

STATE OF UTTARANCHAL AND ANOTHER
v.
SRI SHIV CHARAN SINGH BHANDARI AND OTHERS
(Civil Appeal Nos.7328-7329 of 2013)

AUGUST 23, 2013.

[ANIL R. DAVE AND DIPAK MISRA, JJ.]

SERVICE LAW:

Ad hoc promotion – Granted to junior – Held: A senior has right to be considered even for adhoc promotion -- If seniors are eligible as per the rules and there is no legal justification to ignore them, the employer, at his whim or caprice, cannot extend the promotional benefit to a junior on ad hoc basis.

Ad hoc promotion – Granted to junior – Belated claim by seniors to promote them from the date their junior was granted ad hoc promotion – However on regular promotion, their seniority in promotional post maintained – Held: Though claim of promotion is based on the concept of equality and equitability, relief has to be claimed within a reasonable time -- In the instant case, cause of action had arisen for assailing the order when junior employee was promoted on ad hoc basis -- A stale claim of getting promotional benefits should not have been entertained by Tribunal and accepted by High Court -- Direction given by Tribunal which has been concurred with by High Court, being unsustainable in law, is set aside – Delay/laches.

Service matters – Limitation – Held: The issue of limitation or delay and laches should be considered with reference to the original cause of action -- A mere submission of representation to competent authority does not arrest time.

A One of the juniors to the respondents, namely, 'MS' was given ad hoc promotion from Subordinate Agricultural Services (SAS) Group III to SAS Group II, by the Deputy Director of Agriculture on 15.11.1983. Thereafter the respondents and 'MS' were promoted on regular basis in Group II posts. In the final seniority list issued on 12.2.1994 in respect of promotional cadre, the respondents were shown senior to 'MS'. On 14.10.2003, the respondents filed a petition before the Public Services Tribunal claiming that they were entitled to promotion from SAS Group III to SAS Group II with effect from 15.11.1983, the date on which their junior, 'MS', was promoted and, accordingly, to get their pay fixed along with other consequential benefits. The Tribunal allowed the claim and held that the respondents would be entitled to notional promotional benefits from 15.11.1983. The High Court upheld the order.

In the instant appeals filed by the State Government, it was contended for the appellants that both, the Tribunal and the High Court, failed to appreciate that the claim of the respondents was hit by the doctrine of delay and laches. It was submitted that the grant of notional promotion along with other consequential benefits to the respondents solely on the ground that the junior functioned in the promotional post from a prior date, was not justified. The respondents, on the other hand, contended that they had been submitting representations since 1984 till they approached the Tribunal.

Allowing the appeals, the Court

G HELD: 1.1. If senior incumbents are eligible as per the rules and there is no legal justification to ignore them, the employer cannot extend the promotional benefit to a junior on ad hoc basis at his whim or caprice; and the person aggrieved can always challenge the same in an appropriate forum, for he has a right to be considered even

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for ad hoc promotion and a junior cannot be allowed to march over him solely on the ground that the promotion granted is ad hoc in nature. [para 12] [617-D-F]

1.2. Although the claim of promotion is based on the concept of equality and equitability, yet the relief has to be claimed within a reasonable time. [Para 19] [620-C-D]

Ghulam Rasool Lone v. State of Jammu and Kashmir and another 2009 (10) SCR 591 = (2009) 15 SCC 321; *New Delhi Municipal Council v. Pan Singh and others* 2007 (3) SCR 711 = (2007) 9 SCC 278; *P.S. Sadasivaswamy v. State of Tamil Nadu* 1975 (2) SCR 356 = (1975) 1 SCC 152 – relied on

1.3. 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. 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. A mere submission of representation to the competent authority does not arrest time. [Paras 14-15] [618-G-H; 619-B-C]

