

(2019) 05 J&K CK 0046

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 3137 Of 2001

Bal Krishan Bhat

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 23-05-2019

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 409, 467
Constitution Of India, 1950 — Article 14, 226

Citation : (2019) 05 J&K CK 0046

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Sunil Sethi, Mohit Vaid, S. S. Nanda

Final Decision : Dismissed

Judgement

Rajesh Bindal, J

1. The petitioner has filed the present petition with a prayer for quashing of suspension order allegedly issued in May, 1977, with a further prayer to grant him all consequential benefits by treating the order of suspension as non-est.

2. Mr. Sunil Sethi, learned senior counsel for the petitioner submitted that the petitioner had joined service in the year 1970 and was discharging his duties honestly. While he was working as Nazir at Sonawari, District Baramulla in May, 1977, he was falsely involved in a criminal case, on the basis of which FIR No.37 of 1977 was registered against him at Police Station Sumbal on 24.04.1977, under Sections 409/467 RPC. It was alleged that the petitioner had embezzled an amount of ₹ 15,608/-. The petitioner was pressurized to deposit the amount which he refused being not involved in embezzlement. However, the money was deposited by A.G Mir the then Tehsildar (now deceased) in the name of the petitioner, getting his signature forcibly. Immediately the petitioner was suspended. Initially he was paid 50% as subsistence allowance which was enhanced to 75% but after migration it was reduced to 50%. Challan in the FIR

was presented in the year 1986, which was not complete and the matter remained pending. Subsequently it was transferred to Jammu, however, despite repeated opportunities, complete and bifurcated Challan was not presented. As a result of which vide order dated 05.12.1997, the Challan already filed was consigned to record with liberty to the APP to get the matter revived in case fresh Challan is filed. Nothing was done by the State thereafter and the petitioner continued to suffer. Neither the petitioner was prosecuted nor any departmental proceedings were initiated against him, however, still he remained under suspension from February, 1977 till the date of his retirement in May, 2002.

3. It was further submitted that number of communications were sent by the department, where the petitioner was working, to the Public Prosecutor for return of record, however, the same was not done. Even legal notice got issued by the petitioner did not yield any result. Copy of the suspension order was never supplied. Referring to the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 (hereinafter referred to as 'the 1956 Rules') and the Government instructions issued vide Notification dated September 26, 1978, it was submitted that the suspension of an employee was required to be reviewed periodically after three months. In the case of the petitioner nothing was done. In support of his arguments, reliance was placed on judgment of Hon'ble the Supreme Court in Ajay Kumar Choudhary vs. Union of India through its Secretary and another, AIR 2015 SC 2389.

4. On the other hand, learned counsel for the respondents submitted that the record of the case is not traceable for the reason that two more districts, namely, Kupwara and Bandipora, were carved out of the district where the petitioner was earlier working. The suspension order may have been passed once the petitioner is claiming that he was only getting the suspension allowance. In fact, the petitioner had taken the calculated risk while not approaching any authority to seek even copy of the suspension order. The Writ Petition was filed when he was nearing retirement, claiming that his suspension is wrong and he deserves to be reinstated back in service. He in fact wanted to enjoy the fruits without working. Even if there is a duty cast on the authority to review the suspension periodically but still in case there was any inaction, the petitioner was required to point out the same and raise the issue before the competent authority or approach the Court within some reasonable time.

5. Heard learned counsel for the parties and perused the writ petition. No objections have been filed despite repeated opportunities.

6. The case in hand is a glaring example of inaction on the part of various authorities working in the State. The result is beyond imagination. This clearly shows that none is serious to review the working in any department as if the officers concerned who are heading different departments or the districts have no control over their subordinates or the work assigned to them. Inaction is writ large on the face of it. The State authorities are custodians of public money. Here the petitioner is claiming payment of salary and other retiral dues without even

working. He joined service in the year 1970; was placed under suspension in the year 1977 and retired as such in May 2002. He remained under suspension for more than 24 years as if none in the State was concerned as to whether any action was required to be taken against an employee who was placed under suspension or his period of suspension was required to be reviewed considering the charge against him.

