

**Court No. - 9**

**Case :-** WRIT - A No. - 9709 of 2024

**Petitioner :-** Bhagirath Prasad Sharma

**Respondent :-** State Of Up And 4 Others

**Counsel for Petitioner :-** Om Prakash Chaube

**Counsel for Respondent :-** C.S.C.

**Hon'ble Subhash Vidyarthi J.**

1. Heard Sri Om Prakash Chaube, the learned counsel for the petitioner and Sri Pradipta Kumar Shahi, the learned Additional Chief Standing Counsel for the State respondents.
2. By means of the instant writ petition filed under Article 226 of the Constitution of India, the petitioner has challenged the validity of an order dated 20.01.2024 passed by the respondent no. 5 - Deputy Director of Education (Secondary), Jhansi rejecting the petitioner's representation for payment of difference in salary for the post of officiating Principal for the period June, 2006 to 30.06.2009, on the ground that there was no provision of payment of salary of a post held on officiating basis at that point of time.
3. Earlier the petitioner had filed a Writ-A No. 227 of 2023 with the following prayers: -
  - “i. To issue a writ, order or direction in the nature of mandamus commanding the respondents to make the payment of gratuity amount to the petitioner along with 9% interest with in stipulated time.*
  - ii. To issue a writ, order or direction in the nature of mandamus commanding the respondent No.3 and 4 to consider the claim/representation dated 14.12.2022/16.12.2022 submitted by the petitioner before him with in stipulated time.”*
4. The aforesaid Writ A No. 227 of 2023 was decided by an order dated 15.02.2023, which states that: -

*“The only prayer made by the counsel for the petitioner to direct the respondent no.5 to pass appropriate orders on the representation made by the petitioner dated 14.12.2022, copy of which is appended as Annexure-9 to the writ petition.*

*On the other hand, it is argued by the learned Standing Counsel that the respondent no.5 namely Deputy Director of Education (Secondary) Jhansi Division Jhansi will take a decision in the matter within a period of six weeks thereafter.*

*At this stage, a prayer has been made by the counsel for the petitioner that petitioner may be permitted to make a fresh representation.*

*In view of the above, without entering in to the merits of the case, the present writ petition is disposed of with liberty to the petitioner to file a fresh comprehensive representation ventilating all his grievances before the respondent no. 5/Deputy Director of Education (Secondary) Jhansi Division Jhansi within a period of three weeks from today along with certified copy of this order and in case any such representation is filed by the petitioner before the respondent no. 5 within the time indicated hereinabove, he shall consider and decide the same strictly in accordance with law by a speaking and reasoned order as expeditiously and preferably within a period of six weeks from the date of filing of such representation by the petitioner before him.”*

5. Apparently, the petitioner had not sought a writ of mandamus for payment of difference in salary for the post of officiating Principal for the period January 2006 to 30.06.2009 even in the earlier writ petition and he had merely sought a direction for disposal of his representations dated 14.12.2022/16.12.2022, wherein he had claimed payment of difference in salary as aforesaid.
6. Thus it appears that the petitioner raised the claim of payment of difference in salary for the period June 2006 to 2009 for the first time through his representation dated 14.12.2022/16.12.2022, i.e., that is after expiry of more than 13 years.
7. By means of the impugned order dated 20.01.2024, the Deputy Director Education (Secondary Education) has rejected the petitioner's representation on the ground that the petitioner had worked as officiating principle for the period June 2006 to 30.06.2009

and at that point of time there was no provision for making payment of salary of Principal to a teacher who worked on the post on officiating basis.

8. In is relevant to note that a Full bench of this Court had held in **Jai Prakash Narayan Singh v. State of U.P.**, 2014 SCC OnLine All 15392 = (2014) 6 All LJ 668, that once the nature of that power is construed as a power to make an appointment albeit on an officiating basis till a regularly selected candidate becomes available, there would be no justification to deny a claim for the payment of salary to such a person who has been appointed on an officiating basis. Where a person has been appointed as an officiating principal until a regularly selected candidate takes charge, this involves an assumption of duties and responsibilities of a greater importance than those attaching to the post of a teacher. Hence, a person who is appointed as an officiating principal under the Statutes of the University until a regularly selected candidate is made available, would be entitled to the payment of salary attached to the post of principal. It was only after the aforesaid Full Bench judgment passed on 26.09.2014, that a person working on a post on officiating basis was held to be entitled to get salary for the post.
9. Even after the aforesaid law was laid down on 26.09.2014, the petitioner has submitted the representation claiming the difference of salary of the post held by him substantively and the post which he held on officiating basis during the period June 2006 to 30.06.2009, on 14/12/2022/16.12.2022 and he has filed the Writ Petition claiming the aforesaid amount in the year 2024.
10. Although, the provisions of the Limitation Act, 1963 do not apply to the proceedings under Article 226 of the Constitution of India, it is settled law that a person should approach the Court for redressal of his grievances with reasonable promptitude and writ petitions raising stale claims would not be entertained by this Court.

