

कार्यभारित कर्मचारियों को कमोन्नति और समयमान वेतनमान का लाभ प्रदान करने संबंधी प्रकरणों को विलम्ब के आधार पर खारिज कराये जाने के लिए आवश्यक तथ्यों एवं मान उच्चतम न्यायालय के निर्णयों का विवरण

कार्यभारित कर्मचारियों को कमोन्नति और समयमान वेतनमान का लाभ प्रदान करने संबंधी प्रकरण, म.प्र.शासन सामान्य प्रशासन विभाग (वेतन आयोग प्रकोष्ठ) मंत्रालय भोपाल के परिपत्र क्रमांक एफ 5-4/1/वेआप्र/98 भोपाल दिनांक 27 मार्च 2001/29 मार्च 2001 पर आधारित है, जिनमें कार्यभारित स्थापना के अन्य पदों पर कार्यरत कर्मचारियों द्वारा कार्यभारित वाहन चालकों के समान 12 वर्ष एवं 24 वर्ष के उपरांत उक्त परिपत्र के माध्यम से उन्हें दिये गये दो कमोन्नत वेतनमान का लाभ चाहा गया है। यदि उक्त परिपत्र के जारी होने के दिनांक को देखा जावे तो इन प्रकरणों में Cause Of Action वर्ष 2001 में ही उत्पन्न हो गया था। कार्यभारित वाहन चालकों के समान लाभ प्राप्त करने के लिये कर्मचारियों द्वारा "के. एल.असरे" (निर्णय वर्ष-2005) एवं तेजूलाल यादव (निर्णय वर्ष-2009) प्रकरण का सहारा लिया गया है। यदि इन प्रकरणों का न्यायालयीन दृष्टांतों एवं परिपत्र दिनांक 27 मार्च 2001/29 मार्च 2001 के आधार पर विश्लेषण किया जावे तो यह पाया जाता है कि :- (i) यदि परिपत्र को आधार बनाया जाये तो करीब 20 वर्षों के उपरांत एवं यदि (ii) न्यायालयीन दृष्टांतों को आधार बनाया जावे तो करीब 12-13 वर्षों के उपरांत रिट याचिकायें दायर की गई हैं, जो कि पूरी तरह से अत्यधिक विलंब से दायर प्रकरणों की श्रेणी में आती हैं।

इसके अतिरिक्त कार्यभारित कर्मचारियों द्वारा नियमित कर्मचारियों के लिये वर्ष 2008 में लागू की गई समयमान योजना (वित्त विभाग का परिपत्र क्रमांक एफ11/1/2008/नियम/चार/भोपाल दिनांक 24 जनवरी 2008) का लाभ भी अपनी रिट याचिकाओं के माध्यम से चाहा गया है। यदि परिपत्र के जारी होने के दिनांक को देखा जाये तो इस तरह के लाभों हेतु भी 12-13 वर्षों के पश्चात रिट याचिकायें दायर की गयी हैं।

इन सभी प्रकरणों का एक महत्वपूर्ण पहलू यह भी है कि वित्त विभाग म.प्र.शासन द्वारा आदेश क्रमांक एफ 11-13/1661/2016/नियम/चार भोपाल दिनांक 21.09.2016 के माध्यम से, वर्ष 2008 में नियमित कर्मचारियों को दिये गये समयमान वेतनमान के लाभ को कार्यभारित कर्मचारियों हेतु लागू कर दिया था। सभी वादी कर्मचारियों को जो दिनांक 01.01.2016 की स्थिति में सेवारत थे, उक्त लाभ दिये जा चुके हैं। कर्मचारियों ने उनके लिये वर्ष 2016 में लाई पॉलिसी का लाभ लेते समय अथवा पॉलिसी लागू करने के दिनांक से, वर्तमान रिट याचिकायें दायर करने के पूर्व तक, उक्त पॉलिसी के विरोध में कोई बात नहीं कही है तथा उक्त पॉलिसी को पूर्णतः स्वीकार किया है। पॉलिसी को स्वीकार करने एवं उसका लाभ लेने के 5-6 वर्षों पश्चात इस तरह के लाभ पूर्व के दिनांकों से प्राप्त करने हेतु रिट याचिकायें दायर करना किसी भी दृष्टि से न्यायसंगत नहीं है।

उपरोक्तानुसार सभी दायर प्रकरण उल्लेखित अत्याधिक विलंब से संबंध रखते हैं, तथा इसी आधार पर खारिज किये जाने योग्य हैं।

यदि इन प्रकरणों को माननीय उच्चतम न्यायालय द्वारा निर्णित "एम.आर.गुप्ता बनाम भारत संघ के अन्य में पारित निर्णय दिनांक 21 अगस्त 1995 [1996 AIR 669]" में उल्लेखित "Continuons Cause of action" के दृष्टिकोण से भी देखा जाये, तो सेवानिवृत्त कर्मचारियों के मामले "Cause of

action" के अभाव में खारिज किये जाने योग्य हैं, तथा सेवारत कर्मचारियों को रिट याचिका दायर करने के दिनांक से मात्र 03 वर्ष पूर्ण तक की ही एरियर राशि की पात्रता आती है।

माननीय न्यायालय द्वारा वर्ष 2013 एवं 2015 में सेवानिवृत्त हुये कर्मचारियों को वर्ष 2023 में दायर की गई रिट याचिकाओं के आधार पर के इस तरह के लाभ देने के आदेश दिये हैं। ऐसे में इन प्रकरणों में "एम.आर गुप्ता" प्रकरण के अनुसार वर्तमान स्थिति में वेतन पुनरीक्षण एवं तीन वर्ष पूर्व तक की एरियर राशि देना किसी भांति संभव नहीं है।

माननीय उच्चतम न्यायालय द्वारा विलंब के संबंध में पारित कुछ निर्णयों का उल्लेख निम्नानुसार है :-

(i) The Apex Court in Northern Indian Glass Industries vs. Jaswant Singh & others 2002 Supp(3) SCR 534, wherein the Court cautioned that the High Court cannot ignore the delay and laches in approaching the writ court and there must be satisfactory explanation by the petitioner as how he could not come to the court well in time.

