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

% *Date of Decision: 28th November, 2024*

+ W.P.(C) 16470/2024

MUKESH SAIN & ORS.

....Petitioners

Through: Mr. Pramod Dayal, Mr. Daleep Singh,
Mr. M.K. Saini, Mr. S.N. Gautam and Mr. Rakesh
Kumar, Advocates.

versus

PRAGATI POWER CORPORATION LIMITED
AND ORS.

.....Respondents

Through: Mr. S. Wasim A. Qadri, Senior
Advocate with Mr. R.K. Vats and Mr. Saeed
Qadri, Advocates for R-1 and R-2.

Mr. Prashant Manchanda, Additional Standing
Counsel with Ms. Nancy Shah and Ms. Isha
Baloni, Advocates for GNCTD.

Mr. Shashank Bajpai, Central Government
Standing Counsel with Mr. Vedansh, Government
Pleader with Ms. Stuti Karwal, Advocate for R-4.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

CM APPL. 69471/2024

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 16470/2024 & CM APPL. 69470/2024

3. This writ petition has been preferred on behalf of the Petitioners under Article 226 of the Constitution of India laying a challenge to the Unified Promotion Policy in IPGCL-PPCL-2012 ('2012 Policy') as also praying for



a direction to set aside the Combined Seniority Lists for PPCL and IPGCL. Direction is also sought to reserve the posts in PPCL only for employees working therein. Promotions given to private Respondents No. 5 to 65 basis the Combined Seniority Lists are also under challenge.

4. Case of the Petitioners as set out in the writ petition is that Petitioners were appointed to the post of Assistant Manager (Technical) [AM (T)] in Pragati Power Corporation Ltd. (PPCL) in the year 2009 on probation of one year and their services were confirmed subsequently. By Office Order dated 21.01.2014, Petitioners were promoted notionally to the post of Deputy Manager (Technical) [DM (T)] as per applicable PPCL Rules. During the year 2011, reorganisation of PPCL and Indraprastha Generation Co. Ltd. (IPGCL) was proposed on the basis of an Agenda Note titled ‘re-organization of IPGCL-PPCL (Item No. 54.2.7/50.2.2)’, which was placed before the respective Board of Directors (BoD) to be considered in the meeting scheduled on 15.02.2011. The agenda note was approved and it was resolved as under:-

“i) Proposed Action plan of re-organization of IPGCL and PPCL as placed before the Board;

ii) Introducing a suitable Special Voluntary Retirement scheme in the Company; and

iii) Floating the Transfer Scheme for seeking option from the employees of IPGCL to join PPCL w.e.f the cut off date i.e. 30.6.2011.”

5. On 21.11.2011, an Office Order was issued circulating a provisional combined list of officers working in the grade of AM (T) on regular basis as on 31.10.2011. On 15.02.2012, in anticipation of the fact that both PPCL and IPGCL would merge into one entity, BoD of the two entities envisaged preparing the amalgamation scheme. Another Agenda Note dated



15.02.2012 titled 'reorganisation of IPGCL-PPCL for Item No. 59.4.1/56.4.1' was issued for placing the same before the BoD. This included a proposal for a unified regime for promotions; combined strength of PPCL and IPGCL; and combined seniority for effecting promotions in both companies on the basis of combined vacancies. On 30.08.2012, PPCL and IPGCL circulated final combined seniority lists of officers working in the grade of AM (T).

6. It is averred that in 2015, Ministry of Corporate Affairs, Government of India informed PPCL and IPGCL that application for merger was not found feasible. This intimation was sent through communication dated 07.10.2015 and reiterated by letter dated 16.12.2015. Petitioners were in the meantime granted time bound promotion to the post of DM (T) after serving the requisite period of 04 years from the dates of their appointments. Thereafter, a combined seniority lists of all employees belonging to PPCL and IPGCL for the posts of AM (T) and DM (T) was published vide Office Order dated 15.02.2016.

7. It is averred that between 03.01.2020 to 28.01.2022, PPCL and IPGCL issued Office Orders promoting employees of IPGCL from the post of DM (T) to Manager (T) in the combined list of the posts. This was objected to on multiple occasions by the Petitioners and several representations were sent complaining of stagnation and requesting that vacancies in PPCL be filled by employees of PPCL or in the alternate at least priority be given to them in promotion to the post of Manager (T). Not getting a response, Petitioners filed a writ petition on 16.11.2022 being W.P. (C) 16086/2022 laying a challenge to Combined Seniority Lists and combined list of posts with a direction to the Respondents to carry out



promotions of the Petitioners against posts available in PPCL and to not promote any employee of IPGCL against their posts. In the alternative, it was prayed to give priority to employees of PPCL.