11. The learned Counsel for the petitioner has relied upon a judgment in the case of **Union of India v. Tarsem Singh**, (2008) 8 SCC 648, wherein the Hon'ble Supreme Court summarized the law as follows: -

*“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.**”*

(Emphasis added)

12. The same principle of law was reiterated in **State of M.P. v. Yogendra Shrivastava**: (2010) 12 SCC 538, in which it was held that: -

*“18....Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to*

*recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application.”*

13. The learned Counsel for the petitioner has relied upon a judgment rendered by a Division bench of this Court in **Syed Mohammad Suleman versus State of U. P. and 2 Others**: Special Appeal Defective No. 655 of 2015 decided on 15.09.2015, wherein this Court had followed the aforesaid dictum of law laid down in **Tarsem Singh** (Supra).
14. The learned counsel for the petitioner has relied upon the judgment of Division Bench of this Court in **Jwala Devi versus State of U.P. and 5 others**: Special Appeal Defective No. 768 of 2021 decided on 11.01.2022. The relevant portion of the order passed by an Hon'ble Single Judge of this Court in **Jwala Devi versus State of U.P. and 5 others**: Writ A No. 6549 of 2021, decided on 17.08.2021, is being reproduced below: -

*“Learned counsel for the petitioner states that the payment of gratuity is a recurring cause and, therefore, the question of delay would not arise. Arguments advanced on behalf of the petitioner would merit acceptance where the grievance is in respect of payment of pension as such amount becomes due and payable each month. This is not the position with regard to gratuity as the amount is paid in lump sum either at the time of retirement or death of the employee concerned. Unexplained laches in raising grievance, in that regard cannot be explained on the ground that the petitioner has a recurring cause.”*

15. Allowing the Special Appeal filed against the aforesaid order, the Division Bench held that: -

*“It is settled law that payment of gratuity is the right of the employee, provided gratuity is actually payable in accordance with law. Non-payment of gratuity, in the event it is legally payable, is the statutory responsibility of the employer. Therefore, the writ petition of the widow of the deceased employee asking for payment of gratuity cannot be dismissed merely on the ground of laches, unless it is found that the gratuity is not legally payable.”*

16. In **Jwala Devi** (Supra), the question of effect of laches on a Writ Petition filed for claiming payment of arrears of salary was not decided and, therefore, this judgment is not relevant for deciding this issue.
17. In paragraph 21 of the judgment in the case of **Bichitrnanda Behera versus State of Orissa**, 2023 SCC OnLine SC 1307, the Hon'ble Supreme Court has referred to some precedents on the point of laches and the relevant passage is being reproduced below: -

*“21. Profitably, we may reproduce relevant passages from certain decisions of this Court:*

*(A) Union of India v. Tarsem Singh, (2008) 8 SCC 648:*

*“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 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. 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.”*

*(emphasis supplied by the Hon'ble Supreme Court)*

*(B) Union of India v. N Murugesan, (2022) 2 SCC 25:*

***“Delay, laches and acquiescence***

*20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can*

say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the court.

### **Laches**

21. The word “laches” is derived from the French language meaning “remissness and slackness”. It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.

22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.

23. A defence of laches can only be allowed when there is no statutory bar. The question as to whether there exists a clear case of laches on the part of a person seeking a remedy is one of fact and so also that of prejudice. The said principle may not have any application when the existence of fraud is pleaded and proved by the other side. To determine the difference between the concept of laches and acquiescence is that, in a case involving mere laches, the principle of estoppel would apply to all the defences that are available to a party. Therefore, a defendant can succeed on the various grounds raised by the plaintiff, while an issue concerned alone would be amenable to acquiescence.

### **Acquiescence**

24. We have already discussed the relationship between acquiescence on the one hand and delay and laches on the other.

25. Acquiescence would mean a tacit or passive acceptance. It is 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. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis.”

(emphasis supplied by the Hon'ble Supreme Court)

(C) Chairman, State Bank of India v. M J James, (2022) 2 SCC 301:

“36. What is a reasonable time is not to be put in a straitjacket formula or judicially codified in the form of days, etc. as it depends upon the facts and circumstances of each case. A right not exercised for a long time is nonexistent. Doctrine of delay and laches as well as acquiescence are applied to non-suit the litigants who approach the court/appellate authorities belatedly without any justifiable explanation for bringing action after unreasonable delay. In the present case, challenge to the order of dismissal from service by way of appeal was after four years and five months, which is certainly highly belated and beyond justifiable time. Without satisfactory explanation justifying the delay, it is difficult to hold that the appeal was preferred within a reasonable time. Pertinently, the challenge was primarily on the ground that the respondent was not allowed to be represented by a representative of his choice. The respondent knew that even if he were to succeed on this ground, as has happened in the writ proceedings, fresh inquiry would not be prohibited as finality is not attached unless there is a legal or statutory bar, an aspect which has been also noticed in the impugned judgment. This is highlighted to show the prejudice caused to the appellants by the delayed challenge. We would, subsequently, examine the question of acquiescence and its judicial effect in the context of the present case.