7. Not only this, the conduct of the investigating agency is also totally in contravention to the object for which it has been created. For the FIR registered in the year 1977, as the facts are available on record, Challan for the first time was presented in the year 1986. The offences as per the FIR were under Sections 409/467 RPC. For these offences period of nine years for investigation cannot be explained under any circumstances. Rather one can always view that reasons may be extraneous. The matter regarding investigation and prosecution does not end here as subsequent thereto, the matter was taken up by the Court number of times. Some orders have been placed on record from 1994 onwards. On 17.01.1994, learned 2nd Additional Sessions Judge, Jammu observed that the charges need to be bifurcated but still the parties sought time to argue the matter. On 17.07.1995 the Court directed that separate Challans were required to be filed for more than three offences within a period of one year. On 05.12.1997, on failure of the prosecution to comply with the Court order, the Challan already filed was consigned to record with liberty to the APP to get the same revived in case fresh Challans are filed. The petitioner was present in Court on that date. Order passed by the learned 2nd Additional Sessions Judge, Jammu, on 05.12.1997 is extracted below:-

" The case was to be argued on the point of charge. But learned counsel for the accused submitted that this court had already passed a direction on 17.7.1995 asking the learned A.P.P to present separate challans for separate offences so that each challan should not have more than three offence committed within a period of one year. Thus learned defence counsel submitted that unless A.P.P presents separate challans, no charge can be framed against the accused person. However, A.P.P submitted that this court can itself charge the accused person for any of the three offences committed within a period of one year.

The submission of A.P.P is not tenable because if the court undertakes the duty of separating the challans or selecting the charges, it will amount to stepping into the shoes of the prosecution or to act as a prosecutor, which will definitely cause prejudice to the accused person. It is the duty of the State to present charge sheets against the accused persons and not that of the court who deals in the dispensation of the justice.

From the perusal of the record it is revealed that A.P.P was directed on 17.7.1995 to present separate challans, but till date he has failed in abiding by the above direction.

In these circumstances this court is unable to proceed further in the matter till

the separate challans are produced before this court against the present accused. Accordingly this challan is directed to be consigned to records. A.P.P is at liberty to ask for the release of the record from this court in case he desire to file fresh challans against the accused."

8. Even thereafter the record, as available, shows that the prosecuting agency slept over the matter. If the investigating and prosecuting agencies behave in this manner, the purpose for which these have been created will certainly be defeated as in more than two decades even proper Challan could not be presented for offences under Sections 409/467 RPC with allegation of embezzlement of amount which even according to the petitioner was deposited though claimed to be under pressure.

9. These facts clearly establish that there is no review or monitoring of the working of the prosecuting agency at different levels. The machinery has apparently failed.

10. Financial Commissioner sent a communication to the Assistant Public Prosecutor on 13.04.1999 asking for release of record from the Court. Noticing the fact that in the absence of presentation of separate Challans the prosecution failed, even that office did not care to ask the reasons for non-compliance of the Court order. A reminder was also sent on 06.04.2000. On 10.04.2000, the Public Prosecutor responded to the office of Financial Commissioner. It was stated that SSP Crime Branch, Srinagar, was apprised of the order passed by the Court on 05.12.1997 but till date no action has been taken. The record with the Court could only be got released by the Crime Branch, Srinagar or certified copy should be obtained. There is no other communication available on record. On 12.03.1998 the petitioner got a legal notice issued to the Financial Commissioner, Revenue seeking his reinstatement with all consequential benefits. A reminder was also sent on 30.03.2000. Subsequent thereto writ petition was filed.

11. There is no response filed to the writ petition as the stand taken is that the record of the case is not available with the department. Hence, this Court is left with a situation where the matter is to be decided on the basis of the pleadings of the petitioner.

12. Though the petitioner herein claims that he was placed under suspension in May, 1977 and was being paid subsistence allowance initially @ 50% which subsequently was enhanced to 75% but again reduced to 50% but he has not placed on record any suspension order passed. The submission of learned senior counsel for the petitioner was that it was not supplied to the petitioner. The order must have been passed on files, hence, the department started paying subsistence allowance to the petitioner informing him that he had been placed under suspension. He believed the same and is getting subsistence allowance ever since then. There is nothing on record to show that the petitioner ever raised issue regarding reduction of his subsistence allowance.

13. The fact cannot be disputed and the petitioner after being placed under suspension allegedly on account of registration of criminal case against him with the allegations of embezzlement, did not file any representation or approach the Court till such time the present petition was filed. He never requested the department even to supply him copy of the suspension order. He was sitting quiet getting subsistence allowance without working. He never raised issue regarding reduction of his suspension allowance. The present petition was filed in December, 2001 when the petitioner was to retire in May, 2002. He did not raise any grievance even after registration of FIR against him in which no Challan was presented for years together. He had been appearing in the criminal case against him wherein the Court had directed for presentation of separate Challans but still did not raise any issue. He never raised any issue that he is under suspension without supply of copy of suspension order and even no charge sheet had been issued. Further in the criminal case registered even challan had not been presented for nine years. Apparently, the petitioner also wanted to avoid everything and take the benefit of delay and further with the passage of time even the record may not be available and it happened so, as with the bifurcation of district Baramulla with creation of two more districts Kupwara and Bandipora, as claimed by learned counsel for the State, the record of the petitioner was misplaced.