8. By order dated 20.12.2023, learned Single Judge of this Court dismissed the writ petition on ground of delay and laches as well as estoppel and acquiescence. Against this judgment, Petitioners preferred a review petition being Rev. Pet. No. 23/2024, which was dismissed vide order dated 19.01.2024 holding that there was no material error manifest on the face of the judgment and the arguments of the Petitioners, if accepted, would lead to miscarriage of justice. It was also observed that the grounds for review were in fact grounds of appeal and could not be raised before a Court exercising review jurisdiction. Petitioners thereafter approached the Division Bench and filed LPA No. 197/2024 challenging the judgment dated 20.12.2023 and the order dated 19.01.2024 passed in the review petition. On 10.09.2024, as the order reads, after some arguments, Petitioners withdrew the appeal with liberty to challenge the 2012 Policy, without prejudice to the rights and contentions of the parties and have thereafter filed the present writ petition with identical prayers as in the earlier writ petition but with an additional prayer to quash the 2012 Policy.

9. Issue notice.

10. Counsels, as above, accept notice on behalf of respective Respondents.

11. At the outset, learned Senior Counsel appearing on behalf of Respondents No.1 and 2 takes a preliminary objection to the maintainability of the writ petition on the ground that Petitioners had earlier approached this Court laying a challenge *inter alia* to the combined seniority lists in W.P.



(C) 16086/2022 which was dismissed by the learned Single Judge as being barred by delay and laches as well as estoppel and acquiescence. Review Petition against the said judgment was also dismissed and challenge before the Division Bench in LPA 197/2024 was also unsuccessful as the Division Bench did not interfere in the judgment of the learned Single Judge and thus the finding on delay and laches and acquiescence still holds the field against the Petitioners. It is argued that it is not open to this Court to entertain this writ petition once a Coordinate Bench has rendered a finding in the earlier writ petition that the challenge to the seniority list was barred by delay and laches and the Division Bench did not interfere. Petitioners are labouring under a wrong impression that the liberty granted by the Division Bench means and connotes that Petitioners can once again challenge the combined seniority lists, challenge to which has been negated as barred by delay and laches. Liberty given by a Court can only be construed as a liberty granted in accordance with law and moreover, while granting liberty, the Court preserved the right of both the parties to raise their respective contentions, which means the right of the Respondent to contest the maintainability of this petition on delay and laches and acquiescence. Had the Division Bench found any merit in the submissions of the Petitioners or any infirmity in the judgment of the learned Single Judge dismissing the writ petition on delay and laches or acquiescence, the Court would have interfered and set aside the order for a reconsideration, which was not done and in fact, Petitioners had withdrawn the appeal.

12. Learned counsel for the Petitioners, responding to the preliminary objection, submits that the objection is wholly misconceived. There is no doubt that W.P. (C) 16086/2022 was dismissed by the learned Single Judge



on ground of delay and laches and doctrine of estoppel and acquiescence, however, the Division Bench granted liberty to the Petitioners to challenge the 2012 Policy, which was admittedly not challenged in the earlier writ petition. Implicit in this liberty is the liberty to the Petitioners to not only lay a challenge to the policy but also its consequential impact on the seniority of the Petitioners. It is strenuously argued that Petitioners have a good case on merit. The merger of PPCL and IPGCL and consequent framing of 2012 Policy has resulted in a situation where Petitioners who were employees of PPCL are stagnating while employees of IPGCL are getting promotions. Reliance is placed on the judgment of the Supreme Court in ***State of Punjab v. Davinder Pal Singh Bhullar and Others*, (2011) 14 SCC 770**, for the proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings will fall through, for the reason that illegality strikes at the root of the order. Reliance is also placed on the judgments of the Supreme Court in ***Krishna Rai (Dead) Through legal representatives and Others v. Banaras Hindu University Through Registrar and Others*, (2022) 8 SCC 713** and ***Tata Chemicals Limited v. Commissioner of Customs (Preventive), Jamnagar*, (2015) 11 SCC 628**, to argue that there can be no estoppel against law and therefore, the learned Single Judge has erred in dismissing the writ petition on the ground that having received promotions under the 2012 Policy, Petitioners could not challenge the same on the ground that it suffers from illegalities.

13. Heard counsel for the Petitioners and learned Senior Counsel for Respondents No.1 and 2 as well as the other counsels for the remaining Respondents and examined their respective submissions.



14. Before proceeding further, it is imperative to decide the preliminary objection raised on behalf of Respondents No.1 and 2 as that would go to the root of the matter. Broadly understood, the objection is that Petitioners had filed an earlier writ petition laying a challenge to the “combined seniority posts” and “combined seniority lists” with consequential reliefs and the challenge was negated on the ground of delay and laches as also estoppel and acquiescence. The only prayer that is added in the present writ petition is a challenge to the 2012 Policy. For the sake of comparison between the reliefs sought in the earlier writ petition being W.P. (C) 16086/2022 and this writ petition, the reliefs sought in the two writ petitions are extracted hereunder:

“W.P.(C) 16470/2024

“a) that a Writ, Order or Direction be issued declaring the purported Unified Promotion Policy of 2012 in Indraprastha Generation Co. Ltd. (IPGCL) and Pragati Power Corporation Ltd. (PPCL) as null, void and non-est;

b) that a Writ, Order or Direction be issued setting aside the same "purported Combined Seniority List" for Respondents No.1&2 companies and the same be quashed and promotions to posts available in Respondent No.1 company be reserved only for employees working with Respondent No.1;

c) that a writ, order or direction be issued, setting aside the promotions made on the basis of combined seniority list to the Respondents 5 to 65 along with others promoted against combined seniority list; and”

AND

W.P.(C) 16086/2022

a) Pass an appropriate writ or order quashing and setting aside the ‘combined seniority list’ and ‘combined list of posts’ maintained by the Respondents No. 1 and 2;

b) Pass an appropriate writ, order or direction directing the Respondents to carry out promotions for the Petitioners against the posts available in Respondent No. 1 Company and to not promote any employee of Respondent No. 2 Company against a post available in the Respondent No. 1 Company;

c) In the alternative to prayers (i) and (ii), pass a writ, order or direction



to Respondents give effect to an amended promotion policy formulated so as to give prioritized promotional avenues to employees of Respondent No. 1 to posts under Respondent No. 1 such that posts are first offered to employees of Respondent No. 1 and only thereafter, offered to employees of Respondent No. 2.”

15. Perusal of the relief clauses in the two writ petitions leaves no doubt that Petitioners have in both the writ petitions laid a challenge *inter alia* to the “combined seniority lists” and “combined seniority posts” with consequential relief of promotion. The question that arises is whether by laying a challenge to the 2012 Policy, as an additional relief, Petitioners can overcome the findings in the earlier judgment dated 20.12.2023 that challenge to seniority lists is barred by delay and laches. In order to resolve this conundrum, it will be essential to look into the reason why the earlier writ petition was dismissed. Petitioners had questioned the “combined seniority lists” of employees of PPCL and IPGCL for the posts of DM(T) and AM(T) published by the Respondents pursuant to and on the basis of Board Resolution dated 15.02.2012 after a period of one decade. Objection was raised by the Respondents to the maintainability of the writ petition on grounds of delay and laches and estoppel/acquiescence. Based on this objection, the Court had framed a preliminary issue: *“Whether the instant petition challenging the ‘combined seniority posts’ and ‘combined seniority lists’, is maintainable on the account of suffering from ‘delay and laches’ and ‘doctrine of acquiescence’?”*

16. Referring to several judgments of the Supreme Court on the aspect of delay and laches in the context of seniority disputes, the Court was of the view that the claim of the Petitioners challenging a seniority list after a decade could not be entertained. Court observed that Petitioners cannot



claim that seniority dispute is a “continuous wrong” and having slept for years, their writ petition could not be entertained to re-open a seniority issue and unsettle the settled seniority. There is no gainsaying that this finding was in consonance with the judgments relied upon by the learned Single Judge where the Supreme Court has repeatedly affirmed that once seniority has been fixed, circulated and remains in existence for a reasonable period, the same should not be unsettled at the behest of those who are fence sitters and sleep over their rights. Review Petition against the said judgment was also dismissed *albeit* learned counsel for the Petitioners emphasized that the review was dismissed as the Court was of the view that the grounds set out were those which could only be taken in an appeal. Relevant passages from the judgment of the learned Single Judge are as follows:

“ANALYSIS AND FINDINGS

28. *Heard the learned counsel for the parties and perused the records.*

29. *The instant petitioners have approached this Court seeking an appropriate writ for quashing and setting aside the ‘combined seniority list’ and ‘combined list of posts’ maintained by the respondents no. 1 and 2 and at the same time direct the respondent no. 1 to carry out promotions for the petitioners against the posts available in respondent no. 1 and to not promote any employee of respondent no. 2 against a post available in the respondent no. 1.*

30. *In rival submissions, the learned counsel appearing on behalf of the respondents, have contended that the respondent companies are well within their rights in effectuating the contended promotional scheme of 2012 as the said resolution was approved by the BOD of both the companies and when the same were implemented, no representation and objections to the same were ever submitted by the petitioners or any other person.*

31. *It is primary submission of the respondent companies that the instant petition suffers inadvertent delay, and the petition shall be dismissed on this very ground alone.*

32. *Having heard both parties at length, following issue emerge before this Court for adjudication-*

Whether the instant petition challenging the ‘combined seniority posts’ and ‘combined seniority lists’, is maintainable on the account of suffering from ‘delay and laches’ and ‘doctrine of acquiescence’?



33. At this juncture it is important to deal with the aspect of the preliminary contentions of the respondents pertaining to setting aside the instant petition on the sole ground of 'delay and laches' as the instant petition has been filed after a delay of more than 10 years. Thus, it is imperative for this Court to refer to and highlight the settled principle as enunciated and expounded by the Hon'ble Supreme Court and discuss the same in context to the matter at hand.

