A. F. R.

Neutral Citation No. - 2024:AHC-LKO:73276

Court No. - 6

Case :- WRIT - A No. - 10219 of 2024

Petitioner :- Hanuman Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Horticulture Deptt. Govt.Lko. And 3 Others

Counsel for Petitioner :- Shiv Pal Singh,Suresh Singh

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Shiv Pal Singh, learned counsel for the petitioner and the Standing counsel for the respondents.

2. The petitioner has prayed for following reliefs:

"(I) Issue a writ, order or direction in the nature of Mandamus thereby commanding and directing the opposite parties to treat the regularization of the services of petitioner w.e.f. 2001 when the regularization rules applicable upon the petitioenr were notified, for the purpose of pensionary benefits with all consequential benefits.

(II) Issue a writ, order or direction in the nature of Mandamus thereby commanding and directing the opposite parties to add the services rendered by the petitioner on the daily wages for the purpose of pensionary benefits with all consequential service benefits to the petitioner, in the interest of justice..."

3. It has been submitted that the petitioner was appointed on 1.1.1984 as a Mali on daily wager Group D post in Horticulture Department, Faizabad under the Superintendent, Government Garden. As his services were not regularized despite his working for substantially long length of time, he had approached thsi Court by filing writ petition bearing Writ Petition No.6615 (S/S) of 2004 where by means of an interim order granted on 5.11.2004 the respondents were directed to consider granting him minimum of pay scale and also for

regularization within 8 weeks. As the order of the writ Court was not complied, a contempt petition was preferred being Contempt Petition No.824 (C) of 2005 (Hanuman Singh Vs. Sri Manmohan Sinha, Director, Horticulture) where the proceedings were dropped after recording the statement of the opposite parties that the petitioner shall be paid minimum of pay scale w.e.f. 7.11.2004. The writ petition No. 6615 (S/S) of 2004 was finally allowed by means of order dated 27.5.2013 considering that the petitioner has been working for thirty years, the respondents were directed to create a post in case the same was not available and pass an order regularizing his services within a period of one month. In compliance of the directions of this Court vide order dated 27.5.2013, the respondents by means of order dated 3.11.2013 regularized the services of the petitioner on the post of Mali from the date the said order was passed i.e.23.11.2013. The petitioner continued as a regular employee and finally was superannuated from the services on 30.4.2024.

4. It is only after his superannuation that he started representing against the order of regularization, particularly, with regard to the date of his regularization and representations were submitted on 15.5.2024 and finally the present writ petition has been field seeking a direction that his services deserve to be regularized from 2001 on-wards.

5. Learned Standing counsel, on the other hand, has opposed the writ petition. He has submitted that the grievances of the petitioner with regard to regularization was already canvassed by him by filing two writ petitions before this Court and this Court had duly considered the claim of the petitioner and allowed his writ petition No.6615 (S/S) of 2004 by means of judgment and order dated 27.5.2013. It is on the direction of the writ Court that his services were regularized by means of order dated 23.11.2013 and the petitioner continued on the strength of the said order till the date of his superannuation. He never raised any grievance during currency of his services and after lapse of 11 years, he has filed this writ petition. In the aforesaid circumstances it has been submitted that the petitioner himself has accepted the order dated 23.11.2013 and even in the present writ petition he has only sought a writ of mandamus directing the respondents for consideration of his representation from 2001 on-wards rather than challenging the validity of the order dated 23.11.2013 while the said claim is highly time bared and the petition suffers from unexplained delay and latched of 11 years and accordingly deserves to be dismissed.

6. I have heard the rival contentions and perused the record.

7. From the aforesaid facts it is clear that the petitioner has been working on the post of Mali since 1984 in Horticulture Department and when his services were not regularized he approached this Court by filing writ petition No.6615 (S/S) of 2004. The said writ petition was allowed by means of judgment and order dated 27.5.2013 directing the respondents to duly consider the claim of the petitioner for regularization and it is in pursuance of the directions issued by this Court that by means of order dated 23.11.2013 the services of the petitioner were regularized w.e.f. from the said date and he continued in services till the date of superannuation in 2024 and raised no grievance with regard to date of regularization. The petitioner has accepted the order dated 23.11.2013 and never represented or raised any grievance regarding the same and eve till date he has not even challenged the validity of the said order but only after his superannuation he has sought further relief of being regularized from 2011 on wards. In the entire writ petition there is no averment with regard to the delay in approaching this Court by filing present writ petition. From the aforesaid facts, it is clear that the petitioner has been vigilant about his rights as a government servant and he has already approached this Court on several occasions seeking right of regularization and it cannot be said that he was not aware of the relevant legal provisions with regard to his rights of regularization.

8. At this point, it is relevant to mention certain judgments of Hon'ble Supreme Court explaining the effect of delay, latches and acquiescence in service matters.

(1) 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)

(2) 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.

Latches

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)

***(3) 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 12-13)

"*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."*

(emphasis supplied)

8. In light of the above, we do not find any reason for the delay in approaching this Court and 11 years is a sufficiently long length of time for filing the present writ petition which is highly time barred and and delayed. Even during his services after passing of the order of regularization no grievance was raised by the petitioner. In any view of the matter, the petitioner had duly accepted the order of regularization in 2013 and accordingly he has not challenged the order of regularization till the date of his superannuation which has clearly fallen out from the order of 23.11.2013.

9. In the aforesaid facts, this Court is of the considered opinion that the claim of the petitioner suffers from unexplained delay and latches of 11 years, as such, no interference is required in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. The writ petition is, thus, **dismissed.**

(Alok Mathur, J.)

Order Date :- 6.11.2024
RKM.