GHULAM RASOOL LONE

*v.*

STATE OF J & K & ORS.

(SLP ( C ) No. 14126 of 2009)

JULY 16, 2009

**[S.B. SINHA AND DEEPAK VERMA, JJ.]**

*Constitution of India, 1950 – Articles 14 and 16 – Illegal promotion of employee junior to petitioner upon relaxing Rules – Similar relief sought by another employee – Grant of promotion and order attaining finality – Said relief sought by petitioner after 13 years – Set aside by High Court on the ground of delay and laches – Interference with – Held: Not called for – Article 14 is a positive concept – Equality clause must be enforced in legality and not illegality – Person who claims equity must enforce his claim within a reasonable time – Court may refuse to exercise its jurisdiction on the ground of delay and laches – Employee cannot be granted promotion out of the way as a result whereof the rights of third parties are affected – Public interest as also general administration must be kept in mind – Delay/laches – Equity.*

**HR was illegally promoted to the post of sub-inspector upon relaxing the prescribed Rules in 1987. Subsequently AR filed writ petition seeking similar treatment. He was granted promotion and the writ petition filed by him attained finality. Meanwhile, Maharaj Krishan and others filed writ petition for promotion to the post of sub-inspector. Single Judge of High Court allowed the writ petition. The said order was upheld by this Court. In 2000, the instant petitioner who was senior to HR filed writ petition seeking similar relief and the same was allowed. Respondent-State filed appeal which was allowed. Hence the present SLP.**

A Dismissing the Special Leave Petition, the Court

HELD: 1.1. Keeping in view the equal protection clause contained in Article 14 as also Article 16 of the Constitution of India, all the employees should be treated equally. Equality clause, however, must be enforced in B legality and not illegality. Article 14 is a positive concept. The Constitution does not envisage enforcement of the equality clause where a person has got an undue benefit by reason of an illegal act. [Paras 11 and 12] [597-G-H; 598-A-B]

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1.2. The Court in a given case may be inclined to pass similar order as has been done in the earlier case on the basis of equality or otherwise. The discretionary jurisdiction under Article 226 of the Constitution may, D however, be denied on the ground of delay and laches. It is now well settled that who claims equity must enforce his claim within a reasonable time. [Paras 13 and 14] [598-D-E]

E *Govt. of W.B. v. Tarun K. Roy,* (2004) 1 SCC 347 – relied on.

*Panchi Devi v. State of Rajasthan* (2009) 2 SCC 589; *New Delhi Municipal Council v. Pan Singh,* (2007) 9 SCC 278; *VirenderChaudhary v. Bharat Petroleum Corpn.* (2009) F 1 SCC 297 and *S.S. Balu v. State of Kerala* (2009) 2 SCC 479, referred to.

2.1. No particulars had been placed before the High Court either in the instant case as also in the case of G Maharaj Krishan with regard to the power of the State and/or competent authority to relax the Rules. In absence of such details, there is no other option but to proceed on the basis that the promotion of HR was illegal. [Para 10] [597-F-G]

H 2.2. It is one thing to say that the Letters Patent

Appeal was not maintainable but it is another thing to say that although the same was maintainable but the Division Bench should not have exercised its jurisdiction. [Para 16] [600-F-G] A

2.3. While considering the question of delay and laches on the part of the petitioner, the court must also consider the effect thereof. Promotion of HR was effected in the year 1987. AR filed his writ petition immediately after the promotion was granted. He, therefore, was not guilty of any delay in ventilating his grievances. The petitioner waited till AR was in fact promoted. He did not consider it necessary either to join him or to file a separate writ petition immediately thereafter, although even according to him, AR was junior to him. Therefore, the Division Bench rightly opined that the petitioner was sitting on the fence. [Para 18] [601-A-C] B C D

2.4. If at this late juncture the petitioner is directed to be promoted to the post of sub-inspector even above AR the seniority of those who had been promoted in the meantime or have been directly recruited would be affected. The State would also have to pay the back wages to him which would be a drainage of public funds. Whereas an employee cannot be denied his promotion in terms of the Rules, the same cannot be granted out of the way as a result whereof the rights of third parties are affected. Therefore, the aspect of public interest as also the general administration must be kept in mind while granting equitable relief. [Para 19] [601-D-F] E F

2.5. If those five persons, who were seniors to HR filed writ petitions immediately, the High Court might have directed cancellation of his illegal promotion. This Court in *Maharaj Krishan's* case did not take into consideration all these aspects of the matter and the binding decision of a three Judge Bench of this Court in *Govt. of W.B. v. Tarun K. Roy.* Therefore, the Division Bench of the High G H

A **Court was right in opining that it was not necessary for it to follow *Maharaj Krishan's* case. The judgment of the Division Bench cannot be said either to be arbitrary or illegal. [Paras 20 and 21] [601-G-H; 602-A]**

B **Case Law Reference:**

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| **(2009) 2 SCC 589** | **Referred to.** | **Para 12** |
| **(2004) 1 SCC 347** | **Relied on.** | **Para 14** |
| **(2007) 9 SCC 278** | **Referred to.** | **Para 14** |
| **(2009) 1 SCC 297** | **Referred to.** | **Para 14** |
| **(2009) 2 SCC 479** | **Referred to.** | **Para 14** |

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CIVIL APPELLATE JURSIDICTION : Special Leave D Petition (Civil) No. 14126 of 2009.

