

(A) The Writ Petition No. 13845/2021, filed by the petitioner Shri Santosh Shrivastav is suffering from defects like delay, laches and Acquiescence & the claim presented through the petition is not worth consideration on merits. Some of the points to be considered in this matter are enumerated below :-

1. In the case of the petitioner, the **“cause of action”** arose at the same time when the Chief Engineer Gwalior issued order dated 30.06.2008, by which other daily wage employees, who were junior to him, were regularized and as a result of which he was discriminated against. According to the Limitation Act 1963, in cases of this nature, a claim can be presented before the Hon'ble Court only within a maximum of 03 years from the date of arising of **“cause of action”** (Date 30.06.2008), whereas the writ petition no. 13845/2021 has been filed by him after 13 years. The petitioner has mentioned about the representations given by him from time to time but it has been held by the Hon'ble Supreme Court that by submitting such representations repeatedly, no new **“cause of action”** arises. and the Hon'ble Court has declared the action taken in this manner as against the law. The details are as follows –

(i) The Apex Court in *State of T.N. v. Seshachalam* (2007) 10 SCC 137 observed that it is now well settled that filing of series of representations cannot extend the period of limitation to condone the laches on the part of the petitioner and Delay or Laches are a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration as law leans in favour of those who are alert and vigilant.

(ii) The Apex Court in *Karnataka Power Corporation Ltd. vs. K. Thangappan* (2006) 4 SCC 322 held that series of representation cannot extend the period of limitation to condone the laches on the part of the petitioner. The Apex Court, at Paragraph 6, held as follows:

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.

(iii) In *C. Jacob v. Director of Geology and Mining and another* (2008)10 SCC 115 the Apex Court held that Reply to the representation relating to matter which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. The replies to such representations cannot furnish a fresh cause of action or revive a stale or dead claim.

(iv) The Apex Court had occasion to examine such a situation in *Union of India v. M.K. Sarkarb* (2010) 2 SCC 59 wherein the Court held as follows:

"The order of the Tribunal allowing the first application of respondent without examining the merits, and directing 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 can not 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."

2. The matter of conversion of daily wage service to regular establishment post is legally covered under the definition of promotion. The Apex Court has consistently held that promotion can be denied on the basis of prolong delay and the doctrine of "Continuous cause of action" will not be applied. The Hon. Apex court as well as High court has held that the relief related to promotion has to be claimed within a reasonable time. Some of the decisions of Hon, Apex Court and High Court are described below :-

(i) Hon'ble Apex court in ***Union Of India & Anr VS Tarsem Singh.:2008 (8) SCC 648*** has dismissed the case on the ground of delay and laches if the case involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of lacher/limitation will be applied held as below:.,

5. To summaries, 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 re-opening 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 re fixation 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. in so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, 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.

(ii) In the case of *Durga Prasad v. Chief Controller of Imports and Exports* AIR 1970 SC 769, the Apex Court held that Promotion is not a fundamental right although Right to be considered for promotion is a fundamental right which brings within its purview an effective, purposeful and meaningful consideration. The Court held that delay or laches is one of the factors which is to be borne in mind by the High Court when it exercises its discretionary powers under Article 226 of the Constitution and 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 part.

(iii) In *Ghulam Rasool Lone v. State of Jammu and Kashmir* and another the Apex Court held that there can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability but the said relief has to be claimed within a reasonable time.

(iv) It is incumbent that the Person aggrieved by the promotion order must approach the Court expeditiously as held by the Apex Court in *P.S. Sadasivasway v. State of Tamil Nadu* (1975) 1. SCC 152 wherein it was observed thus:

"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. 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."

(v) The Apex Court in *State of Uttaranchal & another vs Shiv Charan Singh Bhandari & others* (2013) 12 SCC 179 reiterated the principle and denied relief to the appellant for promotion on the ground of delay and laches. The Court on fact held that if senior incumbents are eligible as per the rules of promotion and there is no justification to ignore them, the employer cannot extend the promotional benefit to a junior at his whim or caprice.

However, on facts the court denied the relief to the senior as he had failed to challenge the promotion granted to junior employees at relevant time and had approached the Tribunal after two decades. Submission of learned counsel that the aggrieved person was giving repeated representations would not be a ground to give rise a fresh cause of action, cause of action arose when the junior employee was promoted.

(vi) In *State of M.P. vs. Nandlal Jaismal* reported in 1986 (4) SCC 566, the Apex Court, at Paragraph 24, held as follows:

24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the 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 in filing a writ 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.

The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only third parties.

When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasized time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal.