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38. In Ram Chand v. Union of India [Ram Chand v. Union of India, (1994) 1 SCC 44] and State of U.P. v. Manohar [State of U.P. v. Manohar, (2005) 2 SCC 126] this Court observed that if

*the statutory authority has not performed its duty within a reasonable time, it cannot justify the same by taking the plea that the person who has been deprived of his rights has not approached the appropriate forum for relief. If a statutory authority does not pass any orders and thereby fails to comply with the statutory mandate within reasonable time, they normally should not be permitted to take the defence of laches and delay. If at all, in such cases, the delay furnishes a cause of action, which in some cases as elucidated in Union of India v. Tarsem Singh [Union of India v. Tarsem Singh, (2008) 8 SCC 648 : (2008) 2 SCC (L&S) 765] may be continuing cause of action. The State being a virtuous litigant should meet the genuine claims and not deny them for want of action on their part. However, this general principle would not apply when, on consideration of the facts, the court concludes that the respondent had abandoned his rights, which may be either express or implied from his conduct. Abandonment implies intentional act to acknowledge, as has been held in para 6 of Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. [Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409 : 1979 SCC (Tax) 144] Applying this principle of acquiescence to the precept of delay and laches, this Court in U.P. Jal Nigam v. Jaswant Singh [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] after referring to several judgments, has accepted the following elucidation in Halsbury's Laws of England: (Jaswant Singh case [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500], SCC pp. 470-71, paras 12-13)*

*“12. The statement of law has also been summarised in Halsbury's Laws of England, Para 911, p. 395 as follows:*

*‘In determining whether there has been such delay as to amount to laches, the chief points to be considered are:*

*(i) acquiescence on the claimant's part; and*

*(ii) any change of position that has occurred on the defendant's part.*

*Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.’*

13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?"

39. Before proceeding further, it is important to clarify distinction between "acquiescence" and "delay and laches". Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. [See *Prabhakar v. Sericulture Deptt.*, (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149. Also, see *Gobinda Ramanuj Das Mohanta v. Ram Charan Das*, 1925 SCC OnLine Cal 30 : AIR 1925 Cal 1107] In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, [See *Vidyavathi Kapoor Trust v. CIT*, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. [See *Krishan Dev v. Ram Piari*, 1964 SCC OnLine HP 5 : AIR 1964 HP 34] Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. [See "Introduction", U.N. Mitra, *Tagore Law Lectures — Law of Limitation and Prescription*, Vol. I, 14<sup>th</sup> Edn., 2016.] However, acquiescence will not apply if lapse of time is of no importance or consequence.

*40. Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person. [See Vidyavathi Kapoor Trust v. CIT, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] Given the aforesaid legal position, inactive acquiescence on the part of the respondent can be inferred till the filing of the appeal, and not for the period post filing of the appeal. Nevertheless, this acquiescence being in the nature of estoppel bars the respondent from claiming violation of the right of fair representation.”*

(emphasis supplied by the Hon’ble Supreme Court)

18. In **Mrinmoy Maity v. Chhanda Koley**, 2024 SCC OnLine SC 551, the Hon’ble Supreme Court held that: -

*“9. ...An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.*

*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 laches 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 laches, 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 laches on the part of the applicant in approaching a writ court.”*

19. Therefore, the law is well settled that a claim for arrears of salary for a period earlier than three years, cannot be entertained by the High Court and the Writ Petition filed in the year 2024 for claiming payment of arrears of salary for the period June, 2006 to 30.06.2009 cannot be entertained.
20. Further, the mere fact that the petitioner had filed Writ A No. 227 of 2023 which was disposed off by means of an order dated 15.02.2023, giving the petitioner liberty to file a representation ventilating his grievances, the submission of the representation and rejection thereof will not revive the more than 15 years old stale cause of action of the petitioner.
21. In the case of **State of Uttaranchal and another Vs. Sri Shiv Charan Singh Bhandari and others**: (2013) 12 SCC 179 the Hon'ble Supreme Court held that *“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.”*

22. The aforesaid decision has been relied upon by the Hon'ble Supreme Court in **State of West Bengal Vs. Debabrata Tiwari**: 2023 SCC OnLine SC 219, where after submitting an application in the year 2005-06 the petitioners did nothing further to pursue the matter for a period of ten years. The Hon'ble Supreme Court held that such prolonged delay in approaching the High Court may be regarded as a waiver of a remedy and such a delay would disentitle the writ petitioners to the discretionary relief under Article 226 of the Constitution of India.
23. In view of the aforesaid discussion, the Writ Petition filed in the year 2024 claiming payment of difference in salary for the period June 2006 to 2009, i.e., that is after expiry of more than 15 years, suffers from laches and the same is dismissed on this ground alone.

**(Subhash Vidyarthi J.)**

Order Date: 09.07.2024

Ruhi H.