From the Judgment & Order dated 19.3.2009 of the High Court of Jammu & Kashmir at Srinagar in LPA No. 66 of 2005.

Dinesh Kumar Garg, B.S. Billowary and Dr. Bheem Pratap E Singh for the Appellants.

The Order court was delivered by

**ORDER**

F **S.B. SINHA, J.** 1. One Hamiddulah Dar was an Assistant Sub-Inspector of Police. He was granted promotion to the post of Sub-Inspector illegally upon relaxing the prescribed Rules in the year 1987. Seven persons said to be similarly situated asked for similar treatment.

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2. SWP No.519 of 1987 was filed by one of them, named Abdul Rashid Rather, a Constable. It was allowed by a learned Single Judge of the High Court by an order dated 24th September, 1998. A Letters Patent Appeal filed thereagainst was dismissed by a Division Bench of the High Court by its

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order dated 30th July, 1999. It is stated that a Special Leave Petition filed against the said order was also dismissed by this Court.

3. Another writ petition was filed by four persons, namely - Maharaj Krishan Bhatt, Mohammad Amin, Bansilal Bhatt and Mohammad Abbas Najar in the year 1997, which was registered as SWP No.3735 of 1997, praying for their promotion to the post of Sub-Inspector with effect from the date on which Hamiddulah Dar, who was said to be junior to the petitioners, was promoted. A learned Single Judge of the High Court allowed the said writ petition by an order dated 30th April, 2001. On an intra court appeal having been preferred, a Division Bench of the said Court by its order dated 11th October, 2002 allowed the same. A Special Leave Petition was filed thereagainst by Maharaj Krishan Bhatt and Bansi Lal Bhatt before this Court. Special leave having granted, the matter was registered as Civil Appeal Nos. 8481-8482 of 2003. A Division Bench of this Court allowed the said appeal by an order dated 1st August, 2008 which has since been reported in 2008 (9) SCC 24.

4. Petitioner filed a writ petition which was registered as SWP No. 742 of 2000. It was allowed by a learned Single Judge of the High Court by his order dated 4th December, 2003. Letters Patent Appeal filed by the State of Jammu and Kashmir, however, has been allowed by reason of the impugned judgment and order dated 19th March, 2009.

5. Petitioner is, thus, before us.

6. Mr. D.K. Garg, learned counsel appearing on behalf of the petitioner would contend that the Division Bench of the High Court committed a serious error in passing the impugned judgment in so far as it failed to take into consideration that delay or laches alone could be a ground for discriminating the petitioner *vis-à-vis* five others, who were similarly situated. Our

A attention was drawn to the fact that pursuant to the judgment of the Jammu and Kashmir High Court, the petitioner's name was recommended by the Executive Branch of the State. Even a draft order of promotion was placed before Hon'ble the Chief Minister. However, the said relief had not been granted despite
B an appropriate representation having been filed by the petitioner. Later the Letters Patent Appeal was filed by the State, which as noticed earlier, has been allowed by the impugned judgment.

C 7. Abdul Rashid Rather, who was said to be junior to the petitioner, as we have noticed heretobefore, had filed writ petition in the year 1987. It was decided on 24th September, 1998.

Petitioner admittedly filed the writ petition in the year 2000
D after the writ petition filed by Abdul Rashid Rather attained finality, as the order passed by the Division Bench of the High Court was given effect to on 16th December, 1999.

It is on the aforementioned premise the effect of the
E impugned judgment may have to be considered.

8. The Division Bench by its impugned judgment framed the following question:-

"Was the petitioner-respondent sitting on the fence and
F sought to obtain success on the basis of success of another?

It was found that he did.

The Division Bench opined :-

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"He having not expressed grievance as regard special treatment meted out to Hamiddulah Dar for a long period of time, in law, cannot be permitted to leap forward for the first time, on the basis of success of another who had been

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pursuing his grievance right from the date when the subject unwarranted favour was shown to Hamidullah Dar.

While considering the case of Mahaaraj Krishan Bhatt and others the Hon'ble Supreme Court had no occasion to go into the question whether by reason of success of Abdul Rashid Rather, who had been pursuing his claim to be treated in the same fashion as that of Hamiddulah Dar since 1987, anyone else, who is also similarly situated to that of Abdul Rashid Rather, despite not expressing any grievance since 1987 about dissimilar treatment, can come up to the Court and seek similar relief as has been granted to Abdul Rashid Rather.

That being the substantial question of law, the judgment and order rendered by the Hon'ble Supreme Court in the case of Maharaj Krishan and others is of no help to the petitioner-respondent."

9. Was the Division Bench wrong in its approach so as to warrant interference therewith by this Court in exercise of its extra ordinary jurisdiction under Article 136 of the Constitution of India, is the question.

