to tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court to tribunal deciding to direct "consideration" without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

19. Similar, reiteration of law can be found in a judgment rendered by the Division Bench of this Court in LPA No. 89 of 2012 titled Sainik Schools Society and another vs. R.C. Sharma, decided on 17.06.2014.

20. The discussion on the subject would not be complete in case reference is not made to the judgments of the Hon'ble Supreme Court in Union of India and others vs. C.Girija and others (2019) 15 SCC 633 wherein it was held that mere filing of a belated representation in regard to a dead issue and time barred dispute will not give any fresh cause of action and consideration thereof cannot obviate bar of limitation and issue of delay and laches. It shall be apt to reproduce the relevant observations as contained in paragraphs 14 to 20 which read as under:-

> "14. From the submissions of the learned counsel of the parties and materials on record, following two issues arise for consideration:-
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> 14.1. Whether the claim of the applicant to be included in the Panel dated 09.01.2001 for promotion as APO was barred by delay and laches?
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> 14.2. Whether under 30% quota of LDCE, all the 05 vacancies ought to have been made unreserved and notification dated 14.10.1999 making 04 vacancies unreserved and 01 vacancy reserved for SC was illegal?
>
> Issue No.1
>
> 15. There is no dispute between the parties that in the notification dated 14.10.1999 inviting applications for filling up of 05 posts under 30% LDCE quota, 04 vacancies were shown as unreserved and 01 as reserved for SC. The applicant submitted an application for participation in the selection but she could not be included against 04 unreserved vacancies, she being a general category candidate. There were certain complaints with regard to selection under 70% quota, with

regard to which certain investigations were going on, which could be finalized in 2007. Applicant for the first time submitted representation to General Manager, Southern Railways on 25.09.2007 praying for inclusion of her name in the panel dated 09.01.2001. Copy of the representation filed by the applicant has been brought on the record, which indicate that applicant has in her representation relied on certain orders issued on 20.06.2007 and 05.09.2007 with regard to revision of the panel under 70% selection quota. With regard to 30% quota to be filled through LDCE, she stated that reserving 01 post for SC was totally against all norms. Representation was replied by Railways on 27.12.2007 stating that with regard to revision of the panel under 70% promotion quota, the applicant is not a party in any way. With regard to vacancy under 30% LDCE selection, it was indicated that the same was done as per the Rules prevalent at that time. O.A. No. 466 of 2009 was filed thereafter by the applicant, which has been decided by the Tribunal. Tribunal condoned the delay of 560 days in filing the O.A. The applicant has challenged the communication dated 27.12.2007 of the Railways which was given in reply to the representation of the applicant. The condonation of delay, thus, only meant that against the letter dated 27.12.2007, her O.A. was held to be within time. The Tribunal and High Court has not adverted to the delay, which accrued from the declaration of panel on 09.01.2001 and submitting her representation on 25.09.2007, i.e. after more than 06 years and 09 months.

16. This Court had occasion to consider the question of cause of action in reference to grievances pertaining to service matters. This Court in C.Jacob Vs. Director of Geology and Mining and Another, (2008) 10 SCC 115 had occasion to consider the case where an employee was terminated and after decades, he filed a representation, which was decided. After decision of the representation, he filed an O.A. in the Tribunal, which was entertained and order was passed. In the above context, in paragraph No.9, following has been held: (SCC pp.122-23)

> "9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any "decision" on rights and obligations of parties. Little do they realise the consequences of such a direction to "consider". If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to "consider". If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

17. This Court again in the case of Union of India and Others Vs. M.K. Sarkar, (2010) 2 SCC 59 on belated representation laid down following, which is extracted below: (SCC p.66, para 15)

> "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 timebarred 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."

18. Again, this Court in State of Uttaranchal and another Vs. Shiv Charan Singh Bhandari and others, (2013) 12 SCC 179 had occasion to consider question of delay in challenging the promotion. The Court further held that representations relating to a stale claim or dead grievance does not give rise to a fresh cause of action. In paras 19 and 23 following was laid down:- (SCC pp.184-85)

> "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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> 23. In State of T.N. v. Seshachalam, (2007) 10 SCC 137, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: (SCC p. 145, para 16).

> '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.' "

19. This Court referring to an earlier judgment in P.S. Sadasivaswamy Vs. State of Tamil Nadu, (1975) 1 SCC 152 noticed that 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. In paras No. 26 and 28, following was laid down: (Shiv Charan Singh Bhandari Case, SCC pp. 185-86)

> "26. Presently, sitting in a time machine, we may refer to a two- Judge Bench decision in P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152, wherein it has been laid down that: (SCC p. 154, para 2)
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> > '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.'
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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."

20. On the proposition as noticed above, it is clear that the claim of the applicant for inclusion of her name in the panel, which was issued on 09.01.2001 and for the first time was raked up by her, by filing representation on 25.09.2007, i.e., after more than 06 and half years. The claim of inclusion in the panel had become stale by that time and filing of representation will not give any fresh cause of action. Thus, mere fact that representation was replied by Railways on 27.12.2007, a stale claim shall not become a live claim. Both Tribunal and High Court did not advert to this important aspect of the matter. It is further to be noted from the material on record that after declaration of panel on 09.01.2001, there were further selection under 30% promotion by LDCE quota, in which the applicant participated. In selection held in 2005 she participated and was declared unsuccessful. With regard to her non inclusion in panel in 2005 selection, she also filed O.A. No. 629 of 2006 before the Tribunal, which was dismissed. After participating in subsequent selections under 30% quota and being declared unsuccessful, by mere filing representation on 27.09.2007 with regard to selection made in 2001, the delay and laches shall not be wiped out."

21. Thus what can be deduced from the aforesaid exposition of law is that when belatedly representation in regard to a stale or dead claim is considered and decided in compliance to the directions of the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing afresh cause of action for reviving "stale or dead claim or time barred dispute", more especially when the court while directing the consideration of the representation has not at all adverted to the merits of the case, as is the factual situation obtaining in the instant case.

22. In view of aforesaid discussion and for the reasons recorded herein above, we find the instant petition to be barred by delay and laches and the same is accordingly dismissed, so also pending miscellaneous applications, if any, leaving the parties to bear their own costs.