State of Orissa v. Pyarimohan Samantaray (1977) 3 SCC 396; *State of Orissa v. Arun Kumar Patnaik* 1976 (0) Suppl. SCR 59 = (1976) 3 SCC 579; *Bharat Sanchar Nigam Limited v. Ghanshyam Dass and others* 2011 (4) SCR 380 = (2011) 4 SCC 374; *Jagdish Lal v. State of Haryana* (1977) 6 SCC 538; *State of T.N. v. Seshachalam* 2007 (10) SCR 53 = (2007) 10 SCC 137; *Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another* 2006 (3) SCR 783 = (2006) 4 SCC 322; *C. Jacob v. Director of Geology and Mining and another* 2008 (14) SCR 634 = (2008) 10 SCC 115; *Union of India and others v. M.K. Sarkar* 2009 (16) SCR 249 = (2010) 2 SCC 59 – referred to

A 1.4. In the instant case, the cause of action had arisen
 for assailing the order when the junior employee was
 promoted on ad hoc basis on 15.11.1983. The
 respondents could have challenged the ad hoc
 promotion conferred on the junior employee at the
 B relevant time. However, they chose to sleep over the
 matter and any one who sleeps over his right is bound
 to suffer. Neither the Tribunal nor the High Court has
 appreciated these aspects in proper perspective; they
 proceeded on the base that a junior was promoted and,
 C 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.
 However, the same may not be applicable in all
 D 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
 E 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. Equality has to be claimed at the right
 juncture and not after expiry of two decades. There may
 not be any provision providing for limitation but a
 F grievance relating to promotion cannot be given a new
 lease of life at any point of time. [Para 13 and 22] [617-G;
 618-B; 621-D-H; 622-A]

G 1.5. The direction given by the Tribunal which has
 been concurred with by the High Court being
 unsustainable in law is set aside. [Para 23] [622-F]

Case Law Reference:

H	2008 (14) SCR 634	referred to	Para 13
	2009 (16) SCR 249	referred to	Para 14

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2006 (3) SCR 783	referred to	Para 15	A
(1977) 3 SCC 396	referred to	Para 16	
1976 (0) Suppl. SCR 59	referred to	Para 16	
2011 (4) SCR 380	referred to	Para 17	B
(1977) 6 SCC 538	referred to	Para 17	
2007 (10) SCR 53	referred to	Para 18	
2009 (10) SCR 591	relied on	Para 19	C
2007 (3) SCR 711	relied on	Para 20	
1975 (2) SCR 356	relied on	Para 21	

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.
7328-7329 of 2013.

From the Judgment & Order dated 02.03.2012 of the High Court of Uttarakhand at Nainital in Review Petition No. 82 of 2012 and Judgment & Order dated 04.11.2009 in Writ Petition No. 133 of 2006.

Rachana Srivastava, Utkarsh Sharma for the Appellants.

Gaurav Goel, Rajesh Kumar (for E.C. Agrawala) for the Respondents.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Delay condoned.

2. Leave granted in both the special leave petitions.

3. The respondents were appointed in Group III posts in Subordinate Agricultural Services (SAS) in the Department of Agriculture in the undivided State of Uttar Pradesh. Some of them were appointed in 1974 and some in the year 1975. A provisional seniority list in the cadre of SAS Group III was prepared where they were shown senior to one Madhav Singh Tadagi. The said Madhav Singh Tadagi, who was working as

A Agriculture Plant Protection Supervisor, Group III, was given ad
hoc promotion to the post of Assistant Development Officer
(Plant Protection, Group II) by the Deputy Director of Agriculture
on 15.11.1983. In the year 1983 a Selection Committee was
constituted for making promotion to Group II posts on the basis
B of seniority-cum-fitness from amongst the employees of Group
III posts and in the said selection process the respondents as
well as Madhav Singh Tadagi were promoted on regular basis
in Group II posts. After regular promotion was made, a seniority
list was finalized in respect of promotional cadre and the
C respondents were shown senior to Madhav Singh Tadagi. The
final seniority list was issued on 12.2.1994.

4. On 9.11.2000, under U.P. Reorganization Act, 2000 the
State of Uttaranchal (presently State of Uttarakhand) was
D created. The respondents as well as Madhav Singh Tadagi
were allocated to the State of Uttarakhand. On 14.10.2003, the
respondents filed a claim petition No. 154 of 2003 before the
Public Services Tribunal of Uttarakhand at Dehradun (for short
"the tribunal") claiming that they were entitled to promotion from
SAS Group III to SAS Group II with effect from 15.11.1983 the
E date on which the junior was promoted and, accordingly, to get
their pay fixed along with other consequential benefits, namely,
arrears of salary and interest thereof. Be it noted, the
respondents had submitted number of representations during
the period from July, 2002 to June, 2003 but the said
F representations were not dealt with.