10. It is not disputed before us that Hamiddulah Dar was illegally promoted. Recruitment Rules required to be followed for promotion to the post of Sub-Inspector were relaxed.

No particulars had been placed before the High Court either in the present case as also in the case of *Maharaj Krishan* with regard to the power of the State and/or competent authority to relax the Rules. In absence of such details, we have no other option but to proceed on the basis that the promotion of said Hamidullah Dar was illegal.

11. There cannot be any doubt whatsoever that keeping in view the equal protection clause contained in Articles 14 of the Constitution of India as also Article 16 thereof, all the

A employees should be treated equally. Equality clause, however, must be enforced in legality and not illegality.

12. There cannot furthermore be any doubt that Article 14 is a positive concept. The Constitution does not envisage enforcement of the equality clause where a person has got an B undue benefit by reason of an illegal act.

In *Panchi Devi v. State of Rajasthan* [(2009) 2 SCC 589], this Court held:

C "...Article 14 of the Constitution of India has a positive concept. Equality, it is trite, cannot be claimed in illegality. Even otherwise the writ petition as also the review petition have rightly not been entertained on the ground of delay and laches on the part of the appellant."

D 13. The Court in a given case may be inclined to pass similar order as has been done in the earlier case on the basis of equality or otherwise.

14. The discretionary jurisdiction under Article 226 of the E Constitution may, however, be denied on the ground of delay and laches. It is now well settled that who claims equity must enforce his claim within a reasonable time.

For the said proposition, amongst others, we may notice F a decision of a three Judge Bench of this Court in *Govt. of W.B. v. Tarun K. Roy,* [(2004) 1 SCC 347], wherein it has been opined :-

"34. The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their G 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

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this Court in *Debdas Kumar. 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."

(Emphasis supplied)

The question yet again came up for consideration before this Court in *New Delhi Municipal Council v. Pan Singh,* [ (2007) 9 SCC 278 ], wherein it has been observed :-

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. *After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated.* It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction.

(Underlining is mine)

A [See also *Virender Chaudhary v. Bharat Petroleum Corpn.*, [ (2009) 1 SCC 297 ].

The said principle was reiterated in *S.S. Balu v. State of Kerala* [(2009) 2 SCC 479] in the following terms:-

B "17. It is also well-settled principle of law that "delay defeats equity". The Government Order was issued on 15-1-2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala C preferred an appeal thereagainst, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that D they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage."

E 15. Mr. Garg would, however, contend that the Division Bench of this Court in *Maharaj Krishan Bhatt* (supra) has categorically held that the Division Bench should not have interfered with the order of the learned Single Judge as the latter merely followed the earlier judgment. On that premise, it is urged that in this case also the Division Bench had no F jurisdiction to entertain the Letters Patent Appeal.

16. It is one thing to say that the Letters Patent Appeal was not maintainable but it is another thing to say that although the same was maintainable but the Division Bench should not have G exercised its jurisdiction.

17. It is beyond any cavil of doubt that the remedy under Article 226 of the Constitution of India is a discretionary one. For sufficient or cogent reasons a court may in a given case refuse to exercise its jurisdiction ; delay and laches being one H

of them.

18. While considering the question of delay and latches on the part of the petitioner, the court must also consider the effect thereof. Promotion of Hamidullah Dar was effected in the year 1987. Abdul Rashid Rather filed his writ petition immediately after the promotion was granted. He, therefore, was not guilty of any delay in ventilating his grievances. It will bear repetition to state that the petitioner waited till Abdul Rashid Rather was in fact promoted. He did not consider it necessary either to join him or to file a separate writ petition immediately thereafter, although even according to him, Abdul Rashid Rather was junior to him.

The Division Bench, therefore, in our opinion rightly opined that the petitioner was sitting on the fence.

19. If at this late juncture the petitioner is directed to be promoted to the post of Sub-Inspector even above Abdul Rashid Rather, the seniority of those who had been promoted in the meantime or have been directly recruited would be affected. The State would also have to pay the back wages to him which would be a drainage of public funds. Whereas an employee cannot be denied his promotion in terms of the Rules, the same cannot be granted out of the way as a result whereof the rights of third parties are affected. The aspect of public interest as also the general administration must, therefore, be kept in mind while granting equitable relief.

20. We understand that there would be a heart burning in so far as the petitioner is concerned, but then he is to thank himself therefor. If those five persons, who were seniors to Hamiddulah Dar filed writ petitions immediately, the High Court might have directed cancellation of his illegal promotion. This Court in *Maharaj Krishan Bhatt* (supra) did not take into consideration all these aspects of the matter and the binding decision of a three Judge Bench of this Court in *Govt. of W.B.*

A *v. Tarun K. Roy* (supra). The Division Bench of the High Court, therefore, in our opinion was right in opining that it was not necessary for it to follow *Maharaj Krishan Bhatt* (supra).

21. For the reasons aforementioned, we are of the opinion that the judgment of the Division Bench cannot be said either B to be arbitrary or illegal. This Special Leave Petition is dismissed summarily.

N.J. Special Leave Petition dismissed.