Before Rajesh Bindal, J.

HARNAM SINGH—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS—*Respondents*

CWP No. 3124 of 2011

March 10, 2014

Constitution of India, 1950 - Art. 226 - Revision of pay scale after superannuation - Delay and latches - Petitioner, who retired from service on 31.8.1998 filed writ petition in 2011 claiming revision of pay scales w.e.f. 1.1.1986 - There was delay and laches of 13 years from date of retirement and there was no satisfactory explanation for condoning delay - Held, that petitioner could have raised his claim even 12 years prior to his retirement but he allowed things to lie - Now, claim made to unsettle settled matters can certainly be refused on account of delay and laches - A direction from a court or tribunal to consider representation and such representation having been decided, will not give a fresh cause of action - Delay and latches is to be decided with reference to original cause of action.

Held, that in a recent judgment in State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others, 2013(6) SLR 629, Hon'ble the Supreme Court, while considering the issue regarding delay and laches and referring to earlier judgments on the issue, opined that repeated representations made will not keep the issues alive. A stale or a dead issue/dispute cannot be got revived even if such a representation has either been decided by the authority or got decided by getting a direction from the court as the issue regarding delay and laches is to be decided with reference to original cause of action and not with reference to any such order passed. Delay and 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, in a situation of that nature, will not be attracted as it is well known that law leans in favour of those who are alert and vigilant. Even equality has to be claimed at the right juncture and not on expiry of reasonable time. Even if there is no period prescribed for filing the writ petition under Article 226 of the Constitution

of India, yet it should be filed within a reasonable time. Though it is not a strict rule, the courts can always interfere even subsequent thereto, but relief to a person, who allows things to happen and then approach the court and puts forward a stale claim and try to unsettle settled matters, can certainly be refused on account of delay and laches.

(Para 6)

Sharwan Sehgal, Advocate *for the petitioner.*

Monica Chhibber Sharma, Deputy Advocate General, Punjab.

RAJESH BINDAL J.

(1) The petitioner, who retired from service on 31.8.1998, has filed the present petition claiming revision of pay scales w.e.f. 1.1.1986, proficiency step up increments after completion of 8/16 years of service and amount on account of Group Insurance Scheme.

(2) Considering the fact that the writ petition has been filed 13 years after retirement claiming certain benefits, the issue regarding which could be raised when the petitioner was in service, the petition at this stage deserves to be dismissed on account of delay and laches only.

(3) The issue regarding delay in invoking extraordinary jurisdiction was considered by Hon'ble the Supreme Court in ***U. P. Jal Nigam and another v. Jaswant Singh and another(1)***. It was a case in which certain employees raised the issue that they were not liable to be retired at the age of 58 years but should be permitted to continue in service till they attain the age of 60 years. They were still in service when the writ petitions were filed. The writ petitions were ultimately allowed. Placing reliance upon that judgment, some of the employees, who already stood retired, filed writ petitions claiming same benefit. The writ petitions were allowed by the High Court in terms of its earlier judgment. The judgment of the High Court was impugned before Hon'ble the Supreme Court, wherein while referring to earlier judgments of Hon'ble the Supreme Court in ***Rup Diamonds v. Union of India(2)*** ; ***State of***

(1) (2006) 11 SCC 464

(2) (1989) 2 SCC 356

Karnataka v. S. M. Kotrayya(3) ; ***Jagdish Lal v. State of Haryana(4)*** and ***Government of West Bengal v. Tarun K. Roy(5)*** it was opined that the persons who approach the court at a belated stage placing reliance upon an order passed in some other case earlier, can be denied the discretionary relief on account of delay and laches. Relevant paragraphs thereof are extracted below:

> "5. So far as the principal issue is concerned, that has been settled by this court. Therefore, there is no quarrel over the legal proposition. *But the only question is grant of relief to such other persons who were not vigilant and did not wake up to challenge their reitrement and accepted the same but filed writ petitions after the judgment of this court in Harwindra Kumar v. Chief Engineer, Karmik, (2005) 13 SCC 300. Whether they are entitled to same relief or not?* Therefore, a serious question that arises for consideration is whether the employees who did not wake up to challenge their retirement and accepted the same, collected their post-retirement benefits, can such persons be given the relief in the light of the subsequent decision delivered by this court?
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> 6. The question of delay and laches has been examined by this court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that about 9 writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 30.6.2005 and 31.7.2005. Two writ

(3) (1996) 6 SCC 267

(4) (1997) 6 SCC 538

(5) (2004) 1 SCC 347

petitions were filed wherein no relief of interim order was passed. They were granted interim order. Thereafter a spate of writ petitions followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 and 2006 much after their retirement. Whether such persons should be granted the same relief or not?

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16. Therefore, in case at this belated stage if similar relief is to be given to the persons who have not approached the court that will unnecessarily overburden the Nigam and the Nigam will completely collapse with the liability of payment to these persons in terms of two years' salary and increased benefit of pension and other consequential benefits. Therefore, we are not inclined to grant any relief to the persons who have approached the court after their retirement. Only those persons who have filed the writ petitions when they were in service or who have obtained interim order for their retirement, those persons should be allowed to stand to benefit and not others." [*Emphasis supplied*]

(4) In ***A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala and others(6)*** as well, same issue was considered and following the earlier judgment in U. P. Jal Nigam's case (supra), it was opined as under:

"40. *The benefit of a judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ petitioner had chosen to sit over the matter and then wake up after the decision of this court. If it is found that the appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief."*

(Emphasis supplied)

(6) (2007) 2 SCC 725

(5) The same view was followed by this court in ***Bal Krishan v. State of Punjab and others(7)***.