34. In **Tilokchand Motichand v. H.B. Munshi, (1969), 1 SCC 110**, the 5 Judges Constitutional Bench of the Hon'ble Supreme Court extensively carved out the principle pertaining to 'doctrine of delay and laches'. The relevant portion of the judgement is reproduced herein:

"14. Article 32(2) of the Constitution confers a judicial power on the Court. Like all judicial powers, unless there is an express provision to the contrary, it must be exercised in accordance with fundamental principles of administration of justice. General principles of res judicata were accordingly applied by this Court in *Daryoo v. State of UP* and *Amalgamated Caulfields Ltd v Janapada Sabha, Chindwara* understand that one of the fundamental principles of administration of justice is that, apart from express provisions to the contrary, stale claims should not be given effect to. But what is a stale claim? It is not denied that the Indian Limitation Act does not directly apply to a petition under Article 32. Both the English Courts and the American Courts were confronted with a similar problem. In the United States the Federal Courts of Equity solved the problem thus:

"Except, perhaps, where the statute by its express terms applies to suits in equity as well as to actions at law, or where the jurisdiction of law and equity is concurrent, the rule appears to be that Federal Courts sitting in equity are not bound by state Statutes of limitation. Nevertheless, except where unusual conditions or extraordinary circumstances render it equitable to do so, the Federal Courts usually act in analogy to the State statutes of limitation applicable to cases of like character." (Vol. 34, American jurisprudence, Limitation of Actions. Section 54)

15. In Courts of Admiralty, where the statutes of limitation do not control proceedings, the analogy of such statutes is ordinarily followed unless there is something exceptional in the case (ibid).

16. Story on Equity Jurisprudence states the legal position thus:

"It was, too, a most material ground, in all bills for an account, to ascertain whether they were brought to open and correct errors in the account recenti facto, or whether the application was made after a great lapse of time. In cases of this sort, where the demand was



strictly of a legal nature, or might be cognizable at law, courts of equity governed themselves by the same limitations as to entertain such suits as were prescribed by the Statute of Limitations in regard to suits in courts of common law in matters of account. It therefore, the ordinary limitation of such suits at law was six years, courts of equity would follow the same period of limitation. In so doing they did not act in cases of this sort (that is, in matter of concurrent jurisdiction) so much upon the ground of analogy to the Statute of Limitations, as positively in obedience to such statute. But where the demand was not of a legal nature, but was purely equitable or where the bar of the statute was inapplicable courts of equity had another rule, founded sometimes upon the analogies of the law, where such analogy existed, and sometimes upon its own inherent doctrine, not to entertain stale or antiquated demands, and not to encourage laches and negligence. Hence, in matters of account, although not barred by the Statute of Limitations, courts of equity refused to interfere after a considerable lapse of time, from considerations of public policy, from the difficulty of doing entire justice, when the original transactions had become obscure by time, and the evidence might have been lost, and from the consciousness that the repose of titles and the security of property are mainly promoted by a full enforcement of the maxim, vigilantibus, non dormientibus jura subveniunt. Under peculiar circumstances, however, excusing or justifying the delay, courts of equity would not refuse their aid in furtherance of the rights of the party, since in such cases there was no pretence to insist upon laches or negligence, as a ground for dismissal of the suit and in one case carried back the account over a period of fifty years." (Third Edn. p. 224, Section 529)

17. In England, as pointed out by Bachawat, J. the Court of Chancery acted on the analogy of Statute of Limitation (vide Halsbury, Vol. 14, p. 647, Article 1190)

18. It seems to me, however, that the above solution is not quite appropriate for petitions under Article 32. A delay of 12 years or 6 years would make a strange bed-fellow with a direction or order or writ in the nature of mandamus, certiorari and prohibition. Bearing in mind the history of these writs I cannot believe that the Constituent Assembly had the intention that five Judges of this Court should sit together to enforce a fundamental right at the instance of a person, who had without any reasonable explanation slept over his rights for 6 or 12 years. The history of these writs both in England and the USA convinces me that the underlying idea of the Constitution was to provide an expeditious and authoritative remedy against the inroads of the State. If a claim is barred under the Limitation Act, unless there are exceptional circumstances, prima facie it is a stale claim and



should not be entertained by this Court. But even if it is not barred under the Indian Limitation Act, it may not be entertained by this Court if on the facts of the case there is unreasonable delay. For instance, if the State had taken possession of property under a law alleged to be void, and if a petitioner comes to this Court 11 years after the possession was taken by the State, I would dismiss the petition on the ground of delay, unless there is some reasonable explanation. The fact that a suit for possession of land would still be in time would not be relevant at all. It is difficult to lay down a precise period beyond which delay should be explained. I favour one year because this Court should not be approached lightly, and competent legal advice should be taken and pros and cons carefully weighed before coming to this Court. It is common knowledge that appeals and representations to the higher authorities take time, time spent in pursuing these remedies may not be excluded under the Limitation Act but it may ordinarily be taken as a good explanation for the delay.”

