IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 1305 of 2016

In R/SPECIAL CIVIL APPLICATION NO. 633 of 2014

With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2016
In R/LETTERS PATENT APPEAL NO. 1305 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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STATE OF GUJARAT & ORS.
Versus
BAROT TRIKAMBHAI DUNGARBHAI

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Appearance:
MS ROSHNI PATEL, AGP for GOVERNMENT PLEADER for the Appellant(s) No. 1,2,3
MR KB PUJARA(680) for the Respondent(s) No. 1
RULE SERVED for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 09/05/2024

CAV JUDGMENT
(PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)

1. The present Letters Patent Appeal under Clause 15 of the Letters Patent assails the correctness and validity of the order passed by the learned Single Judge on 05.04.2016 in Special Civil Application No.533 of 2014.

2. The prayer as prayed for by the respondent – original writ petitioner in Special Civil Application No.633 of 2014 was to direct the authorities forthwith to give deemed date of promotion of 01.06.1983 to the petitioner in the cadre of Clerk (Class-III) and to give all consequential benefits together with interest @ 18% per annum to the petitioner. It was also prayed to direct the authorities to forthwith give deemed date of promotion in the cadre of Clerk (Class-III) as given to his junior Mr.Shanabhai Hathibhai Khant.

3. The learned Single Judge, after considering the arguments canvassed by both the parties, was pleased to allow the writ petition and grant the relief as prayed in the writ petition. Therefore, the learned

Single Judge directed to give the deemed date of promotion on 01.06.1983 to the original petitioner in the cadre of Clerk (Class-III) with all consequential benefits including the pension but without any interest. This order is challenged by the State Authorities in the present appeal.

4. The factual matrix that has led to filing of the writ petition was that the respondent – original petitioner belonged to SEBC category. The petitioner was appointed as Kotwal (Class-IV) by order dated 30.05.1979. The petitioner joined the duty on 01.06.1979. He passed the pre-service training examination for purpose of promotion as Clerk (Class-III) by application dated 21.02.1983. However, he was not granted promotion at the relevant time. He sat tight on his right for a long period of time.

5. It was the case of the petitioner that another exactly similarly situated employee viz. Shanabhai Hathibhai Khant passed similar pre-service training examination after the petitioner on 23.12.1983 and was junior to the petitioner for the purpose of promotion.

Mr.Khant was also not granted promotion and, therefore, he preferred writ petition before this Court being Special Civil Application No.7256 of 1990 which came to be allowed by way of judgment and order dated 18.11.1991 and thereby consequentially he was granted deemed date of promotion from 06.03.1993. Therefore, it was the case of the petitioner that he was also similarly situated to Mr.Shanabhai Hathibhai Khant.

6. The petitioner was given promotion as Clerk by order dated 15.12.2006 but without deemed date and after undertaking given by the petitioner that he would not claim deemed date and would not approach the Court for any relief. However, the petitioner made representation in the year 2009 for granting deemed date and another subsequent representation on 25.10.2010. Such representations of the petitioner were not considered and he retired on 31.12.2010. Almost after period of four years in the year 2014 he preferred writ petition for seeking deemed date of promotion. The learned Single Judge by way of impugned order

dated 05.04.2016 granted the prayers made by the petitioner after observing that the only preliminary objection by the respondent authorities was with regard to delay which should not be considered. Therefore, the learned Single Judge was pleased to grant the relief as prayed by the petitioner. The State Authority has assailed this order passed by the learned Single Judge in the present appeal.

7. We have heard Ms.Roshni Patel, learned Assistant Government Pleader for the appellants and Mr.K.B.Pujara, learned advocate for the respondent.

8. Ms.Roshni Patel, learned Assistant Government Pleader submitted that there was massive delay in approaching this Hon'ble Court. It was further submitted that there are two grounds pressed by the respondent before this Hon'ble Court and they were that (i) he became due for promotion in the year 1983 and (ii) similarly situated junior colleague Mr.Khant was granted promotion in the year 1991 and, therefore, in that cases, the respondent had approached

this Hon'ble Court after delay of 31 years in the case of promotion of 1983 and 23 years after the promotion of Mr.Khant. It was the case of learned Assistant Government Pleader that learned Single Judge has not dealt with the aspect of delay which was heavily relied on by the appellants in their affidavit. Therefore, in humble submission of learned Assistant Government Pleader, the petition as preferred by the respondent was with massive delay and laches and ought to have been rejected on that ground only.

9. *Per contra,* Mr.Pujara, learned advocate for the respondent has vehemently submitted that there was gross injustice to the respondent. He was due for promotion in the year 1983 itself and many representations were made by the respondent – original petitioner. However, they were not considered. Subsequently, his junior, who was a similarly situated employee, was granted promotion based on order passed by this Hon'ble Court. Despite such facts the case of the petitioner was not considered. Lastly he had made representation in the year 2009-10 prior to

his superannuation which was also not considered. Therefore, it was case of Mr.Pujara, learned advocate for the respondent that on the basis of merits itself the order passed by the learned Single Judge should be confirmed.

