



2025:DHC:806-DB



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 979/2024 & CM APPL. 57667/2024

MANJEET KUMAR .....Appellant

Through: Mr. Nitin K Gupta, Ms. Pranjal  
Vyas and Mr. Aayush Tripathi, Advs.

versus

FOOD CORPORATION OF INDIA .....Respondent

Through: Mr. Om Prakash, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**HON'BLE MR. JUSTICE AJAY DIGPAUL**

**JUDGMENT (ORAL)**

**07.02.2025**

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**C. HARI SHANKAR, J.**

1. Consequent to an advertisement issued by the Institute of Banking Personnel Selection<sup>1</sup> on 23 February 2019 inviting applications for recruitment to the post of Assistant Grade-III in the UR, Depot, Technical and Accounts Cadres and Hindi Posts in the Food Corporation of India<sup>2</sup>, the appellant applied and appeared in the Phase I examination of the said selection which was conducted on 3 June 2019. The result dated 8 July 2019, released by the IBPS, declared the appellant to have been successful in the Phase I examination conducted on 3 June 2019. The appellant thereafter

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<sup>1</sup> "IBPS" hereinafter

<sup>2</sup> "FCI" hereinafter



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appeared in the Phase II examination which took place on 27 July 2019. The result of the said examination was declared in December 2020. The appellant's name did not figure in the said result. The appellant was aware of the fact that the result was declared in December 2020 and that his name did not figure therein.

2. On these facts, there is no dispute.
3. According to the recital of facts in the impugned judgment of the learned Single Judge, which Mr. Gupta, learned Counsel for the appellant does not dispute, the appellant did not approach the Court as, according to him, similarly situated persons had approached the Court and the appellant decided to await the outcome of those writ petitions. Mr. Gupta submits that the FCI had, in fact, reassured the appellant that, if the candidates who had approached the Court were successful in their challenge, the benefit of the judgment would be extended to all other similarly situated, including the appellant.
4. Though, we note that there is no such averment even in the writ petition filed by the appellant before the learned Single Judge, Mr. Gupta submits that, in fact, an oral submission to this effect was made before the learned Single Judge, which, he submits, was recorded, somewhat inaccurately, in para 5 of the impugned judgment, which reads thus:  
  
“5. Learned counsel for the petitioner, on a query, submits that on account of COVID, the delay has occurred. Learned counsel submits that on being informed orally by the FCI that other petitions challenging the same result were pending before this



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Court, the petitioner did not agitate his own grievance before this Court.”

5. We have perused the writ petition as well as the impugned judgment of the learned Single Judge. There is nothing to indicate that the FCI had ever held out any assurance to the appellant that, if the candidates who had approached the Court were to succeed in their writ petitions, the benefit of the judgment would *ipso facto* be extended to all other similarly situated. Rather, the tenor of para 5 of the impugned order would indicate that it was the appellant’s own decision to sit back and watch for the outcome of the petitions filed by others, similarly affected, thereby making him a classic “fence-sitter”.

6. We, therefore, find ourselves in agreement with the learned Single Judge that the appellant was a mere fence sitter, who, despite being aware of the fact that others had approached the Court, chose not to take a chance and to wait and see the outcome of the litigation initiated by others. Fence sitters, who take their chance belatedly after others have sought their legal remedies in time and succeeded, are not entitled to relief. Such cases constitute an exception to the general principle that the benefit of a judgment must be extended, by the administration, to all persons similarly situated. *State of U.P. v Arvind Kumar Srivastava*<sup>3</sup> clearly sets out the law in this regard, after taking note of several authoritative pronouncements on the point:

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

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<sup>3</sup> (2015) 1 SCC 347



22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. *However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.*

22.3. *However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see **K.C. Sharma v UOI**<sup>4</sup>). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”*

7. The position is, therefore, one of an exception to an exception. To the general principle that the benefit of a judgment must extend to

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<sup>4</sup> (1997) 6 SCC 721



all persons similarly situated, is the exception that fence sitters who are guilty of delay and laches would not be entitled to invoke this benevolent principle, which principle, in turn, stands excepted where the judgment is *in rem*. The Supreme Court has, however, clarified that an judgment *in rem* must disclose a manifest intendment of *having been rendered in rem*, such as a case in which the Court directs regularization of employees.