There is nothing on record to suggest that any charge sheet was issued against the petitioner for holding departmental enquiry. Even complete and proper Challan was also not presented in the FIR registered against him. However, still the fact remains that this court cannot shut its eyes on the glaring facts which are available on record namely filing of the present petition by the petitioner more than 24 years after his alleged suspension, seeking reinstatement when he was close to his retirement as if the public money was to be paid to him as a bounty. Whatever suspension allowance he got it, that was also without any work performed by him. No doubt even departmental functionaries are also at fault for the same.

14. Different facets of issue regarding delay and laches in filing the petition had been subject matter of consideration before Hon'ble the Supreme Court on number of occasions, wherein it has been consistently opined that the party can be denied relief if he sleeps over the matter.

15. In *State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others*, 2013(6) SLR 629, Hon'ble the Supreme Court, while considering the issue regarding delay and laches and referring to earlier judgments on the issue, opined that repeated representations made will not keep the issues alive. A stale or a dead issue/dispute cannot be got revived even if such a representation has either been decided by the authority or got decided by getting a direction from the court as the issue regarding delay and laches is to be decided with reference to original cause of action and not with reference to any such order passed. Delay and laches on the part of a government servant may even deprive him of

the benefit which had been given to others. Article 14 of the Constitution of India, in a situation of that nature, will not be attracted as it is well known that law leans in favour of those who are alert and vigilant. Even equality has to be claimed at the right juncture and not on expiry of reasonable time. Even if there is no period prescribed for filing the writ petition under Article 226 of the Constitution of India, yet it should be filed within a reasonable time. Such an order promoting a junior should normally be challenged within a period of six months or at the most in a year of such promotion. Though it is not a strict rule, the courts can always interfere even subsequent thereto, but relief to a person, who allows things to happen and then approach the court and puts forward a stale claim and try to unsettle settled matters, can certainly be refused relief on account of delay and laches. Anyone who sleeps over his rights is bound to suffer. An employee who sleeps like Rip Van Winkle and got up from slumber at his own leisure, deserves to be denied the relief on account of delay and laches. Relevant paragraphs from the aforesaid judgment are extracted below:-

"13. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983. In *C. Jacob v. Director of Geology and Mining and another*, (2008) 10 SCC 115, a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus:-

"Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim." [Emphasis supplied]

14. In *Union of India and others v. M. K. Sarkar*, (2010) 2 SCC 59, this Court, after referring to *C. Jacob* (supra) has ruled that when a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such

decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a Court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In *Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another*, (2006) 4 SCC 322, the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

16. In *State of Orissa v. Pyarimohan Samantaray*, (1977) 3 SCC 396, it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in *State of Orissa v. Arun Kumar Patnaik*, (1976) 3 SCC 579.

17. In *Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others*, (2011) 4 SCC 374, a three-Judge Bench of this Court reiterated the principle stated in *Jagdish Lal v. State of Haryana*, (1977) 6 SCC 538 and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

18. In *State of T. N. v. Seshachalam*, (2007) 10 SCC 137, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus:-

"... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant."

19. There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in *Ghulam Rasool Lone v. State of Jammu and Kashmir and another*, (2009) 15 SCC 321.

20. In *New Delhi Municipal Council v. Pan Singh and others*, (2007) 9 SCC 278,

the Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

21. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in *P. S. Sadasivaswamy v. State of Tamil Nadu*, (1975) 1 SCC 152, wherein it has been laid down that a person aggrieved by an order of promoting a junior over his head should approach the court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time, but it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters.

22. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time." [Emphasis supplied]

16. The aforesaid view was followed by Hon'ble the Supreme Court in Union of India and others vs Chaman Rana 2018(5) SCC 798 and Union of India and others vs. C. Girija and others, 2019 (3) SCALE 527.

17. In Chennai Metropolitan Water Supply and Sewerage Board and others v. T. T. Murali Babu, 2014 (4) SCC 108, Hon'ble the Supreme Court opined as under:-

"13. First, we shall deal with the facet of delay. In Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others, AIR 1969 SC 329, the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp, (1874) 5 PC 221, which is as follows:-

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

14. In State of Maharashtra v. Digambar, (1995) 4 SCC 683, while dealing with exercise of power of the High Court under Article 226 of the Constitution, the Court observed that power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.

