

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/LETTERS PATENT APPEAL NO. 547 of 2024****In R/SPECIAL CIVIL APPLICATION NO. 21710 of 2023**

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CHARPOT SHAILESHBHAI PARSINGBHAI & ANR.

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR VICKY B MEHTA(5422) for the Appellant(s) No. 1,2

for the Respondent(s) No. 3

MR ADITYA S PATHAK, AGP for the Respondent(s) No. 1

MR UM SHASTRI(830) for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 18/06/2024

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. The present appeal is filed under Clause 15 of the Letters Patent Act, 1865 and directed against the judgement and order dated 01.01.2024 passed in the captioned writ petition being Special Civil Application No.21710 of 2023, wherein and whereby the learned Single Judge has specifically rejected the writ petition filed by the appellants.

2. A prayer clause made in the writ petition more particularly, 17(a) is very cleverly drafted. The same reads as under:

“17(a)Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or

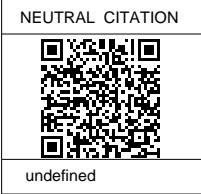


direction in the nature of mandamus, by holding that the petitioners are eligible and entitled to be appointed on the post of Vidhya Sahayak pursuant to the advertisement of Vidhya Sahayak "backlog" appointment published by the District Primary Education Officer, Panchmahal at Godhra and further be pleased to direct the respondents to give an appointment on the post of Vidhya Sahayak with arrears and all consequential benefits including continuity of service;

(b) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus, by holding that the petitioners being more meritorious as the petitioner no.1 stood at Sr, no.416 and the petitioner no.2 stood at Sr. no.422 ahead of Kamol Gitaben Bhurasingbhai who stood at Sr. no.430, are entitled for appointment on the post of Vidhya Sahayak and further be pleased to direct the respondents to give appointment to the petitioners, with arrears and all consequential benefits including continuity of service."

3. A bare perusal of the prayer clause would reveal that in fact, the appellants have suppressed the actual date of publication of the selection list and on a specific query raised by this Court with regard to publication of the selection list, learned advocate Mr.Mehta has submitted that the same was published in the year of 2007. Learned Single Judge has rejected the writ petition on the ground of delay and latches.

4. The facts, which are not in dispute, are that the respondent published the advertisement dated 25.01.2007 for the appointment of Vidhya Sahayak of backlog vacancies and the appellants-



petitioners appeared in the said selection process on 12.03.2007. It is the case of the petitioners that petitioner No.1 was placed at Sr.No.416 of the selection list, petitioner No.2 was placed at Sr.No.422 and a candidate namely, Kamol Gitaben Bhurasingbhai was placed at Sr.No.430 and she was appointed though having lesser marks.

5. The cause list of the writ petition reveals that the petitioners have also not joined Kamol Gitaben Bhurasingbhai as a party respondent. The petitioners went in slumber and ultimately, for the first time, in the year 2016, they filed an RTI application. After receiving such information, they filed the writ petition in the year 2023. Learned Single Judge in the said writ petition has observed thus:

"8. In so far as the submission of learned advocate for the petitioner that the grievance of the petitioner constitutes a continuous wrong, the same also does not merit any consideration. The Hon'ble Apex Court in case of Rushibhai Jagdishchandra Pathak relied upon by learned advocate for the petitioners, has explained, more particularly, referring to decision in case of Union of India and others v. Tarsem Singh reported in 2008 (8) SCC 648 as regards the concept of continuous wrong. Paragraph-11 of the decision, being relevant for the present purpose is reproduced hereinbelow for benefit:-

"11. Relying upon the aforesaid ratio, this Court in the case of Union of India and Others v. Tarsem Singh, 11 while referring to the decision in Shiv



Dass v. Union of India and Others, 12 quoted the following passages from the latter decision:

"8...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. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. ... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years."

In Tarsem Singh (supra), reference was also made to Section 22 of the Limitation Act, 1963, and the following passage from Balakrishna Savalram Pujari Waghmare and Others v. Shree Dhyaneswar Maharaj Sansthan and Others, AIR 1959 SC 798 which had explained the concept of continuing wrong in the context of Section 23 of the Limitation Act, 1908, corresponding to Section 22 of the Limitation Act, 1963, observing that:

"31...It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw



a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."

Accordingly, in Tarsem Singh (supra) it has been held that principles underlying 'continuing wrongs' and 'recurring/successive wrongs' have been applied to service law disputes. A 'continuing wrong' refers to a single wrongful act which causes a continuing injury. 'Recurring/successive wrongs' are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. Having held so, this Court in Tarsem Singh (supra) had further elucidated some exceptions to the aforesaid rule in the following words:

"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."

9. Quoted paragraph-31 of Tarsem Singh as above, would reflect that a continuous wrong, according to the Hon'ble Apex Court is a continuous source of injury which renders the doer of the act responsible and liable for continuance of the said injury. According to the Hon'ble Apex Court if the wrongful act causes an injury which is complete then there is a no continuing wrong even though the damage resulting from the act may continue. On the other hand, it has been explained that if the wrongful act is of such a character that the injury caused by the said act continues then the act constitutes a continuing wrong. In the considered opinion this court, the grievance of the petitioners would not constitute a continuing wrong since the alleged wrongful act of not appointing the petitioners, while appointing a person less meritorious than petitioners, had become complete upon the non appointment of the petitioners. While the damage on account of the non appointment would continue but there is no continuing wrong which takes place. As explained the damage caused on account of the alleged wrongful act would continue but at the same time the alleged wrongful act has not resulted in a continuous cause of action in favour of the petitioners, for the petitioners to claim that the present petition should be decided on merits without any reference to the delay which has occurred in the interregnum.

10. As such it also requires to be mentioned here that quoted paragraph No.8 of Tarsem Singh as above, also reflects the law laid down by the Hon'ble Apex Court that the High Court would not ordinarily permit a belated resort to the extraordinary remedy of writ, more particularly, if the delay is unreasonable and there is an effect of not only hardship and inconvenience but also injustice on third parties. The Hon'ble Apex Court has further observed that in writ-jurisdiction, unexplained delay coupled with creation of third party rights in the time is an important factor which would weigh with the High Court."



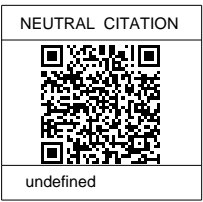
6. Thus, the learned Single Judge, after considering the law enunciated by the Apex Court, has rejected the writ petition as the selection process is questioned, after delay of about 16 years.

7. Learned advocate Mr.Mehta has also placed reliance on the judgement rendered by the Apex Court in the case of Rushibhai Jagdishchandra Pathak Vs. Bhavnagar Municipal Corporation, JT 2022 (5) SC 470 and has submitted that the delay occurred in the filing the captioned writ petition is required to be ignored.

8. A bare perusal of the judgement of the Apex Court in the case of **Rushibhai Jagdishchandra Pathak** (supra) makes it clear that the same would not apply in the facts of the present case.

9. The case of non-appointment / non-selection of a person, who has participated in selection process in the year 2007 cannot be questioned at this stage. More particularly, the issue of appointment/ selection would also give rise to further complications such as seniority, promotion etc.

10. Hence, we do not find any infirmity or illegality in the judgement and order passed by the learned Single Judge in the captioned writ petition.



11. The present appeal fails. The same is hereby rejected.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(MAUNA M. BHATT,J)

NVMEWADA/2