35. In **Shiba Shankar Mohapatra v. State of Orissa, (2010) 12 SCC 471**, the Hon'ble Supreme Court observed that in cases where a seniority list has been fixed, circulated, and remains in existence for a reasonable period, the same shall not be entertained subsequently. The relevant portion of the judgement is reproduced herein:

29. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the court is guilty of delay and laches. The court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallizes in the interregnum (Vide *Aflatoon v. LL Governor of Delhi*; *State of Mysore v. V.K. Kangan, Municipal Council, Ahmednagar v. Shah Hyder Beglinder j Gupto v. Union of India*; *Shiv Dass v. Union of India A.P. SRTC v. N. Satyanarayano and City and industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla*).

30. Thus, in view of the above the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In *KR. Mudgal*, this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.



36. *The Hon'ble Supreme Court in Union of India & Anr. v. Tarsem Singh (2008), 8 SCC 648 observed in context to service matters that a stale and belated claim shall be preliminarily rejected solely on the ground of delay and laches. The relevant part of the said judgment is reproduced herein:*

"5. 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 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."

37. *In reference to the cases discussed above it can be concluded that, the Courts exercising writ jurisdiction shall not encourage agitation of stale claims where the right of third parties crystallizes in the interregnum and that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion.*

38. *Furthermore, it is also clarified from the above-cited judicial dicta that there exists an exception to the rule of delay and laches that if the matter pertains to a continuous wrong but there also exists an exception to the exception stating that if the grievance related to an administrative order and affects the settled rights of third parties, no such claim shall be entertained.*

39. *Therefore, in light of the said position of law, this Court needs to determine whether the petitioner's case falls within the ambit of exceptions provided by the Hon'ble Supreme Court.*

40. *At this juncture it is imperative to deal with the aspect of the doctrine of acquiescence as applicable to the instant petition on*



considering the aspect where the petitioners have stayed silent for a long period of time and have sort the benefit of promotion under the challenged promotional scheme of 2012.

41. *Thus, it is pertinent for this Court to refer to and highlight the yardstick followed by the Hon'ble Supreme Court and discuss the same in context to the matter at hand.*

42. *While dealing with a matter where the condition relating to seniority was not challenged immediately, the Hon'ble Supreme Court in **M.P. Palanisamy v. A. Krishnan**, (2009) 6 SCC 428, observed that they cannot disown the condition at a later stage. The relevant portion of the judgement is reproduced herein:*

“28. As has already been stated, the contention of the appellants is that they had all the qualifications for holding the posts of Postgraduate Assistants when they were appointed under Rule 101) and their service was also without any breaks and they were ultimately regularised in the year 1988. Therefore, though the act of the State Government in regularising them was correct, the provision that their seniority will be below those who were selected by T.N. PSC in 1986, is not correct.

29. *Ms Nalini Chidambaram, learned Senior Counsel appearing on behalf of the appellants, along with Ms Indu Malhotra and Mr. M.N. Krishnamani, learned Senior Counsel, firstly urged that when a candidate is appointed under Rule 10co/XT) on ad hoc basis and is subsequently regularised, then ordinarily, his seniority has to be reckoned from the date when he was first appointed, provided he has all the necessary qualifications for the job. There can be no dispute with this proposition generally, however, it must be borne in mind that though the appellants herein had the necessary qualifications at the time of their initial appointment under Rule 10(a)(i)(1) and though they were subsequently regularised also, the regularisation was conditional regularisation, which was done way back in 1988. The condition regarding the seniority was explicit in the said regularisation, which is clear from a mere reading of GOMs No. 1813.*

30. *It cannot be forgotten that this regularisation was all along accepted by the present appellants. Once they chose to accept the regularisation which was conditional, then it would have to be borne in mind that they have accepted the conditions also, it cannot be countenanced that only the favourable part of the GOMs was accepted by them and the unfavourable part was reject ed. If they had to do it, they had to challenge the GOMS immediately. They did not do it,*



instead they waited almost for six years, when for the first time, they came out with an original application wide OA No. 3617 of 1994. Again, when the matters were decided in the Writ Petitions Nos. 2911 and 3041 of 1998 on 24-3-1998 and the seniority prayed for on the basis of initial appointment was refused to them, they kept quiet, only to raise the same demand again in 2003 when the panel was prepared.

31. The panel is absolutely correct in the light of GOMS No. 1813, The appellants merely raised a lame plea that they did not challenge GOMs No. 1813, as they were expecting themselves to be placed over and above the TN. PSC-selected candidates. Such could never be the position in the wake of plain language of GOMs No. 1813. This is one of the main reasons why the claim of the appellants has to be rejected. The aspect of conditional regularisation, therefore, had to be kept in mind.

