State Of U.P.& Ors vs Arvind Kumar Srivastava & Ors on 17 October, 2014

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Bench: A.K. Sikri, J. Chelameswar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9849 OF 2014
(ARISING OUT OF SLP (C) NO. 18639 OF 2012)

STATE OF UTTAR PRADESH & ORS.	.....APPELLANT(S)	
VERSUS		
ARVIND KUMAR SRIVASTAVA & ORS.	.....RESPONDENT(S)	

J U D G M E N T

A.K. SIKRI, J.

Leave granted.

This appeal, preferred by the State of Uttar Pradesh and its functionaries, assails the order of the High Court whereby the writ petition filed by the appellants has been dismissed and the order of the Uttar Pradesh Public Services Tribunal, Lucknow (for short, 'the Tribunal') passed in favour of the respondents herein, is affirmed.

To mention at the outset, the Tribunal as well as the High Court has given the respondents herein benefit of the order passed by the Court in earlier round of litigation filed by similarly situated persons. The appellants contend that as far as these respondents are concerned, they never approached the Court seeking such a relief and were only fence-sitters and, therefore, relief should not have been granted to them even if they were similarly situated as those persons who have been granted relief in the petitions filed by them. Respondents, on the other hand, contend that once it is found that both sets of persons are identically placed, the impugned orders granting them the same benefit are in tune with the constitutional mandate enshrined in Article 14 of the Constitution of India.

Such a situation has not occurred for the first time in the present appeal. There are many decisions of this Court. If outcome alone of those judgments is seen, one would find that in some cases the Courts have extended the benefit to the similarly situated persons, whereas, in some other cases

similar benefit is denied to the second set of people who approached the Court subsequently. However, on delving deep into the rationale and reasoning of these two sets of cases, one is able to mentally rexognise the logic behind different outcomes. Under what circumstances such a benefit can be extended and what are the reasons for denying the same, shall be discerned after taking note of those judgments. But, before undertaking that exercise, it would be apt to take note of the facts of this case in order to understand and appreciate as to how the respondents are placed.

It was sometime in the year 1986 that the Chief Medical Officer, Varanasi, had advertised certain posts of Homeopathic Compounder and Ward Boys in various newspapers. Respondents herein applied for the said post and participated in the selection process. After the interviews, they were kept in the waiting list. Those who were in the select list were offered the appointments. Some of those candidates who were higher in merit and were offered the appointments did not join. For this reason, candidates in the waiting list were issued appointment letters by the then Chief Medical Officer. These included the respondents herein as well. However, before the respondents could join their duties, new Chief Medical Officer assumed the charge and blocked their joining. Thereafter, vide order dated June 22, 1987 he even cancelled the said appointments made by his predecessor for these Class-III and Class-IV posts i.e. Homeopathic Compounder and Ward Boys.

The respondents filed the suit in the Court of City Munsif, Varanasi challenging the aforesaid orders dated June 22, 1987 cancelling their appointments by the new Chief Medical Officer. This suit was registered as Suit No. 695/1987. It appears that this suit could not be taken to its logical conclusion as same was dismissed for non-prosecution because of non appearance of the advocate of the respondents. The respondents herein did not take any further steps in the said suit either by filing application for restoration of the suit or challenging the said order in appeal. In fact, there was a complete quietus on the part of these respondents.

It so happened that a few other candidates who were also affected by the same orders dated June 22, 1987, whereby their appointments were cancelled, approached the Tribunal challenging the legality, validity and proprietary of the said order on several grounds. One of the grounds taken was that before cancellation of their appointments, no show-cause notice was given to them. The Tribunal decided the case filed by them in their favour vide judgment dated August 16, 1991 holding the impugned order dated June 22, 1987 as illegal and void and quashed the same. Against the order of the Tribunal, the State filed the writ petition in the High Court. This writ petition was dismissed on August 27, 1992 thereby confirming the order passed by the Tribunal. The Special Leave Petition filed by the State met the same fate as that was also dismissed by this Court on August 12, 1994. In this manner, the Tribunal's order dated August 16, 1991 attained finality and the persons who had approached the Tribunal got the appointments.