A similar view was reiterated by the Apex Court in Printers (Mysore) Ltd. Vs. M.A. Rasheed & another (2004) 4 SCC 460, wherein it held that the High Court should have dismissed the writ petition on the ground of delay and laches.

(ii) The Apex Court in S.S. Balu vs. State of Kerala (2009) 2 SCC 479 in the following terms:

"17. It is also well-settled principle of law that "delay defeats equity". The Government Order was issued on 15-1-2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal thereagainst, they impleaded themselves as party-respondents.

It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage."

(iii) The Apex Court in Karnataka Power Corporation Ltd. vs. K. Thangappan (2006) 4 SCC 322 held that series of representation cannot extend the period of limitation to condone the laches on the part of the petitioner. The Apex Court, at Paragraph 6, held as follows:

6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as

taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party.

(iv) In *G. C. Gupta vs. N.K. Pandey* (1988) 1 SCC 316, the Apex Court held that inordinate delay is not merely a factor for the court to refuse appropriate relief but also a relevant consideration for not unsettling settled things.

(v) In *State of Maharashtra v. Digambar* reported in AIR 1995 SC 1991, the Hon Supreme Court, considered a case, where compensation for the acquired land was claimed belatedly and at Paragraph 21, held as follows:

21. Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement of such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily.

(vi) In *State of Rajasthan v. D.R.Laxmi* reported in 1996 (6) SCC 445, the Apex Court observed that though the order may be void, if the party does not approach the Court within a reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner.

(vii) In *Board of Secondary Education of Assam v. Mohd. Sarifuz Zaman*, reported in (2003) 12 SCC 408, the Apex Court has observed as follows:

12. Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting into depriving of the remedy, is a principle based on public policy and utility and not equity alone.

(viii) In *Virender Chaudhary v. Bharat Petroleum Corporation* reported in 2009 (1) SCC 297, the Apex Court held that the court exercises its jurisdiction only upon satisfying itself that it would be equitable to do so and also observed that Delay/ Laches, indisputably, are the relevant factors. The Court held thus:

15. The Superior Courts, times without number, applied the equitable principles for not granting a relief and/or a limited relief in favour of the applicant in a case of this nature. While doing so, the court although not oblivious of the fact that no period of limitation is provided for filing a writ petition but emphasize is laid that it should be filed within a reasonable time. A discretionary jurisdiction under Article 226 of the Constitution of India need not be exercised if the writ petitioner is guilty of delay and laches.

(ix) In *Lipton India Ltd. v. Union of India* [(1994) 6 SCC 524] and *M.R.Gupta v. Union of India* [(1995) 5 SCC 628]) the Apex Court held that Although, there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily, writ petition should be filed within a

reasonable time and in case of entitlement of arrear amount, it will be limited to the period of three years prior to the date of filing of writ petition.

(ix) In *Chennai Metropolitan Water Supply & Sewerage Board v. T. T. Murali Babu* 2014 (4) SCC 108, the Apex Court held as follows:

Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not.

Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant ♦ a litigant who has forgotten the basic norms, namely, procrastination is the greatest thief of time and second, law does not permit one to sleep and rise like a phoenix.

Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years ♦ delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice.

On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others ♦ ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons ♦ who compete with ♦ Kumbhakarna ♦ or for that matter Rip Van Winkle. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

(x) In *Brijesh Kumar v. State of Haryana* 2014 (11) SCC 351, the Apex Court held that it is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at

a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

(xi) In *Prabhakar v. Joint Director, Sericulture Department* reported in 2015 (3) SCC 1, the Apex Court held as follows:

37. Let us examine the matter from another aspect viz. laches and delays and acquiescence.

38. It is now a well-recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity delay defeats equities.

(xii) In *State of Jammu and Kashmir v. R.K.Zalpuri* reported in 2015 (15) SCC 602, the Apex Court, at paragraph 27, held as follows:

27. The grievance agitated by the respondent did not deserve to be addressed on merits, for doctrine of delay and laches had already visited his claim like the chill of death which does not spare anyone even the one who fosters the idea and nurtures the attitude that he can sleep to avoid death and eventually proclaim *Deo gratias*.

(xiii) The Apex Court in *Rup Diamonds & Ors vs Union Of India And Ors* 1989 SCR (1) 13 has held in clear terms that Recourse to judicial proceedings should be within 'reasonable time' and the Petitioner cannot rise from slumber to seek indulgence of Court and held thus:

"Apart altogether from the merits of the grounds for rejection on which it cannot be said that the mere rejection of the Special Leave Petitions in the cases of *M/s. Ripal Kumar & Co.*, and *M/s. H. Patel & Co.*, could by itself, be construed as the imprimatur of this Court on the correctness of the decisions sought to be appealed against--there is one more ground which basically sets the present case apart. Petitioners are re-agitating claims which they had not pursued for several years.

Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. There case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a Court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate delay in preferring this writ petition which is brought after almost an year after the first rejection."