32. The further sinister silence for about six years and thereafter, till 2003 in spite of adverse judgments, also goes against the appellants. The learned Senior Counsel for the appellants very heavily relied on the change of the Government's stand. It was pointed out that the Department had all along given the interpretation that the second condition in GOMs No. 1813 applied only when the candidates appointed under Rule 10(a)(i)(1) and the TN. PSC-selected candidates came in the same year. That may be so. However, the parties cannot be allowed to act on the impressions, when the original text of the GOMS says otherwise. There was nothing in the language of GOMs No. 1813 that the second condition would apply when the appointments of PG Assistants under Rule 10(a) and the TN. PSC-selected PG Assistants would be in the same year. That was wholly wrong. Even clarification by the Director of School Education had given a wrong position. That error could be perpetuated in our opinion, it was rightly corrected later on when the stand was taken that all these PG Assistants would be below the TN. PSC-selected PG Assistants. This stand is correct, as though the appellants were fully qualified PG Assistants at the time of their initial appointment after 1981, the fact of the matter is that they never faced any competition. They studiously and conveniently desisted from taking the examination, though it was made very clear to them that they would have to take the examination.

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38. The learned Senior Counsel pointed out that the said seniority list was never challenged by the present appellants and they only claimed the benefit of seniority, when the panel for promotions was prepared



for the first time in 2003. Thus, right from 1988, when they were regularised, they accepted the second condition, obtained the regularisation and thereafter, for the first time chose to challenge the seniority list indirectly in 1994 and thereafter, directly in 2003. This, they could not do. The submission is undoubtedly, sound.

39. We cannot at this juncture, ignore the fact that the appellants in their first attempt before the Tribunal, challenged only the first condition regarding the appointment and chose not to challenge the second condition. At that juncture, they had the full opportunity of challenging the second condition also. They conveniently interpreted GOMS No. 1813 in their favour, and in our opinion, wrongly, and ignored to challenge the second condition. This is not permissible. They could not thereafter turn back and challenge the second condition in the second or third round of litigation, it is for this reason also, that the claim of the appellants must fail.”

43. In **P.S. Gopinathan v. State of Kerala, (2008), 7 SCC 70**, the Hon'ble Court observed that once the appellant has accepted his initial promotion which was termed as temporary, without any objections and was appointed on regular basis from a subsequent date, he was deemed to have acquiesced and estopped from challenging it later on. The relevant portion of the judgement is reproduced herein:

“33. The law of equitable estoppel by acquiescence has been clearly stated by Fry. J. in *Wilmott v. Barber*. It has been said therein that the acquiescence which will deprive a man of his legal rights should amount to fraud. A man is not to be deprived of his legal right unless he has acted in such a way as would make it fraudulent for him to set up those rights. What, then, are the elements or requisites necessary to constitute fraud of that description, are stated thus:

- (i) The plaintiff (i.e., the party pleading acquiescence) must have made a mistake as to his legal rights,
- (ii) The plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of the mistaken belief;
- (iii) The defendant, the possessor of the legal right must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff, if he does not know of it, he is in the same position, as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights;
- (iv) The defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights and
- (v) The defendant the possessor of the legal right must have encouraged the plaintiff in his expenditure of money, or in the other



acts which he has done, either directly or by abstaining from asserting his legal right, where all these elements exist, there is fraud of such a nature as will entitle the court to restrain the possessor of the legal right from exercising it, but nothing short of this will do.

These principles were followed and applied in many cases in India.

34. The appellant was appointed by the Governor by transfer/appointment order issued on 14-1-1992 and his seniority was to be considered as provided under Rule 6 of the Rules which says that the seniority of a person appointed shall be determined with reference to the date of the order of his first appointment to the category. Thus apparently when the order dated 14-1-1992 was issued by the Governor, it would be the first appointment for the determination of the seniority of the appellant. There is nothing in the order dated 14-1-1992 on the basis of which it can be treated to be an appointment on temporary basis made by the Governor. It is apparent from the posting order dated 29-2-1992 that the High Court, because of the integration of two services wef 1-1-1992 prior to the issuance of the order of appointment on 14-1-1992, has treated the order of appointment as a temporary one and, therefore, the posting order specifically mentioned that the appellant's appointment would be temporary without there being any probationary rights.

35. Thereafter on 21-2-1992, a fresh panel was prepared by the High Court for the purposes of transfer/promotion to Category (2): District and Sessions judge and the proposal for promotion of the officers in that list has been accepted by the Governor by issuance of the order of appointment including that of the appellant on 15-7-1992. On 31-7-1992, the appellant's posting order was issued. Posting order clearly indicated that the appellant was working as a temporary District Judge and by virtue of the order issued on 15-7-1992 he shall be treated as permanent District Judge. While issuing the posting order of the appellant in pursuance of the order dated 14-1-1992, the High Court has committed a mistake in treating it to be an order of temporary appointment of the appellant when there was nothing to this effect in the appointment order. When the posting order was issued on 29-2-1992, the appellant was well aware of the order of his appointment dated 14-1-1992 whereby he was appointed on permanent basis on the post of District and Sessions Judge, yet when the posting order was issued treating him to be a temporary appointee which was inconsistent with the order dated 14-1-1992, the appellant did not raise any objection and readily accepting the posting order joined the service on 7-3-1992 as temporary Additional District judge. The posting order dated 29-2-1992 specifically mentioned that he has been posted as a temporary Additional District judge without any



probationary rights and thus the appellant was well aware of the mistaken belief of the High Court in appointing and posting him as a temporary employee. As there was no objection and protest by the appellant a fresh panel prepared, recommended and fresh order of appointment of the appellant was issued by the Governor.

