



2024:CGHC:33275

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5586 of 2014

- S.P.Pandey S/o Shri Govind Pandey Aged About 65 Years R/o 25 Mig Indravati Colony Raipur P.S. and District Raipur, Chhattisgarh

... **Petitioner****versus**

1. State of Chhattisgarh Through The Secretary Science and Technology Department, Mantralaya New Raipur P.S. Rakhi Distrit Raipur, Chhattisgarh
2. The Chhattisgarh Council of Science and Technolony, through the Director, Indravati Colony Raipur Distt. Raipur C.G.
3. Anil Kumar Pathak Senior Scientist Chhattisgarh Council Of Science And Technology Indravati Colony Raipur Distt. Raipur C.G.

... **Respondents**

(Cause Title is taken from Case Information System)

For Petitioner	:	Mr. Prashant Singh, Advocate holding the brief of Mr. Prateek Sharma, Advocate
For State/Respondent No. 1	:	Ms. Nupoor Sonkar, Panel Lawyer
For Respondents No. 2 & 3	:	Dr. Saurabh Pande, Advocate

Hon'ble Shri Justice Rakesh Mohan Pandey**Order on Board****30.08.2024**

1. By way of this petition, the petitioner has sought the following relief(s):-

“10.1 That, this Hon'ble court may kindly be pleased to direct the respondents to promote the petitioner in the post of Scientist form the date of promotion of respondent No. 3 i.e. 14.10.2004, with all consequential benefits and arrears of salary, with interest at the rate of 18% per annum.

10.2 *That, this Hon'ble Court may kindly be pleased to set-aside the impugned gradation list dated 01.07.2014 (Annexure P/1) to the extent of placement of respondent No. 3 over and above the petitioner and further be pleased to direct the respondents to issue fresh gradation list, placing the petitioner over and above the respondent no. 3.*

10.3 *That, this Hon'ble Court may kindly be pleased to direct the respondent no. 2 to pay two increments from the date of allocation of petitioner in the State of Chhattisgarh and also to grant two months advance salary, as per the entitlement of petitioner, in the interest of justice.*

10.4 *That, this Hon'ble Court may kindly be pleased to direct the respondents to fix the pay scale/salary of the petitioner by granting all the consequential benefits.*

10.5 *That, any other relief/order which may deem fit and just in the facts and circumstances of the case including award of the costs of the petition may be given."*

2. Learned counsel for the petitioner submitted that junior to the petitioner, respondent No. 3/Anil Kumar Pathak was promoted to the post of Scientist from the post of Cartographer on 14.10.2004 and the name of the petitioner was not considered.
3. On the other hand, the learned counsel appearing for the Respondents would oppose. Dr. Pande submitted that the petitioner is challenging the promotion of respondent No. 3 dated 14.10.2004 by filing this petition in the year 2014 and thus, there is a delay of more than 10 years and the same has not been explained.
4. I have heard learned counsel for the parties.
5. Admittedly, the petitioner has challenged the promotion of respondent No. 3/Anil Kumar Pathak to the post of Scientist after 10 years and there is no

explanation in this regard.

6. The Hon'ble Supreme Court in the matter of ***Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T. Murali Babu*** reported in **(2014) 4 SCC 108** held as under:-

‘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 remain unauthorizedly 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 treated 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.

7. Recently, the Apex Court in the matter of ***Rushibhai Jagdishbhai Pathak Vs. Bhavnagar Municipal Corporation*** reported in **2022 SCC Online SC 64** held as under:-

“9. The doctrine of delay and laches, or for that matter statutes of limitation, are considered to be statutes of repose and statutes of peace, though some contrary opinions have been expressed (in Nav Rattanmal Vs. state of Rajasthan, AIR 1961 SC 1704). The courts have expressed the view that the law of limitation rests on the foundations of greater public interest for three reasons, namely, (a) that long dormant claims have more of cruelty than justice in them; (b) that a defendant might have lost the evidence to disapprove a stale claim; and (iii) that persons with good causes of action (who are able to enforce them) should pursue them with reasonable diligence (State of Kerala Vs. V.R. Kalliyankutty, (1999) 3 SCC 657 relying on Halsbury’s Laws of England, 4th Edn., Vol. 28, para 605; Halsbury’s Laws of England , Vol. 68 (2021) para 1005. Equally, change in de facto position or character, creation of third party rights over a

period of time, waiver, acquiesce, and need to ensure certitude in dealings, are equitable public policy considerations why period of limitation is prescribed by law. Law of limitation does not apply to writ petitions, albeit the discretion vested with a constitutional court is exercised with caution as delay and laches principle is applied with the aim to secure the quiet of the community, suppress fraud and perjury, quicken diligence, and prevent oppression.(see Popat and Kotecha Property Vs. State Bank of India Staff Association (2005) 7 SCC 510). Therefore, some decisions and judgments do not look upon pleas of delay and laches with favour, especially and rightly in cases where the persons suffer from adeptness, or incapacity to approach the courts for relief. However, other decisions, while accepting the rules of limitation as well as delay and laches, have observed that such rules are not meant to destroy the rights of the parties but serve a larger public interest and are founded on public policy. 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. (See N. Blarkrishnan Vs. M. Krishnamurthy, (1998)7 SCC 123. Referring to the principle of delay and laches, this Court, way back in Moons Mils Ltd Vs. M.R. Mehar, President, Industrial Court, Bombay AIR 1967 SC 1450, had referred to the view expressed by Sir Barnes Peacock in The Lindsay Petroleum Company and Prosper Armstrong Hurd, Abram Farewell, and John Kemp, (L.R.) 5 P.C.221 in the following words:

“ 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 this 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.”

8. The Hon'ble Supreme Court in the matter of ***Bichitrananda Behera Vs. State of Orissa and others*** reported in **2023 Livelaw (SC) 883** under

relevant para 21 held as under:-

“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 25:

"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

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.

9. 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."

10. 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.

11. 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 ***Chennai Metropolitan Water Supply (supra)***, ***Rushibhai Jagdishbhai Pathak (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. Therefore, relief 10.1 sought by the petitioner is hereby rejected.
12. With regard to prayer clause No. 10.2, the learned counsel for the petitioner submitted that in the gradation list, the name of the petitioner was placed at serial No. 6, whereas, he is senior to respondent No. 3, and the respondent authorities ought to have placed the name of the petitioner above respondent No. 3.
13. On the other hand, Dr. Pande stated that the petitioner joined the services

in the year 2009, whereas, respondent No. 3 joined services at the time of the bifurcation of the State of M.P. and Chhattisgarh, and therefore, respondent No. 3 was promoted to the post of Scientist in the year 2004 and placed above the petitioner.

14. Ms. Nupoor Sonkar, Panel Lawyer appearing for the State would support the contention made by Mr. Pande.
15. Taking into consideration the submissions made by learned counsel for the parties, the petitioner is permitted to make a representation before the respondent authorities claiming therein seniority above respondent No. 3, and in turn, the authority concerned is directed to decide the same expeditiously.
16. With regard to prayer clause No. 10.3, in the absence of any circular or policy of the State Government no order can be passed for the grant of two increments to the petitioner.
17. For relief clause No. 10.4, the petitioner would be at liberty to make a representation before the respondent authority, which will be decided strictly in accordance with the law expeditiously.
18. With the aforesaid observation(s) and direction(s), the instant petition is **disposed of.**

Sd/-
(**Rakesh Mohan Pandey**)
Judge