8. The manner in which these interplaying considerations would pan out in a case such as the present is exemplified by the immediately succeeding para 23 of *Arvind Kumar Srivastava*, which reads thus:

“23. Viewed from this angle, in the present case, we find that the selection process took place in the year 1986. Appointment orders were issued in the year 1987, but were also cancelled vide orders dated 22-6-1987. *The respondents before us did not challenge these cancellation orders till the year 1996 i.e. for a period of 9 years. It means that they had accepted the cancellation of their appointments. They woke up in the year 1996 only after finding that some other persons whose appointment orders were also cancelled got the relief. By that time, nine years had passed. The earlier judgment had granted the relief to the parties before the Court.* It would also be pertinent to highlight that these respondents have not joined service nor working like the employees who succeeded in earlier case before the Tribunal. As of today, 27 years have passed after the issuance of cancellation orders. Therefore, not only was there unexplained delay and laches in filing the claim petition after a period of 9 years, it would be totally unjust to direct the appellants to give them appointment as of today i.e. after a period of 27 years when most of these respondents would be almost 50 years of age or above.”

(Emphasis supplied)

9. The italicized observations, albeit rendered in the context of the



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facts before the Supreme Court, would equally apply to the case before us. The COVID-19 pandemic and the somewhat ironic amnesty that litigants obtained as a consequence thereof, came to an end in February 2022. Even thereafter, the first time that the appellant had sought any clarification with respect to the non-declaration of his result was by way of an application under the Right to Information Act, 2005<sup>5</sup>, which itself was preferred after more than two years, on 12 April 2024. The reply provided to the said communication was used by the appellant as a spring board to justify approaching the Court belatedly, thereby reaping the benefits of the seeds sowed by his more vigilant colleagues.

**10.** For these reasons, we had called upon Mr. Gupta who appeared for the appellant on the last date of hearing to take instructions as to whether there was any cogent explanation for the appellant's indolence between 2020 and 2024. He submits that there is no real explanation but reiterates that the appellant had been reassured by the FCI that on other similarly situated succeeding in their petitions, the appellant would be extended similar reliefs.

**11.** That appears, however, only to have been wishful thinking on the appellant's part. No evidence of any such assurance, or reassurance, is forthcoming. Apparently, therefore, without any justifiable reason, the appellant chose to remain quiet. It was for the first time in April 2024 that the appellant sought clarifications under the RTI Act. Though the clarification was provided by the respondent,

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<sup>5</sup> "the RTI Act"



consequent on the appellant's request, in May 2024, the learned Single Judge has correctly observed that the delay between December 2020 and April 2024 remains completely unexplained.

12. The Supreme Court has recently, in its judgment in *UOI v C. Girija*<sup>6</sup>, emphasized the fact that writ courts have to be mindful of laches, if any, on the part of petitioners who approach the Court, and should not exercise equitable jurisdiction where the petitions are filed belatedly. We may reproduce the relevant paragraphs from *C. Girija*, thus:

16. This Court had occasion to consider the question of cause of action in reference to grievances pertaining to service matters. This Court in *C. Jacob v Director of Geology and Mining*<sup>7</sup> had occasion to consider the case where an employee was terminated and after decades, he filed a representation, which was decided. After decision of the representation, he filed an OA in the Tribunal, which was entertained and order was passed. In the above context, in para 9, following has been held:

“9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any “decision” on rights and obligations of parties. Little do they realise the consequences of such a direction to “consider”. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to “consider”. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. *The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to*

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<sup>6</sup> (2019) 15 SCC 633

