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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P. (C) 485/2021, CM APPL. 1244/2021

SATAYENDER KUMARPetitioner
Through: Mr.Ankur Chhibber, Advocate.

Versus

UNION OF INDIA AND ORSRespondents
Through: Ms.Bhartathi Raju, CGSC for UOI.

% Date of Decision: 26th February, 2021

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. The petition has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the letter dated 29th October, 2020 whereby respondents have allegedly arbitrarily rejected the petitioner's claim for correct fixation of his seniority at par with his batch-mates.
3. Petitioner also seeks a direction to the respondents to treat the petitioner's appointment, through LDCE-2007, to the post of Sub-Inspector w.e.f. 18th September, 2007 instead of 03rd April, 2010, and to promote him to the rank of Inspector w.e.f. 22nd February, 2011.

4. Learned counsel for petitioner states that the petitioner had been appointed to the post of Sub-Inspector belatedly on account of an erroneous medical board decision and his seniority was fixed from 03rd April, 2010 instead of 18th September, 2007. He further states that on account of the erroneous fixation of seniority, the petitioner filed a representation dated 17th August, 2016 as well as issued a legal notice dated 28th February, 2020. However, the same were rejected vide letter dated 29th October, 2020.

5. Learned counsel for the petitioner submits that the respondent vide the impugned letter has disregarded the petitioner's prayer even though the law is settled that if a candidate's joining is delayed for reasons not attributable to the candidate but the employer, then the candidate cannot be deprived of his seniority. In support of his submission, he relies upon the judgment in *Naveen Kumar Jha vs. Union of India, 2012 SCC OnLine Del 5606* and *M.V. Sheshagiri vs. Union of India & Ors., W.P.(C) 6275/2016*.

6. A perusal of the paper book reveals that the petitioner has prayed that his appointment to the post of Sub-Inspector be treated from 18th September, 2007 instead of 03rd April, 2010 on account of him erroneously being declared medically unfit. Consequently, this Court is of the view that the petitioner's cause of action, if any, to file the present writ petition arose on 03rd April, 2010, whereas the present writ petition had been filed on 15th December, 2020.

7. The Supreme Court in *State of Madhya Pradesh and Another Vs. Bhailal Bhai & Ors., AIR 1964 SC 1006* has held that though there is no limitation for filing of the writ petition, yet period of three years may be

taken to be a reasonable standard by which delay under Article 226 can be measured.

8. In the present case, the writ petition has been filed after more than ten years. Further, the petitioner's first representation on record is dated 17th August, 2016 i.e. after a gap of more than six years. Accordingly, its disposal vide letter dated 29th October, 2020 would neither extend the limitation nor condone the delay in approaching the authorities for redressal of his grievances. It has also been repeatedly held by the Supreme Court that repeated representations by the petitioner would not extend the time period to file the writ petition.

9. In fact, the Supreme Court in ***Chairman/Managing Director, U.P. Power Corporation Ltd. & Ors. vs. Ram Gopal, 2020 SCC OnLine SC 101*** has held that delay defeats equity and law favours the vigilant and not the indolent. The relevant portion of the said judgment is reproduced hereinbelow:-

16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In SS Balu v. State of Kerala, this Court observed thus:

“17. It is also well-settled principle of law that “delay defeats equity”. ...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.”

17. Similarly, in Vijay Kumar Kaul v. Union of India this Court while considering the claim of candidates who, despite being higher in merit, exercised their right to parity much after those who were though lower in merit but were diligently agitating their rights, this Court observed that:

“27. ...It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time.”

10. Also, the judgment in **Naveen Kumar Jha** (supra) does not deal with the issue of delay and laches. This Court finds that the judgment in **M.V. Sheshagiri** (supra) relies on **State of Uttar Pradesh vs. Arvind Kumar Srivastava, (2015) 1 SCC 347** to condone the delay in filing of that writ petition. A perusal of the aforesaid Supreme Court judgment reveals that delay was condoned in the said case as similarly situated persons had approached the Court and the judgment pronounced by the Court was a judgment in *rem* with intent to give benefit to all similarly situated persons. Consequently, neither **Naveen Kumar Jha** (supra) nor **M.V. Sheshagiri** (supra) or **State of Uttar Pradesh vs. Arvind Kumar Srivastava** (supra) offer any assistance to the petitioner.

11. It is also an admitted position that if the present writ petition is allowed, then the petitioner who is ranked at Serial No.2398 in the seniority list of Sub-Inspector, as on 01st February, 2011, shall be entitled to be placed at Serial No.840. However, the petitioner has not arrayed the officers, who shall be affected by the change of petitioner's seniority.

12. Consequently, as the necessary and proper parties are not arrayed as respondents, the present writ petition along with pending application is not maintainable.

13. Keeping in view the aforesaid, the present writ petition filed after more than ten years is barred by delay and laches and suffers from non-joinder of necessary and proper parties. Accordingly, present writ petition and application are dismissed.

14. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

ASHA MENON, J

FEBRUARY 26, 2021
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