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**(2019) 03 J&K CK 0059**

**In the Jammu And Kashmir High Court**

**Case No :** Service Writ Petition (SWP) No. 559 Of 2019, IA 01 Of 2019

Shahnawaz Akhtar

APPELLANT

Vs

State Of Jammu & Kashmir & Ors

RESPONDENT

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**Date of Decision :** 15-03-2019

**Acts Referred:**

Constitution Of India, 1950 — Article 32, 136, 226

**Citation :** (2019) 03 J&K CK 0059

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

**Bench :** Single Bench

**Advocate :** Mohammad Amin Bhat

**Final Decision :** Dismissed

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## **Judgement**

1. The petitioner in the instant petition has prayed for the following reliefs;

i. Writ of Mandamus, commanding the respondents to consider the representation of the petitioner and absorb him in the Civil Wing of the Department, as the petitioner has specialization in the same.

ii. A writ of Mandamus commanding the respondents to consider the request of the petitioner without any further delay and absorb him in Civil Wing of the Department .

Brief facts of the case are summarized as under:

2. The petitioner's father, who was serving as a Junior Engineer in the respondent department, passed away while in harness in the year 2002 and at the time of death, he (father of the petitioner) was posted at Handwara. Being a legal heir of the deceased, the case of the petitioner, was processed and he was temporarily appointed as Executive 3050-4910, having three years Diploma in PHE (Civil) Engineering. Thereafter, he was allotted to Superintending Engineer EM&RE Circle-II for his further posting against the available post.

3. The claim of the petitioner in the present writ petition is that he was appointed

on an inferior post when on the date of his appointment, he was having higher qualification and should have appointed on a higher post, accordingly.

4. After hearing the learned counsel for the petitioner, perusing the documents on record and considering the matter, what comes to fore is that the petition of the petitioner is time barred. The order of appointment of the petitioner on compassionate basis was, admittedly, issued by the respondents in the year 2006, but the petitioner, who is seeking adjustment on a higher post commensurate to his qualification, has filed the writ petition in the year 2019, i.e. after a long period 13 years, thereby rendering the petition hopelessly time barred. No plausible explanation has been tendered by the petitioner as to why he, if aggrieved, did not approach the competent Court for seeking redressal of his grievances at the appropriate point of time.

5. Law on the subject of delay and laches is no more res integra. The Hon'ble Supreme Court, in case titled 'Tamil Nadu Housing Board, Chennai v. M. Meiyappan & Ors.', reported as '(2010) 14 SCC 309', at paragraph Nos. 14 to 18, has held as under:

"14. At the outset, we must state that on the facts of this case, the High Court was not justified in entertaining the writ petition. In our opinion, the writ petition must fail on the short ground that the writ petition had been filed 16 years after the award was announced by the Collector. It is trite law that delay and laches is one of the important factors which the High Court must bear in mind while exercising discretionary power under Article 226 of the Constitution. If there is such negligence or omission on the part of the petitioner to assert his right which, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party, the High Court must refuse to invoke its extra-ordinary jurisdiction and grant relief to the writ petitioner.

15. In Durga Prashad Vs. Chief Controller of Imports and Exports, this Court had held that it is well-settled that the relief under Article 226 is discretionary, and one ground for refusing relief under Article 226 is that the petitioner has filed the petition after delay for which there is no satisfactory explanation. It was noted that:

"4. Gajendragadkar, C.J., speaking for the Constitution Bench, in Smt Narayani Devi Khaitan v. The State of Bihar observed:

"It is well-settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party

moving the High Court under Article 226 for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably."

16. In *Rabindranath Bose & Ors. Vs. The Union of India & Ors.*<sup>6</sup>, a Constitution Bench of this Court, dealing with the same issue in relation to Article 32 of the Constitution, had observed that: -

"We are of the view that no relief should be given to petitioners who, without any reasonable explanation, approach this Court under Article 32 of the Constitution after inordinate delay. The highest Court in this land has been given original jurisdiction to entertain petitions under Article 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years. It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution-makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay."

17. Though the afore-extracted observations in *Rabindranath Bose* (supra) relate to Article 32 of the Constitution, a fortiori, they would apply to writ petitions filed under Article 226 of the Constitution as well.

18. Similarly, in *Tridip Kumar Dingal & Ors. Vs. State of West Bengal & Ors.*<sup>7</sup>, (to which one of us (D.K. Jain, J.) was a party), this Court had observed as under:

"56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhumed matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime."

6. A perusal of the law laid down above reveals that the Apex Court has observed

that the Courts are expected to be very cautious and circumspect about exercising their discretionary jurisdiction under Article 226 or Article 32 of the Constitution if there has been inordinate/ unexplained delay in questioning of the validity of any claim. It has also been held by Hon'ble the Supreme Court that the Courts must be averse to entertain writ petitions where there is delay or laches, since such claims, if allowed, would not only involve enormous loss of public money, but would also cause undue delay in carrying out projects meant for general public. In the instant case, too, admittedly, the petitioner has been adjusted by the respondents on compassionate basis way back in the year 2006 and the petitioner has approached this Court in 2019, that is after a period of 13 years, seeking appointment against a higher post. If the petitioner wanted to invoke the jurisdiction of a Writ Court, he should have come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a Writ will indeed form a ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of State claims and exhumate matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime. On this ground alone, the instant petition is liable to be dismissed.

7. In the above background, the instant petition is devoid of any merit and, accordingly, same is dismissed in limine alongwith the connected IA.