The respondents herein waited all this while, that is till the dismissal of the Special Leave Petition in the year 1994. It is only thereafter, in the year 1995, the respondents filed the writ petition for giving appointments to them as well on the strength of the judgment of the Tribunal given in the case of other persons, claiming parity. This writ petition was rejected vide order dated June 06, 1995 by the Chief Medical Officer. Against this rejection the respondents approached the Tribunal by filing Claim Petition No. 96/1996. As mentioned above, the said petition was allowed by the Tribunal on

the ground that they were in the same position in which the other successful candidates were given relief and as such these respondents were also be entitled to the same relief. The High Court has affirmed the order of the Tribunal.

The moot question which requires determination is as to whether in the given case, approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. Whereas the appellants contend that the respondents herein did not approach the Court in time and were fence-sitters and, therefore, not entitled to the benefit of the said judgment by approaching the judicial forum belatedly. They also plead the some distinguishing features on the basis of which it is contended that the case of the respondents herein is not at par with the matter which was dealt with by the Tribunal in which order dated June 22, 1987 were passed giving benefit to those candidates who had approached the Court at that time. On the other hand, the respondents claim that their case is identical to those who had filed the Application before Tribunal inasmuch as appointments of the respondents were also cancelled by the same order dated June 22, 1987 and, therefore, there is no reason to deny the same treatment which was meted out to the said persons, as denial thereof would amount to invidious discrimination which is anathema to the right of equality enshrined under Article 14 of the Constitution of India.

It is of interest to note that both the sides, in support of their respective submissions, have referred to certain judgments and the reading whereof would demonstrate that in certain cases benefit of a particular judicial pronouncement is extended to those who are identically situated on the principle of equality. On the other hand, there is a line of judgments denying such a benefit to the second group which approaches the Court afterwards, even when the said second group is similarly situated as the persons belonging to the first group. However, there is no conflict between the two sets of cases. In order to find out the principles laid down on the basis of which benefit of the earlier judgment is extended to those coming subsequently and the situations where such benefit is denied, we will have to undertake a journey into these details and lay down clear parameters.

Let us first take note of those judgments, which are referred to by the learned counsel for the respondents, wherein this Court has applied the ratio of the earlier judgments to the similarly situated persons giving them the same benefit. First case, in the line of these cases, referred to by the learned counsel for the respondents is the judgment in Inder Pal Yadav & Ors. v. Union of India & Ors.[1] That was a case where the services of casual labour employed on railway projects continuously for more than a year were terminated on the ground that the projects where these casual labour were working had been wound up. Challenging their termination, writ petitions under Article 32 of the Constitution of India were filed in this Court. During the pendency of these petitions, Railway Administration framed scheme for their absorption as temporary workmen on completion of 360 days of continuous employment. This scheme was made applicable to those who were in service as on January 01, 1984. In view of this development, writ petitions were set out for hearing to examine the fairness and justness of the Scheme, particularly, on the issue as to whether choice of date of January 01, 1984 was arbitrary or discriminatory. The Court was not enthused by fixation of January 01, 1984 as the cut off date on the ground that it was likely to introduce an invidious distinction between similarly situated persons and expose some workmen to arbitrary

discrimination flowing from fortuitous Court's order. It was noticed that in some matters, the Court had granted interim stay before the workmen could be retrenched while in some other cases no such interim orders had been passed. Thus, as a result of grant of interim relief by stay/ suspension of the order of retrenchment, persons benefitted by the said interim order and were treated in service as on January 01, 1984. Those who failed to obtain the interim relief, their services were terminated in the meantime and, therefore, they were not in service as on January 01, 1984. The Court pointed out that though both the groups belong to the same category, one category could get the benefit of the scheme with cut off date of January 01, 1984, whereas the other category would fail to get the benefit/advance of the scheme. The Court also noted that there may be some other persons, similarly situated, who could not afford to rush to the Court and they would also be left out. Giving these reasons, the date of January 01, 1984 fixed in the scheme was struck down and the Court while accepting the scheme framed by the Railway Administration, modified the date from January 01, 1984 to January 01, 1981. While doing so, following reasons were given:

> "5...There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to know at the door of justice because these doors do not open unless hudge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. Therefore, those who could not come to the Court need not be at comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court." We would like to point out at this stage itself that the writ petitions were filed by the concerned affected persons which were already pending before the Court and it was the step taken by the Railway Administration itself which framed the Scheme for their absorption. In such circumstances, the question of fixing the rationality of cut off date in the said Scheme arose for consideration and the Court was of the view that while implementing the Scheme, those whose services were terminated before January 01, 1984, they would be discriminated against. Thus, while giving the direction to implement the scheme which was framed by the Railway Administration itself, the Court gave the direction to start absorbing those with longest service, which is clear from the reading of para 6 of the said judgment, and we reproduce the same hereunder:

> "6. To avoid violation of Article 14, the scientific and equitable way of implementing the scheme is for the Railway Administration to prepare, a list of project casual labour with reference to each division of each railway and then start absorbing those with the longest service. If in the process any adjustments are necessary, the same must be done. In giving this direction, we are considerably influenced by the statutory recognition of a principle well known in industrial jurisprudence that the men with longest service shall have priority over those who have joined later on. In

other words, the principle of last come first go or to reverse it first come last go as enunciated in Section 25-G of the Industrial Disputes Act, 1947 has been accepted. We direct accordingly." This case, therefore, may not be of direct relevance.

Next judgment is of the Constitution Bench judgment of this Court in the case of K.C. Sharma & Ors. v. Union of India[2]. In this case the Court was directly concerned with the issue of granting benefit of the earlier judgment. The Government had passed Notification dated December 05, 1988 which obviously affected the pension of retired employees, retrospectively. These persons had not challenged the said Notification within the limitation period. However, in some other case filed by similarly situated persons, a Full Bench of the Central Administrative Tribunal declared the Notification invalid vide its judgment dated December 16, 1993. After this Notification was declared invalid, the appellants also claimed the benefit of that judgment from the Railways. On Railways refusal to extend the benefit, they filed Application in the Central Administrative Tribunal in April 1994. This Application was dismissed by the Tribunal as time barred and against the judgment of the Tribunal these appellants had approached this Court. The Court, in a brief order which runs into six paragraphs, held that delay in filing the Application should have been condoned and the appellants should have been given relief by the Tribunal on the same terms as were granted to others by the Full Bench judgment of the Tribunal . After stating the aforesaid facts in the earlier paragraphs of the order, the reasons for extending the benefit are contained in para 6 thereof, which reads as under:

"6. Having regard to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside, the delay in filing of OA No. 774 of 1994 is condoned and the said application is allowed. The appellants would be entitled to the same relief in the matter of pension as has been granted by the Full Bench of the Tribunal in its judgment dated 16-12-1993 in Oas No. 395-403 of 1993 and connected matters. No order as to costs." Immediate comment which is called for by us to the aforesaid judgment is that there is no detailed discussion in the said order. What can be observed from the reading of this order is that the earlier judgment of the Tribunal striking down the Notification dated December 05, 1988 was treated as judgment in rem. Naturally, when the Notification itself is struck down and it was a matter of pension, benefit thereof was to be given to the others as well. It appears that for this reason the Constitution Bench observed that delay should have been condoned giving relief to the appellants also in the same terms as was granted by the Full Bench of the Tribunal.

In State of Karnataka & Ors. v. C. Lalitha[3], which is the next case relied upon by the learned counsel for the respondents, our attention was drawn to the following passage from the said judgment:

"29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently. It is furthermore well settled that the question of seniority should be governed by the rules. It may be true that this Court took notice of the subsequent events, namely, that in the meantime she had also been promoted as Assistant Commissioner which was a Category I post but the direction to create a supernumerary post to adjust her must be held to have been issued only with a view to accommodate her therein as otherwise she might have been reverted and not for the purpose of conferring a benefit to which she was not otherwise entitled to." We have to understand the context in which the aforesaid observations came to be made. That was a case where the order passed in the first round of litigation between the same parties came up for construction and its effect. The background in which the issue arose was that an amendment made in the reservation policy of the State was challenged in N.T. Devin Katti v. Karnataka Public Service Commission[4]. In that judgment, this Court had declared that the revised reservation policy was not applicable to the selections initiated prior thereto. It resulted in the consequential direction to the State Government to appoint N.T. Devin Katti (appellant in that case) on the post of Tehsildar with retrospective effect. At the same time, it was also made clear that for the purposes of seniority such persons would have to be placed below the last candidates appointed in the year 1976 and they would also be not entitled to any back wages. Insofar as, respondent C. Lalitha is concerned, on the basis of revised reservation policy, she was appointed as Tehsildar. After the rendition of the aforesaid judgment in N.T. Devin Katti's case (supra), she approached the Karnataka Administrative Tribunal by filing an OA claiming appointment as Assistant Commissioner. The Tribunal dismissed the OA. However, her appeal against the order of the Tribunal was allowed by this Court vide orders dated March 15, 1994, taking note of the fact that she was selected and shown in the first list, which was upheld by the Court in the case of N.T. Devin Katti (supra). Since she had already been promoted to Class I Post of Assistant Commissioner by then, for her appointment the Court directed that if no vacancies are available, the State Government will create a supernumerary post and for the purpose of seniority, she had to be placed below the last candidate appointed in the year 1976 and was not entitled to any back wages. It is clear from these directions that her appeal was allowed giving same directions as given in N.T. Devin Katti (supra). It so happened that though her name was in the first list, which was upheld in N.T. Devin Katti's case (supra), her rank was little below and there were few persons above her. As per her rank in the general merit Category I posts, after taking the opinion of the Public Service Commission, it was decided by the Government to consider her for the post of Assistant Controller of Accounts , a Category I Post, as the marks secured by her were below the marks secured by the candidates selected as Assistant Controller of Accounts. She refused to accept the said post and approached the Tribunal again. The Tribunal dismissed the OA filed by her. Against that order of the Tribunal she approached the Karnataka High Court, which allowed the writ petition directing the

