

**(2019) 04 J&K CK 0065**

**In the Jammu And Kashmir High Court**

**Case No :** Service Writ Petition (SWP) No. 712 Of 2019, IA No. 01 Of 2019

Mohammad Rafiq Choudhary

APPELLANT

Vs

State Of Jammu & Kashmir And Ors

RESPONDENT

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**Date of Decision :** 03-04-2019

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 226

**Citation :** (2019) 04 J&K CK 0065

**Hon'ble Judges :** Ali Mohammad Magrey, J

**Bench :** Single Bench

**Advocate :** J.A Kawoosa, B.A Dar

**Final Decision :** Dismissed

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**Judgement**

1. Through the medium of instant petition, petitioner seeks quashment of appointment orders of private respondents 5 to 26 with further direction to respondents to appoint him against the Class-IV post, on the analogy of private respondents, from the date they have been appointed and may also release all consequential benefits in favour of the petitioner.

2. Briefly stated the case of the petitioner is that, the official respondents initiated the process of engagement of candidates against class-IV vacancies on temporary basis in the year 2011. It is submitted that the petitioner being educated upto 11th standard and also possessing a valid Driving License issued by the competent authority besides having Diploma of 06 months in Computer Applications, applied to the concerned authority on 01.12.2011 and after endorsement, handed over the application to the respondent no.3.

3. It is submitted that no receipt was issued against the said application to the petitioner. It is further submitted that the petitioner being downtrodden, may also get the benefit of ST category, in this regard number of representations have been filed from time to time.

4. It is submitted that the respondents resorted to make appointments on pick

and choose method arbitrarily and without any selection process. It is submitted that the petitioner was constrained to file an application under J&K Right to Information Act in the year 2013. It is also submitted that the petitioner was provided the list of incumbents appointed against the class-IV vacancies from 2011 to 2013. It is further submitted that the respondents have done the exercise of such appointments without following due procedure of law.

5. It is submitted that the petitioner is aggrieved of the appointments of private respondents and also for not considering him against the class-IV post, challenged the same on the grounds detailed out in the petition.

6. Heard learned counsel for the parties, considered the matter and perused the records.

7. When asked Mr. J. A Kawoosa, learned counsel for petitioner, how the writ petition is maintainable which is hopelessly time barred besides being not entitled to the relief claimed. Learned counsel for strengthening his argument has referred to and relied upon case titled "Pankaj Gupta and ors v. State of J&K and ors" reported in (2004) 8 Supreme Court Cases 353 and LPA no. 117/2015 titled "Mahajabeen Bano v. State and ors". The judgments referred to and relied upon by the learned counsel for the petitioner are entirely distinguishable, therefore, are not attracted to the case in hand.

8. Delay and laches on the part of a petitioner may deprive him of the benefit which had been given to private respondents. 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 though 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. An order should normally be challenged within a period of six months or at the most in a year. 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 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.

9. In *State of T. N. v. Seshachalam*, (2007) 10 SCC 137, the 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."

10. Thus, the doctrine of delay and laches should not be lightly brushed aside. The 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 six years' delay in approaching the court without any plausible explanation.

11. The explanation rendered by the petitioner for the delay and laches in filing the writ petition is not found to be satisfactory. Accordingly, the writ petition is required to be dismissed on the ground of delay and laches. In this regard reference has been made to the Judgment of the Hon'ble Supreme Court in case titled Union of India Vs. Durairaj reported in (2010) 14 Supreme Court Cases 389. Relevant para of the Judgment is extracted as under:

"It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stake and such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage to effectively contest or counter the claim as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches."

12. Admittedly, the petitioner has approached this Court after a period of almost six years, therefore, the writ petition suffers for laches and delay.

13. The petitioner has tried to explain the delay and laches in filing the writ petition by stating that every moment he was given assurance by the competent authority that his representation will be considered and yet no decision was taken by them.

14. In view of above, the writ petition along with connected IA, is dismissed, on the ground of delay and laches.