(vii) In the decision dated 10.11.2021 passed by the Hon'ble High Court, Division Bench Gwalior in writ petition number 24199/2021 (Munni Bai vs. State of M.P. and others), which was filed to get the benefit of regularization, was rejected on the ground of delay and laches. The court observed that promotion can be denied on the basis of prolong delay and the doctrine of

"Continuous cause of action" will not be applied. The court took the support of many Hon. Apex Court decisions like: - **Karnataka Power Corpon. Ltd. Vs. K. Thangappan reported in (2006) 4 SCC 322, M.P. Ram Mohan Raja Vs. State of T.N. Reported in (2007) 9 SCC 78, Shiv Dass Vs. Union of India reported in (2007) 9 SCC 274, Nadia Distt. Primary School Council Vs. Sristidhar Biswar reported in (2007) 12 SCC 779, Jagdish Lal Vs. State of Haryana reported in (1997) 6 SCC 538, NDMC Vs. Pan Singh reported in (2007) 9 SCC 278, State of Uttaranchal v. Shiv Charan Singh Bhandari reported in (2013) 12 SCC 179, C. Jacob v. Director of Geology and Mining reported in (2008) 10 SCC 115, Union of India v. M.K. Sarkar reported in (2010) 2 SCC 59, State of Orissa v. Pyarimohan Samantaray reported in (1977) 3 SCC 396, State of Orissa v. Arun Kumar Patnaik reported in (1976) 3 SCC 579, BSNL v. Ghanshyam Dass reported in (2011) 4 SCC 374, State of T.N. v. Seshachalam reported in (2007) 10 SCC 137, Ghulam Rasool Lone v. State of J&K reported in (2009) 15 SCC 321a & P.S. Sadasivaswamy v. State of T.N., reported in (1975) 1 SCC 152 and finally rejected the claim of promotion. The decision is as below :-**

12. A moot question for consideration is as to whether the promotion is a recurring cause of action or delay and laches is fatal to the claim of the petitioner.

13. So far as the order relied upon by the counsel for the petitioner is concerned, it is completely not reasoned order. Except by saying that because promotion is a recurring cause of action, nothing has been considered as to how the delay and laches will not be a ground to dismiss the petition.

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16. Thus, it is clear that by keeping silent for number of years, if a person allows drastic changes to take place, then delay and laches are good enough to reject the claim of the aspirant for his consideration for promotion. The petitioner in paragraph 4 of the writ petition has mentioned as under:

“(4) Delay, if any, in filing the petition and explanation therefor:

That, the subject matter challenge in the petition is of recurring cause and this Hon'ble Court in identical matter decided the grievance hence there is no delay in filing of the petition.”

17. The case of the petitioner is that in identical matter, this Court has granted relief to some other employees. It is well established principle of law that passing of an order in favour of the similarly situated employee would not give rise to any fresh cause of action, but the original cause of action would be the first cause of action. If a person was sleeping over his rights, then he cannot all of a sudden wake up and claim that some favourable orders have been passed in favour of the similarly situated persons who were vigilantly prosecuting their *lis* and, therefore, they should also be given the same relief specifically in the case of promotion with extension of certain benefits with retrospective effect.

18. Furthermore, this Court had also come to a conclusion that the order passed by the coordinate Bench of this Court in the case of Rajendra Singh Yadav cannot be said to be identical in nature

because Rajendra Singh Yadav had approached this Court at a time when he was still working as a daily wager and during the pendency of the said writ petition, his services were regularized in the year 2009, whereas this petitioner woke up only after 31 years of her services, i.e., from 01.10.1990, the date on which she was appointed as a daily wager, 24 years after the regularization of respondent No. 5, i.e., 01.04.1997, after 12 years, i.e., from the date of her regularization and after six years from the date when an order was passed in favour of Rajendra Singh Yadav.

19. Thus, by no stretch of imagination, it can be said that the petition does not suffer from delay and latches.

20. It is next contended by the counsel for the petitioner that since the petitioner has made a representation for reconsideration of her case, therefore, the respondents be directed to decide the said representation.

21. As already held by this Court that mere direction to decide the representation in stale, old and dead cases would not give rise to any fresh cause of action. Even otherwise, a decision on representation regarding stale, old and dead cases would also not give rise to any fresh cause of action and the cause of action has to be considered from the date on which it arose for the first time.

22. Viewed from any angle, this Court is of the considered opinion that this petition suffers from delay and latches and no relief can be granted to the petitioner. Accordingly, the petition fails and is hereby dismissed.

3. If the matter is considered under the doctrine of "Continuous cause of action " and "continuous wrong" and the delay and laches are ignored in view of the pension related benefits, then the writ petition filed after a long delay and many years after the “**cause of action**” arose is also liable to be dismissed on the ground of doctrine of Acquiescence. It has been held by the Hon'ble Supreme Court in many of its judicial precedents that **Acquiescence** actually destroys the rights of the person. The Hon'ble Supreme Court in its judgment dated 16.11.2021 passed in Civil Appeal No. 8223/2009 (Chairman State Bank of India vs M.J. James) states as follows:-

28.If at all, in such cases, the delay furnishes a cause of action, which in some cases as elucidated in Union of India and Others v. Tarsem Singh 2008 (8) SCC 648, 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 paragraph 6 of Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh and Others 1979 (2) SCC 409. Applying this principle of acquiescence to the precept of delay and laches, this Court in [U.P. Jal Nigam and Another v. Jaswant Singh and Another](#) 2006 (11) SCC 464, after referring to several judgments, has accepted the following elucidation in Halsbury's Laws of England:

“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?"