10. To consider the contentions raised by advocates for both the sides, certain facts are necessary.

10.1 In the year 1983, it was the case of the respondent – original petitioner that he was due for promotion. There is nothing on record to show that why the respondent – original petitioner had not asserted his right from the year 1983. The only explanation given is that he had made representations. In the year 1991, this Hon'ble Court considered the case of colleague of the respondent – original petitioner and granted him deemed date promotion. There is nothing on record to show as to why respondent – original petitioner had not asserted his right despite making repeated representations.

10.2 The other aspect is that respondent – original petitioner had accepted his promotion in the year 2006 with duress and after giving an undertaking that he would not claim the deemed date. Therefore, on one hand he accepts the promotion waiving his right and on the other hand makes claim for duress by giving such undertaking. Thereafter he makes a last representation in the year 2009 and thereafter again sits tight over his rights till the year 2014. Therefore, there is definitely the case of indolent behaviour of the respondent – original petitioner in asserting his right. It is true that it is not rule of Law that Court may not inquire into delayed and stale claim but rule of practice based on sound and proper exercise of discretion. It is also true that there is no inviolable rule that wherever there is delay, the Court must not entertain the petition and each case depends on its own facts. In the present case, the first thing that needs to be ascertained is about whether there is indolent behaviour of the respondent – original petitioner and laxity in asserting his right and thereby allowing his cause of action to drift away. In our

considered opinion, 'yes' there is definitely laxity on the part of the respondent – original petitioner in asserting his right. The petitioner has slept tight over his right for considerable period of time. In the present case, a huge period of 30 years and for a moment even assuming the last representation then also more than 4 ½ years the respondent original petitioner has suddenly weaken up from deep slumber for grant of extra-ordinary relief of the writ court. Therefore, in the considerable opinion of this Court such indolent behaviour on the part of the respondent original petitioner was not at all permissible.

10.3 The Law as laid down by the Hon'ble Supreme Court on such delay is squarely applicable by the decision in the case of *Mrinmoy Maity vs. Chhanda Koley and others* rendered in Civil Appeal No.5027 of 2024. The relevant paragraphs i.e. paras:10 and 11 of the same read as under:

> *"10. The discretion to be exercised would be with care and caution. If the delay which has occasioned in approaching the writ court is explained which would appeal to the conscience of the court, in such circumstances it cannot be gainsaid by the contesting*

party that for all times to come the delay is not to be condoned. There may be myriad circumstances which gives rise to the invoking of the extraordinary jurisdiction and it all depends on facts and circumstances of each case, same cannot be described in a straight jacket formula with mathematical precision. The ultimate discretion to be exercised by the writ court depends upon the facts that it has to travel or the terrain in which the facts have travelled.

11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and latches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. ***If it is found that the writ petitioner is guilty of delay and latches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong****. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and latches on the part of the applicant in approaching a writ court This Court in the case of* ***Tridip Kumar Dingal and others v. State of W.B and***

others, (2009) 1 SCC 768 *has held to the following effect*:-

> *"56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.*
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> *57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide State of M.P. v. Bhailal Bhai [AIR 1964 SC 1006 : (1964) 6 SCR 261] , Moon Mills Ltd. v. Industrial Court [AIR 1967 SC 1450] and Bhoop Singh v. Union of India [(1992) 3 SCC 136 : (1992) 21 ATC 675 : (1992) 2 SCR 969]). This principle applies even in case of an*

infringement of fundamental right (vide Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110] , Durga Prashad v. Chief Controller of Imports & Exports [(1969) 1 SCC 185] and Rabindranath Bose v. Union of India [(1970) 1 SCC 84]).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose."

10.4 The Hon'ble Apex Court has laid down a dicta in the case of ***Karnataka Power Corportion Ltd. and another v. K. Thangappan and another, (2006) 4 SCC 322*** whereunder it has been held that thereunder:-

"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. Even where fundamental right is involved the matter is still within the discretion of the Court as

pointed out in Durga Prashad v. Chief Controller of Imports and Exports [(1969) 1 SCC 185 : AIR 1970 SC 769] . Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd [(1874) 5 PC 221 : 22 WR 492] (PC at p. 239) was approved by this Court in Moon Mills Ltd. v. M.R. Meher [AIR 1967 SC 1450] and Maharashtra SRTC v. Shri Balwant Regular Motor Service [(1969) 1 SCR 808 : AIR 1969 SC 329] . Sir Barnes had stated:

"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 limitation, 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 it relates to the remedy."

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in Rabindranath Bose v. Union of India [(1970) 1 SCC 84 : AIR 1970 SC 470] that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in State of M.P. v. Nandlal Jaiswal [(1986) 4 SCC 566 : AIR 1987 SC 251] that the High Court in 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 and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it

may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

10.5 Subsequently, the Hon'ble Apex Court in the case of ***Chennai Metropolitan Water Supply & Sewerage Board and others v. T.T. Murali Babu, (2014) 4 SCC 108*** has held that:-

"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 scrutinise 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."*

11. Therefore, in the considered opinion of this Court, the appeal succeeds on the aspect of delay and laches by the respondent – original petitioner. The appeal, therefore, is allowed. The order of the learned Single Judge dated **05.04.2016** passed Special Civil Application No.**633** of **2014** is hereby quashed and set aside. No order as to costs. Consequently, the connected civil application would not survive and it is accordingly disposed of.

(BIREN VAISHNAV, J)

(PRANAV TRIVEDI,J)

MISHRA AMIT V.