15. In State of M. P. and others etc. etc. vs. Nandlal Jaiswal and others etc. etc., AIR 1987 SC 251, the Court observed that it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. It has been further stated therein that if there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the

High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

16. 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."

[Emphasis supplied]

18. In *Bal Krishan vs. State of Punjab and others*, 2013(2) RSJ 18, (P&H), wherein the petitioner, after rendering about 34 years of service, sought refixation of his pay from the date he joined service by filing a petition more than three years after his retirement. The court dismissed the writ petition on account of delay and laches only.

19. The issue regarding decision of a claim on a direction by the Court on the representation filed by a writ petitioner was also considered in *Union of India and*

others vs. M.K. Sarkar, 2010 (2) SCC 59, wherein it was held that the issue of limitation or delay and laches is to be considered with reference to original cause of action and not with reference to an order passed in compliance to Court's direction. The Court's direction to consider representation or a decision given in compliance thereof, will not extend the limitation or erase the delay and laches.

20. In Vijay Kumar Kaul and others vs. Union of India and others 2012 (7) SCC 610, Hon'ble the Supreme Court declined relief to the petitioners who were fence sitters as they had approached the Court after the issues raised by other employees were decided. Relief was declined on account of delay and laches.

21. The issue was further examined in Prabhakar vs. Joint Director Sericulture Department and another, (2015) 15 SCC 1. It was a case under the Industrial Disputes Act. In the aforesaid case the matter in dispute was regarding delay in raising the industrial dispute. The opinion expressed by the Court was that right not exercised for a long time is non-existent even if there is no limitation period prescribed. The litigant was non-suited on the doctrine of delay and laches as well as doctrine of acquiescence. Paragraph 38 of the judgment is extracted below:-

"38. Likewise, if a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while the act is in progress he cannot afterwards complain. This principle is based on the doctrine of acquiescence implying that in such a case party who did not make any objection acquiesced into the alleged wrongful act of the other party and, therefore, has no right to complain against that alleged wrong."

22. The Halsbury's Laws of England explains delay, laches and acquiescence as under:

"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."

23. In State of Jammu & Kashmir vs. R. K. Zalpuri and others 2015 (15) SCC 602, Hon'ble the Supreme Court considered the issue regarding delay and laches

in raising the dispute before the Court. It was opined that the issue sought to be raised by the petitioners therein was not required to be addressed on merits on account of delay and laches. The relevant paras thereof are extracted below:-

"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 - ?thanks to God?.

28. Another aspect needs to be stated. A writ court while deciding a writ petition is required to remain alive to the nature of the claim and the unexplained delay on the part of the writ petitioner. Stale claims are not to be adjudicated unless non-interference would cause grave injustice. The present case, need less to emphasise, did not justify adjudication. It deserves to be thrown overboard at the very threshold, for the writ petitioner had accepted the order of dismissal for half a decade and cultivated the feeling that he could freeze time and forever remain in the realm of constant present."

24. The case in hand is unique in nature namely that the petitioner herein is seeking quashing of his suspension without placing the order on record. He merely says that the department is paying him subsistence allowance claiming that he was under suspension and he started getting the same. It is undisputed that the petitioner did not make any effort for all this period from 1977 till the filing of the writ petition in the year 2001 to seek even copy of the suspension order what to talk about challenging the same or making any representation to the authorities for his reinstatement. He did not even raise issue regarding reduction of his subsistence allowance from 75% to 50% after migration, as pleaded. Even repeated representations also do not revive a stale cause of action as it has to be examined in the light of the date of original cause of action. There being no record available with the State even the stand of learned counsel was that there may be some suspension order as the petitioner is claiming that he was only paid the subsistence allowance but he cannot comment positively. This Court is in a dilemma as to what to quash as there is no order on record as such.

25. No doubt there is duty cast upon the employer to review the suspension of an employee periodically but equally important is the fact that an employee who is under suspension for a long period is also duty bound to point out the same to his employer. His silence will certainly go against him, if the delay is not satisfactorily explained. Rights are meant to be enforced within reasonable time. Any delay can certainly affect the relief which can be sought from the court. Right may not be extinguished but the remedy may be.