State to implement order dated March 15, 1994 which was passed by this Court in the earlier round. Against this order of the High Court, the State preferred appeal and it is in this backdrop that effect of the earlier order dated March 15, 1994 came up for consideration. It was argued by the State that effect of the order dated March 15, 1994 was to relegate the parties to the same position as if the reservation policy was not amended and if so construed, the respondent having been placed in the supplementary list could not have been laid any claim for any post in the administrative service. It is this contention which was accepted by this Court noticing another crucial fact that there were many persons who were higher in the merit than the respondent and the effect of the earlier order passed by this Court could not have been to ignore the said merit list and give something to the respondent which was not admissible in law. The Court held that merit should be the sole criteria for selection of candidates and the earlier judgment was to be construed as if it had been rendered in accordance with law. While holding so, the Court also sited many case law to demonstrate that the judgments are not to be read as a statute. It is in the aforesaid context that observations are made in para 29, on which heavy reliance has been placed by the respondent.

When we understand the impact of the observations contextually, we find that again the issue at hand is totally different.

Next case in the line, on which the respondents rely, is Maharaj Krishna Bhatt & Anr. v. State of Jammu & Kashmir[5]. In that case, the appellants and some other Constables approached the Chief Minister of the respondent State for relaxation of rules relating to 50% direct recruitment quota for appointment as Sub-Inspectors of Police (PSI). The Chief Minister's office in turn called for the Director General's recommendations, who recommended the name of one person only, namely, Hamidullah Dar. Hamidullah Dar was accordingly appointed as PSI with effect from April 01, 1987. Thereupon, other persons also approached the Court. In the case of one Abdul Rashid Rather, the Single Judge of the High Court allowed his writ petition. The respondent State filed LPA which was dismissed, and subsequently, special leave petition was also dismissed by this Court. Consequently, Abdul Rashid Rather was also appointed as PSI. It would be pertinent to mention that the appellants in the said appeal, along with two others, had also filed the writ petition in the year 1987, which was disposed of on September 13, 1991 and a direction was issued to the Director General of Police to consider their cases for appointment to the post of PSI by relaxing of rules. Pursuant to the said directions, the Director General of Police considered and rejected the cases of the appellants for appointment without giving any reasons. These appellants initially filed the contempt petition, but thereafter preferred fresh writ petition being Writ Petition No. 3735 of 1997. This writ petition of the appellants was pending when the orders of appointment came to be passed in the writ petition filed by Abdul Rashid Rather and on the basis of that judgment, Abdul Rashid Rather had been given the appointment with effect from April 01, 1987. In this scenario, when writ petition of the appellants came up for

hearing before the Single Judge of the High Court, it was allowed vide judgment dated April 30, 2001 following the judgment in the case of Abdul Rashid Rather, which had been affirmed by this Court as well. However, the State filed appeal thereagainst and this appeal was allowed by the Division Bench of the High Court. Even the review petition filed by the appellants was dismissed by the Division Bench. Special Leave Petition was filed challenging the judgment of the Division Bench, which was the subject matter in the case of Maharaj Krishan Bhatt (supra). Leave was granted and ultimately appeal was allowed holding that the appellants were also entitled to the same treatment. While doing so, the Court made the following observations:

"23. In fairness and in view of the fact that the decision in Abdul Rashid Rather had attained finality, the State authorities ought to have gracefully accepted the decision by granting similar benefits to the present writ petitioners. It, however, challenged the order passed by the Single Judge. The Division Bench of the High Court ought to have dismissed the letters patent appeal by affirming the order of the Single Judge. The letters patent appeal, however, was allowed by the Division Bench and the judgment and order of the learned Single Judge was set aside. In our considered view, the order passed by the learned Single Judge was legal, proper and in furtherance of justice, equity and fairness in action. The said order, therefore, deserves to be restored." No doubt, the Court extended the benefit of the decision in Abdul Rashid Rather's case to the appellants. However, what needs to be kept in mind is that these appellants had not taken out legal proceedings after the judgment in Abdul Rashid Rather's case. They had approached the Court well in time when Abdul Rashid Rather had also filed the petition.

The submission of learned counsel for the appellants, on the other hand, is that the respondents did not approach the Court earlier and acquiesced into the termination orders. Approaching the Court at such a belated stage, after the judgment in some other case, was clearly impermissible and such a petition should have been dismissed on the ground of laches and delays as well as acquiescence. It was submitted that in such circumstances this Court has taken consistent view to the effect that benefit of judgment in the other case should not be extended even if the persons in the two sets of cases were similarly situated. Mr. P.N. Misra, learned senior counsel appearing for the appellants, pointed out in this behalf that though the orders were passed by the appellants on June 22, 1987, the respondents have filed their claim petition before the Tribunal only in the year 1996, i.e. after a period of 9 years from the date of passing of the orders. He drew our attention to the following observations in M/s. Rup Diamonds & Ors. v. Union of India & Ors.[6]:

"8. Apart altogether from the merits of the grounds for rejection – on which it cannot be aid 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 imprematur 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. Petitioner 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. Their 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. From the orders in M/s Ripal Kumar & Co.'s case and M/s H. Patel & Co.'s case it is seen that in the former case the application for revalidation and endorsement was made on March 12, 1984 within four months of the date of the redemption certificate dated November 16, 1983 and in the latter case the application for revalidation was filed on June 20, 1984 in about three months from the Redemption Certificate dated March 9, 1984." That case pertains to import facility for import of OGL items available under para 185(3) and (4) of Import – Export Policy, 1982-83 to export houses after discharging export obligation on advance/imprest licence. The petitioners had applied for, and were granted, this imprest licence for the import of uncut and unset diamonds with the obligation to fulfil certain export commitment for the export, out of India, of cut and polished diamonds of the FOB value, stipulated in each of the imprest licences. As per the petitioners, they have discharged their export obligation and, therefore, in terms of para 185(4) of the Import – Export policy, they were entitled to the facility for the import of OGL items. However, they sought revalidation four years after discharge of export obligation and five years after the expiry of the licence. This claim was rejected by the authorities on the ground of delay. Writ petition was filed in this Court one year after such rejection. In these circumstances, the Court dismissed the writ petition for approaching the Court belatedly and refused to follow the orders passed in another petitions by this Court, which was sought to be extended on the ground that the petitions were exactly similar to those petitions which were preferred in another case.

No doubt, writ petition was dismissed on the ground of unexplained inordinate delay, but it would be necessary to observe that it was not a service matter. However, the principle of delay and laches would have some relevance for our purposes as well.

State of Karnataka & Ors. v. S.M. Kotrayya & Ors.[7] is, on the other hand, a service matter. Here, the respondents, while working as teachers in the Department of Education, availed of Leave Travel Concession (LTC) during the year 1981-82. But later it was found that they had never utilised the benefit of LTC but had drawn the amount and used it. Consequently, recovery was made in the year 1984-86. Some persons in similar cases challenged the recovery before the Administrative Tribunal which allowed their Applications in August 1989. On coming to know of the said decision, the respondents filed Applications in August 1989 before the Tribunal with an application to condone the delay. The Tribunal condoned the delay and allowed the OAs. Appeal against the said order was allowed by this Court holding that there

was unexplained delay in approaching the Tribunal. The Court relied upon the Constitution Bench case in S.S. Rathore v. State of M.P.[8], which deals with the manner in which limitation is to be counted while approaching the Administrate Tribunal under the Administrative Tribunal Act, 1985. Here again, on the ground of delay, the Court refused to extend the benefit of judgment passed in respect of other similarly situated employees.