(B) Another Point for rejection of claim

The appointment of the petitioner daily wage worker is completely illegal and the Hon'ble Supreme Court has invalidated the regularization of illegally appointed daily wage employees in the case of Uma Dewi (supra):-

(i) The employment of the petitioner as a daily wage worker under Public Health Engineering Maintenance Division No. 1, Gwalior was completely illegal. As per the information available departmentally, no rule/procedure was followed in his appointment. There is no evidence of any legal procedure being followed in his appointment nor has any legal order been issued in relation to his appointment. No posts for daily wage workers (permanent classified or otherwise) are sanctioned in the department and were not sanctioned in the past also. The petitioner was not employed against the sanctioned posts. The concerned employers did not have the right to appoint daily wage workers. Accordingly, the petitioner was employed without any recruitment rule or any recruitment process and without any educational qualification, without any vacant post and without appointment order. Service rules of the State Government do not apply to such daily wage workers. Even if their employment is considered under the M.P. Industrial Employment (Permanent Orders) Act 1961 and Rules 1963, it is found that the provisions regarding the appointment of industrial workers under the Industrial Employment Act, mentioned in S.No. 4 and S.No. 4A have not been followed, which is as follows :--

4: Recruitment. — The manager may after consulting the Employment Exchange lay down the procedure for recruitment of employees and notify it on the notice board on, which standing orders are exhibited.

4-A. Letter of appointment. — Every employee shall be given a letter of appointment, in which among other things, his name, age, qualification, designation, classification: pay-scale, allowance,

nature of job, name of department etc., shall be indicated.

(ii) As per the principles laid down by the Hon'ble Supreme Court in its judgment dated 10/04/2006 in Civil Appeal No. 3595-3612/1999 (Secretary, State of Karnataka and others vs. Umadevi and others) and order dated 11.4.2017 in SLP (C) CC No. 3582/2017 (Arun Kumar Tiwari vs. Mansukh Lal Saraf and others), the daily wage employment of the petitioner was totally illegal.

(ii) Hon'ble Supreme Court in the judgment dated 08.02.2023 passed in SLP (Civil) No. 10519/2020 (Vibhuti Shankar Pandey vs. State of M.P. and others), citing its earlier decided case Civil Appeal No. 3595-3612/1999 (Secretary Karnataka State and others vs. Uma Devi and others) dated 10.04.2006, has held that the demand for regularization made by such daily wage employees who have been employed without any recruitment rules or any recruitment process and without any vacant post and without appointment order is not tenable. The decision is as follows:-

3. The case of the appellant is that he was engaged in 1980 as a Supervisor, on daily rated basis, under a project of the State Water Resources Department of Madhya Pradesh. The appellant sought regularization on the post of Supervisor/Time Keeper. Admittedly, the minimum qualification for the said post was matriculation with mathematics; a qualification which the appellant did not possess. These qualifications were relaxed by a Government Circular dated 31.12.2010 and the appellant sought his regularization on the post of Supervisor/Time Keeper, as he was qualified for the post and had been working on daily wage basis for a long period of time. In fact, in another writ petition (W.P. 13997/2010) filed by the appellant earlier, the High Court of Madhya Pradesh vide order dated 02.11.2017, had given directions to the State Government to decide the claim of the writ petitioner in accordance with law. Vide order dated 18.06.2018 issued by the Office of Chief Engineer, Rani Avanti Bai Lodhi Sagar Project, the claim of the appellant for regularization was rejected for the reasons that though the minimum qualifications of matriculation with mathematics will not come in the way for his regularization, but the fact remains that the appellant was never appointed against any post. Moreover, his appointment was never made by the competent authority and there were no posts available at the time for regularization. The appellant on the other hand, had set his claim for regularization as persons who were junior to him as daily wagers were regularized in the year 1990 or even before. The learned Single Judge while allowing the writ petition gave directions for regularization of the appellant from the date on which his juniors were regularized. This

order was challenged by the State Government before a Division Bench which allowed the appeal of the State Government. The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in **Secretary, State of Karnataka and Ors. v. Umadevi and Ors.** , as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working. These two conditions were clearly missing in the case of the present appellant. The Division Bench of the High Court therefore has to our mind rightly allowed the appeal and set aside the order dated 27.06.2019.

4. In view of the law laid down by the Constitution Bench of this Court in **Uma Devi** (supra), the appellant had no case for regularization. There is no scope, hence, for our interference with the order of the Division Bench of the Madhya Pradesh High Court. Appeal is dismissed.