(6) In a recent judgment in ***State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others(8)***, Hon'ble the Supreme Court, while considering the issue regarding delay and laches and referring to earlier judgments on the issue, opined that repeated representations made will not keep the issues alive. A stale or a dead issue/dispute cannot be got revived even if such a representation has either been decided by the authority or got decided by getting a direction from the court as the issue regarding delay and laches is to be decided with reference to original cause of action and not with reference to any such order passed. Delay and 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, in a situation of that nature, will not be attracted as it is well known that law leans in favour of those who are alert and vigilant. Even equality has to be claimed at the right juncture and not on expiry of reasonable time. Even if there is no period prescribed for filing the writ petition under Article 226 of the Constitution of India, yet it should be filed within a reasonable time. An order permitting a junior should normally be challenged within a period of six months or at the most in a year of such promotion. Though it is not a strict rule, the courts can always interfere even subsequent thereto, but relief to a person, who allows things to happen and then approach the court and puts forward a stale claim and try to unsettle settled matters, can certainly be refused on account of delay and laches. Any one who sleeps over his rights is bound to suffer. An employee who sleeps like Rip Van Winkle and got up from slumber at his own leisure, deserves to be denied the relief on account of delay and laches. Relevant paragraphs from the aforesaid judgment are extracted below:

> "13. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the

(7) 2013(2) RSJ 18

(8) 2013(6) SLR 629

junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983. In *C. Jacob v. Director of Geology and Mining and another, (2008) 10 SCC 115,* a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus:-

> *"Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim."*
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> *[Emphasis supplied]*

14. *In Union of India and others v. M. K. Sarkar, (2010) 2 SCC 59, this Court, after referring to C. Jacob (supra) has ruled that 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.

15. 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. In *Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another, (2006) 4 SCC 322,* the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

16. In *State of Orissa v. Pyarimohan Samantaray, (1977) 3 SCC 396*, *it has been opined that making of repeated representations is not a satisfactory explanation of delay.* The said principle was reiterated in *State of Orissa v. Arun Kumar Patnaik, (1976) 3 SCC 579.*

17. In *Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others, (2011) 4 SCC 374,* a three-Judge Bench of this Court reiterated the principle stated in *Jagdish Lal v. State of Haryana, (1977) 6 SCC 538* and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

18. 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:-

> "... 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. *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. The said principle has been stated in Ghulam Rasool Lone v. State of Jammu and Kashmir and another, (2009) 15 SCC 321.*

20. In *New Delhi Municipal Council v. Pan Singh and others*, (2007) 9 SCC 278, the Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, *yet ordinarily a writ petition should be filed within a reasonable time.* In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

21. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in *P. S. Sadasivasway v. State of Tamil Nadu, (1975) 1 SCC 152*, wherein it has been laid down 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.* 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 the 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.

22. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. 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. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades.* Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time."

[Emphasis supplied]

(7) In Civil Appeal No. 1941 of 2014 [arising out of SLP (C) No. 15530 of 2013— ***Chennai Metropolitan Water Supply and Sewerage***

Board and others v. T. T. Murali Babu, decided on 10.2.2014, Hon'ble the Supreme Court opined as under:

> "13. First, we shall deal with the facet of delay. In *Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others, AIR 1969 SC 329*, the Court referred to the principle that has been stated by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp, (1874) 5 PC 221*, which is as follows:
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> > "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."
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> 14. In *State of Mahrashtra 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 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. and others etc. etc. v. Nandlal Jaiswal and others etc. etc., AIR 1987 SC 251,* the Court observed that 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 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 laches 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. 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 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."

[Emphasis supplied]

(8) In view of the above authoritative enunciation of law by Hon'ble the Supreme Court, the present writ petition filed by the petitioner nearly after 13 years of his retirement to claim certain benefits to which he claimed to be entitled to 12 years before his retirement certainly deserves to be dismissed on account of delay and laches as there is no satisfactory explanation available for delay.

(9) As far as the benefit of Group Insurance Scheme is concerned, the stand of the respondents in reply is that the petitioner stopped contribution to the Scheme from 1989 onwards and as a result thereof, he did not remain member thereof. On account of that reason, the petitioner was held not entitled to any amount of Group Insurance Scheme. The action of the respondents is not illegal.

(10) For the reasons mentioned above, the writ petition is dismissed.

P.S.Bajwa

Before Rajiv Narain Raina, J.

RAJBIR SINGH—*Petitioner*

versus

STATE OF HARYANA AND ANOTHER—*Respondents*

CWP No. 7235 of 2012

August 14, 2013

Constitution of India,1950 - Art. 226 - Suspension - Petitioner clerk was charge sheeted on two counts that he came to office under influence of liquor, and that he misbehaved with his co-employees - In inquiry, both charges held to be proved, leading to removal from service - High Court partly allowed writ petition by returning a finding that removal from service was too harsh a punishment and matter was remanded back to disciplinary authority for imposing a lesser punishment as allegation of misbehaviour was not proved - However, again an equally harsh punishment of reduction to lowest pay in time scale was imposed on the assumption that both charges were proved, and further, employee was deprived of his salary for period he was removed from service - Held, that only charge of attending office under influence of liquor sticks to petitioner charge may be grave but it has happened on a single day in a large span of service with no recurrence or prior history of delinquency - A lesser punishment proportionate to charge was to be imposed - Case remanded to appellate authority for passing a fresh order choosing a punishment proportionate to charge - Period of absence was to be considered as duty period, with arrears of salary payable from date of first order of High Court.

Held, that the only charge that sticks to the petitioner is attending office under influence of liquor. Liquor obviously not consumed in office during duty hours but before reaching office. The charge may be grave but it has happened on a single day in a large span of service with no recurrence or prior history of delinquency. It is, therefore, not one