26. The petitioner, who had joined service in the year 1970 had worked only for a period of seven years till 1977 and is now seeking payment of salary and all consequential benefits for more than 24 years without working, as he retired from service in May 2002. An employee who is placed under suspension and is

not getting full salary, which according to him is not sustainable, will certainly run from pillar to post to get this grievance redressed but the petitioner herein kept quiet sitting at home as if he was being paid some pension by the State. There is no explanation forthcoming for inordinate delay of 24 years in filing of petition after the petitioner was allegedly placed under suspension, what to talk of its satisfactory explanation.

27. Not only this, there is no representation to the department to supply him copy of the suspension order or praying for reinstatement. Grant of relief to such a petitioner at this stage after a huge delay will not only burden state exchequer unduly but even unsettle many settled things. It may generate more litigation as the claim is sought to be made of all consequential benefits, without even working. Had the petitioner raised issue regarding his suspension with the authority at appropriate time, necessary action may have been taken to redress his grievance but the petitioner for the reasons best known to him slept over the matter.

28. It is settled law that one who seeks equity must do equity. Here the conduct of the petitioner does not show that. If his source of income was only the employment and salary, he would have certainly taken steps immediately for redressal of his grievance but apparently he was having other sources of income. Under such circumstances, I do not find it to be a fit case in which the petitioner can either be granted salary for the period he did not work i.e. from the date of his alleged suspension, till the date of his retirement or any other consequential benefit, which may be due to him during this period as he has admittedly not worked and had not raised any grievance regarding his suspension. An employee who is living in slumber cannot be allowed to get up at his own whims and fancies and seek payment of huge money from the State without even working.

29. Now coming to the issue of grant of consequential benefits, once this Court is not satisfied with the conduct of the petitioner regarding approaching the Court after inordinate delay of more than 24 years for challenging a non-existent suspension order and this Court is of the view that he is not required to be paid any salary for the aforesaid period as he did not work, I do not find any good reason to award him any retiral benefits as such. The petitioner herein had worked only for a period of seven years and he wants the pensionary benefits by treating him as deemed in service after quashing his suspension. However, any amount which was deducted out of the salary of the petitioner such as G.P Fund etc., which may be lying with the State may be paid to him along with interest due thereon. Public money cannot be allowed to be usurped by employees like the petitioner. It is contribution of hard earned money of the tax payers. The State is custodian thereof. Hence, even the claim regarding payment of retiral dues is also rejected.

30. Before parting with the judgment, this Court is constrained to comment on the working of the State. An employee, who as is available from the facts of the case in hand, was placed under suspension in the year 1977, no authority ever

thought of reviewing that order or ensuring any action against him, as if there is no record available of the employees working in different establishments. Chief Secretary of the State is directed to collect data from all the different departments and autonomous bodies about the employees who have been placed under suspension, the period thereof and if there is inordinate delay in taking action against them, the reasons therefor and appropriate action be taken in the matter in all those pending cases without any delay. Needful be done within four months from the date of receipt of copy of the order.

31. Though this case was fit for ordering action against the officers for their inaction, however, the matter being about four decades old and there being number of officers who may be responsible, this Court is not passing any order in that regard but this may be treated as a warning that action may be taken in future if such a matter comes before the Court.

32. The conduct of the investigating and the prosecuting agency also needs to be commented upon. Investigation in the FIR, which was registered way back in the year 1977, was not completed for a period of nine years. The first Challan, as pleaded was presented in the year 1986, which was not complete. Despite directions by the Court for presentation of separate Challans, needful was not done. Ultimately the Court had to consign the Challan to record with liberty to get the same revived in case fresh Challans were filed. Thereafter the prosecuting agency kept quiet as no further efforts were made, as if there were no responsible officers to take any case registered to its logical end, which could be a message to other employees who may be indulging in misappropriation of State money. They have miserably failed in discharge of their official duty. This failure is in fact a result of non-monitoring of the cases registered in the State by the persons responsible. The Director General of Police and Director Prosecution & Litigation who are responsible for investigation and prosecution of the cases, shall get complete data of the criminal cases registered in which Challans have not been presented within the period prescribed and examine the reasons there for. Responsible officers shall be appointed to expedite investigation wherever required to lead the same to its logical end, otherwise this only leads to adverse inference.

33. For the reasons mentioned above, I do not find any merit in the present petition, the same is accordingly, dismissed.

34. A copy of this order be sent to Chief Secretary of the State of Jammu and Kashmir, the Director General of Police and the Director Prosecution & Litigation for appropriate action. Copy of the action taken report be furnished to the Court. For the purpose, the matter may be listed on 22.11.2019.