36. Again when the fresh appointment order was issued on 15-7-1992 by the Governor and the appellant was posted on 31-7-1992 treating his first appointment order as a temporary appointment, no protest was made by him, in view of the fact that the Governor issued an order dated 15-7-1992 even when order of 14-1-1992 was in existence, it is apparent that the appointing authority has also treated the first order dated 14-1-1992 as an order of appointment on temporary basis. It is, therefore, apparent from the second appointment order that the appointing authority as well as the posting authority have all along treated the appellant as a temporary District Judge, but the appellant did not object on both occasions when he joined on 7-3-1992 and on 31-7-1992 of he being treated as temporary District judge. The act and action of the appellant in accepting his appointment as temporary one amounts to his assent to the temporary appointment and the appellant throughout till he raised an objection on 28-10-1992 has slept on his right of being appointed permanently on the post of District and Sessions Judge. By his conduct at the time of the issuance of the order by the High Court on 29-2-1992 and thereafter issuance of the second appointment order on 15-7-1992 with full knowledge of his own right and the act of the High Court which infringes it led the High Court to believe that he has waived or abandoned his right.

37. Lord Campbell in Carcross v. Lorimer held that: (All ER p. 176 G-H)

generally speaking if a party having an interest to prevent an act being done had full notice of its being done, and acquiesces it, so as to induce a reasonable belief that he consents to it and the position of the others is altered by their giving credit to his sincerity, he has no more right to challenge the act to their prejudice than he would have had if it had been done by his previous licence.

38. The aforesaid facts clearly make out an acquiescence of the appellant in accepting order dated 14-1-1992 being treated as temporary appointment order on the post of District and Sessions judge and he cannot now be permitted to change his position and claim the permanent appointment from 14-1-1992 to claim seniority on the post. Besides this, the High Court has rightly held that in the absence of the challenge to the second appointment."



44. Upon perusal of the cases discussed above, it can be concluded that as per the doctrine of acquiescence' a man shall not be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to asset up those rights.

45. Therefore, if a party having an interest to prevent an act being done had full notice of it being done, they do not have a right to challenge the act to their prejudice and it is an implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act.

46. The question that falls for consideration before this Court is whether the claim of the respondent was inordinately delayed, obsolete, stale, and is barred by the principle of delay and laches, and upon referral to the above stated paragraphs of the various cases, and applying the same to the present case, this Court is of a considered view, that the petitioners like any vigilant citizen, were expected to assert their rights before an appropriate forum within a reasonable time. Repeated representations neither give rise nor revive the cause of action, if it had already arisen in the past.

47. As per material on record, the petitioners have not challenged the validity of the promotional scheme approved by the BOD on 15th February, 2012 wherein a 'combined seniority list' and 'combined seniority posts' were proposed and approved by both the organizations, rather the instant petition challenges the scheme pertaining to the combined list and posts alone.

48. The material on record also suggests that the petitioners have been promoted based on this very scheme and have not challenged the same by seeking any representation prior to the year 2020.

49. In light of the same, this Court is of the opinion that the petitioners cannot seek the ground of a 'continuous wrong' as they have slept on and choose to not challenge the scheme as being illegal and perverse to the laid down in this pretext.

50. Thus, the contention of the respondents that the instant petition shall be dismissed on the sole ground of delay and laches holds strength and therefore, in view of the law laid down by the Hon'ble Supreme Court in catena of cases, this Court is of a considered opinion that the instant petition suffers illegality on the account of delay and is liable to be dismissed on this ground alone.

51. On merits, another important aspect with respect to the fact that the petitioners have been promoted via the alleged illegal scheme of 2012 also attracts the doctrine of estoppel and acquiescence where the petitioner can be deemed to consent to an act. Thus, when acquiescence takes place, it presupposes knowledge against a particular act which flows till the passive acceptance.



52. Therefore, instead of taking any action against alleged illegality, despite adequate knowledge of its terms, and instead of choosing to continue by consciously ignoring it and thereafter, proceeding further, acquiescence does take place and the present case lies well within the parameters of the said doctrine.

53. In the instant case, the petitioners have been promoted from the post of Assistant Manager (T) to Deputy Manager (T) as a result of following the scheme, and therefore, the petitioners cannot approach this Court alleging the promotional scheme to suffer illegality and not permissible in law as the same is barred by the doctrine of acquiescence.

54. Taking into consideration the cumulative effect of the facts in this case, coupled with the legal principles cited above, this Court is satisfied that the claim of the petitioners is time barred, and the same ought not to have been entertained by the Court after a span of over a decade.

CONCLUSION

55. It is hereby, held that there is no force in the arguments advanced by the petitioners, therefore, the present writ petition is liable to be dismissed since the same is not a fit case for interference under the extraordinary writ jurisdiction of this Court.