Both these judgments, along with some other judgments, were take note of in U.P. Jal Nigam & Anr. v. Jaswant Singh & Anr.[9] That was a case where the issue pertained to entitlement of the employees of U.P. Jal Nigam to continue in service up to the age of 60 years. In Harwindra Kumar v. Chief Engineer, Karmik[10] this Court had earlier held that these employees were in fact entitled to continue in service up to the age of 60 years. After the aforesaid decision, a spat of writ petitions came to be filed in the High Court by those who had retired long back. The question that arose for consideration was as to whether the employees who did not wake up to challenge their retirement orders, and accepted the same, and had collected their post retirement benefits as well, could be given relief in the light of the decision delivered in Harwindra Kumar (supra). The Court refused to extend the benefit applying the principle of delay and laches. It was held that an important factor in exercise of discretionary relief under Article 226 of the Constitution of India is laches and delay. When a person who is not vigilant of his rights and acquiesces into the situation, his writ petition cannot be heard after a couple of years on the ground that the same relief should be granted to him as was granted to the persons similarly situated who were vigilant about their rights and challenged their retirement. In para 7, the Court quoted from M/s. Rup Diamonds & Ors. (supra). In para 8, S.M. Kotrayya (supra) was taken note of. Some other judgments on the same principle of laches and delays are taken note of in paras 9 to 11 which are as follows:

“9. Similarly in Jagdish Lal v. State of Haryana, (1997) 6 SCC 538, this Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the court, then such person cannot stand to benefit. In that case it was observed as follows: (SCC p. 542) “The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Union of India v. Virpal Singh Chauhan, (195) 6 SCC 684. The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage.”

10. In Union of India v. C.K. Dharagupta, (1997) 3 SCC 395, it was observed as follows:

“9. We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P. Joshi v. Union of India, OA No. 497 of 1986 decided on 17-3-1987, gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit

> of Joshi case. In view of our finding that the benefit of the judgment of the Tribunal dated 17-3- 1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief."
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> 11. In Govt. of W.B. v. Tarun K. Roy, (1997) 3 SCC 395, their Lordships considered delay as serious factor and have not granted relief. Therein it was observed as follows: (SCC pp. 359-60, para 34) "34. The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in State of W.B. v. Debdas Kumar, 1991 Supp (1) SCC 138. The plea of delay, which Mr. Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents.

Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a court of law." The Court also quoted following passage from the Halsbury's Laws of England (para 911, p.395):

> "In determining whether there has been such delay as to amount to laches, the chief points to be considered are:
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> (i) acquiescence on the claimant's part; and
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> (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 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." Holding that the respondents had also acquiesced in accepting the retirements, the appeal of U.P. Jal Nigam was allowed with the following reasons:

> "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?" The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim. (3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them

shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

Viewed from this angle, in the present case, we find that the selection process took place in the year 1986. Appointment orders were issued in the year 1987, but were also cancelled vide orders dated June 22, 1987. The respondents before us did not chalelnge these cancelleation orders till the year 1996, i.e. for a period of 9 years. It means that they had accepted the cancellation of their appointments. They woke up in the year 1996 only after finding that some other persons whose appointment orders were also cancelled got the relief. By that time, nine years had passed. The earlier judgment had granted the relief to the parties before the Court. It would also be pertinent to highlight that these respondents have not joined the service nor working like the employees who succeeded in earlier case before the Tribunal. As of today, 27 years have passed after the issuance of cancellation orders. Therefore, not only there was unexplained delay and laches in filing the claim petition after period of 9 years, it would be totally unjust to direct the appointment to give them the appointment as of today, i.e. after a period of 27 years when most of these respondents would be almost 50 years of age or above.

For all the foregoing reasons, we allow the appeal and set aside the order of the High Court as well as that of the Tribunal. There shall, however, be no order as to costs.

.....J. (J. CHELAMESWAR) .....J. (A.K. SIKRI) New Delhi;

October 17, 2014.

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[1] (1985) 2 SCC 648 [2] (1997) 6 SCC 721 [3] (2006) 2 SCC 747 [4] (1990) 3 SCC 157 [5] (2008) 9 SCC 24 [6] (1989) 2 SCC 356 [7] (1996) 6 SCC 267 [8] (1989) 4 SCC 582 [9] (2006) 11 SCC 464 [10] (2005) 13 SCC 300