<sup>7</sup> (2008) 10 SCC 115



*examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.”*

17. This Court again in *Union of India v M.K. Sarkar*<sup>8</sup> on belated representation laid down following, which is extracted below:

*“15. 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.”*

18. Again, this Court in *State of Uttaranchal v Shiv Charan Singh Bhandari*<sup>9</sup>, had occasion to consider question of delay in challenging the promotion. The Court further held that representations relating to a stale claim or dead grievance does not give rise to a fresh cause of action. In paras 19 and 23 following was laid down:

*“19. 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.*

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23. In *State of T.N. v Seshachalam*<sup>10</sup>, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus:

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<sup>8</sup> (2010) 2 SCC 59

<sup>9</sup> (2013) 12 SCC 179

<sup>10</sup> (2007) 10 SCC 137



“16. ... 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. This Court referring to an earlier judgment in *P.S. Sadasivaswamy v State of T.N.*<sup>11</sup>, noticed 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. In paras 26 and 28, following was laid down: (*Shiv Charan Singh Bhandari case*<sup>12</sup>)

“26. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in *P.S. Sadasivaswamy v State of T.N.* (*supra*), wherein it has been laid down that:

‘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. 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 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.*’

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28. *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*

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<sup>11</sup> (1975) 1 SCC 152

<sup>12</sup> State of Uttaranchal v Shiv Charan Singh Bhandari, (2013) 12 SCC 179



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*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.”

(Emphasis supplied)

**13.** The writ court has, therefore, a duty not to come to the aid of the indolent and recalcitrant.

**14.** As a last effort, Mr. Gupta also produced before us the following orders passed by a learned Single Bench of this Court in WP (C) 3301/2023<sup>13</sup>, instituted by one Naveen who, according to him, is similarly situated. The petition is presently pending before a learned Single Bench of this Court. We deem it appropriate to reproduce these orders, thus:

“Order dated 17 March 2023

Issue notice.

Mr. Om Prakash, learned counsel accepts notice on behalf of Respondent No. 1.

Mr. Himanshu Pathak, learned Senior Panel Counsel accepts notice on behalf of Respondent No. 2.

Counter affidavits be filed within a period of six weeks from today.

Rejoinder, if any, be filed within a period of four weeks thereafter.

List on 10.08.2023.

Order dated 6 May 2024

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<sup>13</sup> **Naveen v FCI**



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1. No time left.
2. List on 07.10.2024.

Order dated 17 January 2025

The matter could not be taken up for hearing due to paucity of time.

List on 26.05.2025.”

**15.** We are unable to understand how these orders come to the aid of the appellant. There is nothing to indicate that Naveen, assuming he is a similarly situated candidate, was indolent in the matter of approaching the department with his grievance. The facts of the Naveen’s case are not forthcoming from these orders. Besides, Mr. Om Prakash, learned Counsel for the FCI submits that, even in that case, the respondent has pleaded delay and latches as a ground to contest the writ petition.

**16.** In any event, the writ petition in Naveen’s case is still pending. Notice has only been issued thereon. The pendency of the said writ petition can certainly not constitute a satisfactory ground for us to set aside the impugned judgment of the learned Single Judge.

**17.** Mr. Om Prakash also submits that the recruitment process in question stands closed in 2022, to which Mr. Gupta replies that, even thereafter, certain petitions of other similarly situated candidates are pending. In the view we have taken, it is not necessary for us to enter into that arena.



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**18.** Suffice it, therefore, to state that we are unable to find any error in the approach of the learned Single Judge in holding that the writ petition was badly hit by delay and latches.

**19.** For the aforesaid reasons, we are of the opinion that the appellant has not been able to make out a case for interference with the decision of the learned Single Judge.

**20.** The appeal is accordingly dismissed, albeit without costs.

**C. HARI SHANKAR, J.**

**AJAY DIGPAUL, J.**

**FEBRUARY 7, 2025/ar**

*[Click here to check corrigendum, if any](#)*