56. In view of the above discussions of facts and legal principles, this Court is of the view that the present petition is barred by the doctrine of delay and laches and also estoppel, as the instant petition is filed after a delay of 10 years and also having taken benefit of the challenged promotional scheme.

57. For all the aforesaid reasons, this Court does not find any merit in the instant petition, and the same stands dismissed.

58. Pending applications, if any, also stand dismissed.

59. The judgment be uploaded on the website forthwith.”

17. Petitioners approached the Division Bench in LPA No. 197/2024 challenging the judgment as well as the order dismissing the review petition. On 10.09.2024, appeal was withdrawn by the Petitioners seeking liberty to challenge the 2012 Policy. Liberty as prayed for was granted by the Division Bench, without prejudice to the rights and contentions of the parties and the order is as follows:

“1. After some arguments, learned counsel appearing on behalf of the appellants, on instructions, seeks permission to withdraw the present appeal, with liberty to challenge the policy of 2012.

2. The appeal is dismissed as withdrawn, with liberty as prayed for, without prejudice to the rights and contentions of the parties”



18. Learned counsel for the Petitioners calls upon this Court to hold that on account of the liberty granted by the Division Bench, it is open to the Petitioners to once again reagitate the issue of the “combined seniority lists” published for the first time on 30.08.2012. In my considered view, Petitioners cannot be permitted to reagitate the issue of “combined seniority lists”, challenge to which stood negated by the learned Single Judge in W.P. (C) 16086/2022 as barred by delay and laches and estoppel/acquiescence. Reading of the order of the Division Bench makes it palpably clear that the Court has not interfered with the judgment dated 20.12.2023 and thus the finding of the learned Single Judge that the writ petition was barred by delay and laches holds the field. Had the Division Bench found merit in the contention of the Petitioners that they could lay a challenge to the settled seniority after a decade and there was an infirmity in the judgment of the learned Single Judge, the judgment would have been set aside. Quite contrary to this position, Petitioners themselves withdrew the appeal and therefore, the findings in the judgment dated 20.12.2023 have attained finality *qua* the Petitioners who were parties to the *lis*. As a Coordinate Bench, it is not open to this Court to re-open the issues crystalised in the judgment dated 20.12.2023 which has not been disturbed by the Division Bench.

19. Much was argued by learned counsel for the Petitioners that in view of the liberty granted by the Division Bench, it is open to them to file this writ petition and assail the 2012 Policy and the objection is without merit. This argument only deserves to be rejected. From the counter affidavit, it emerges that PPCL and IPGCL were two separate legal entities and after detailed deliberations, a merger was effected. Proposed scheme of



amalgamation/merger was approved by the Government of India and the concerned High Court in consonance with the Companies Act. Pursuant thereto, the 2012 Policy was formulated and basis the Board Resolution dated 15.02.2012, the “combined seniority lists” of employees of PPCL and IPGCL was published. Therefore, quite evidently challenge to the 2012 Policy will have a direct impact on the “combined seniority lists” and “combined seniority posts”, challenge to which stands negated in the earlier writ petition on ground of delay and laches and acquiescence. It is a settled proposition of law that what cannot be done directly cannot be achieved indirectly. [*Ref: Institution of Mechanical Engineers (India) Through Its Chairman v. State of Punjab and Others, (2019) 16 SCC 95*]. Liberty granted by the Division Bench can only be construed as liberty in accordance with law and cannot be read to mean that the Division Bench intended to grant liberty to seek relief which would amount to overreaching the judgment of the learned Single Judge, which was not set aside. Plain reading of the present writ petition shows that while the petition has been camouflaged as laying challenge to a policy, however, the emphasis is entirely on the combined seniority lists and combined list of posts, with alleged consequential impact on the promotional avenues of the Petitioners, who are employees of PPCL and this can be illustratively demonstrated from pages 90, 94, 95 and grounds AA/BB/CC/JJ, etc. of the writ petition.

20. The judgment of the Supreme Court in ***Davinder Pal Singh Bhullar (supra)***, was relied upon by the learned counsel for the Petitioners to put forth the proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings will fall through. This legal proposition can hardly be debated but is wholly inapplicable in the present



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case where the Petitioners are seeking to re-agitate issues decided against them in the earlier round of litigation. In ***Krishna Rai (supra)***, the Supreme Court has held that there is no estoppel against law, a proposition affirmed and reaffirmed by the Supreme Court in several judgments and is open to no quarrel. However, the said judgment does not aid the Petitioners and in no manner negates the time tested proposition of law that long settled seniority cannot be unsettled, which was the foundation of the judgment of the learned Single Judge dismissing W.P. (C) 16086/2022 filed by the Petitioners in the earlier round of litigation and it is not open to this Court to re-open the issue.

21. In view of the aforesaid, the preliminary objection raised on behalf of Respondents No. 1 and 2 is sustained and the writ petition is, accordingly, dismissed. Pending application also stands disposed of.

JYOTI SINGH, J

NOVEMBER 28, 2024/shivam/BSR