5. The claims put forth by the respondents were resisted
by the State and its functionaries contending, inter alia, that
promotion to Madhav Singh Tadagi was given by an officer who
was not competent to promote any incumbent from SAS Group
G III to SAS Group II post; that the promotion was made without
prejudice to the seniority of other employees; and that the
grievance put forth was hit by limitation. The tribunal, after
hearing the rival submissions urged before it, came to hold that
H as a junior person was extended the benefits of promotion in

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the year 1983, the seniors could not be deprived of the said promotional benefits and, hence, they are entitled to get promotion from the said date. Being of this view, the tribunal directed that the respondents shall be given benefits of promotion with effect from November, 1983 and as they had already been promoted in the year 1989, they would be entitled to notional promotional benefits from 15.11.1983.

6. Assailing the order of the tribunal the State of Uttarakhand and its functionaries preferred Writ Petition No. 133 of 2006 before the High Court of Uttarakhand at Nainital. The High Court opined that Madhav Singh Tadagi was promoted on ad hoc basis, continued in the said post and was allowed increments and the promotional pay-scale till his regular promotion, and the claimants though seniors, were promoted on a later date on regular basis and, therefore, the directions issued by the tribunal could not be found fault with. After disposal of the writ petition, an application for review was filed with did not find favour with the High Court and accordingly it dismissed the same by order dated 2.3.2012. Hence, the present appeals by special leave have been preferred challenging the said orders.

7. We have heard Ms. Rachna Srivastava, learned counsel appearing for the appellants, and Mr. Gaurav Goel, learned counsel appearing for the respondents.

8. It is urged by learned counsel for the appellants that both the tribunal and the High Court have failed to appreciate that the claim put forth before the tribunal did not merit any consideration being hit by the doctrine of delay and laches inasmuch as the respondents did not challenge the grant of ad hoc promotion to the junior employee from 15.11.1983 till 14.10.2003. It is her further submission that the respondents really cannot have any grievance in praesenti as said Madhav Singh Tadagi's promotion from 1983 has been cancelled during the pendency of the special leave petition by the competent authority of the State Government, and quite apart from that

A when the junior employee was only given ad hoc promotion and
continued in the said post but not conferred seniority in the
promotional grade when regular promotions took place in
1989. The learned counsel for the State would further submit
that the grant of notional promotion along with other
B consequential benefits to the claimant-respondents solely on
the ground that the junior functioned in the promotional post from
a prior date, is not justified.

9. Mr. Gaurav Goel, learned counsel appearing for the
C respondents, in oppugnation to the aforesaid proponentms,
would contend that the respondents had raised their grievance
by bringing it to the notice of the Competent Authority in the year
1984 but they fell in deaf ears. Thereafter, they submitted
number of representations but when sphinx like silence was
D maintained by the State which is totally unexpected from a
model employer, they approached the tribunal and, in the
obtaining factual matrix, the tribunal has appositely not thrown
their claim overboard on the ground of delay and laches and,
hence, the order passed by the tribunal, which has been given
the stamp of approval by the High Court, cannot be flawed. It
E is canvassed by him that the submission that Madhav Singh
Tadagi's promotion has been cancelled and, therefore, the
grievance of the respondents stands mitigated, has no legs to
stand upon, and that apart the order of cancellation has already
been assailed before the High Court and an order of stay is in
F vogue. A submission has also been propounded that setting
aside of the order would be inequitable as the junior has
already received the benefit and the seniors have been
deprived of the same.

G 10. At the very outset, we would like to make it clear that
we are not going to deal with the cancellation of promotion of
the said Madhav Singh Tadagi as the same is sub-judice before
the High Court and an order of stay has been passed. We may
further clarify that advertence to the same by us is not required
H for the adjudication of the controversy involved in these appeals.

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11. The centripodal issue that really warrants to be dwelled upon is whether the respondents could have been allowed to maintain a claim petition before the tribunal after a lapse of almost two decades inasmuch as the said Madhav Singh Tadagi, a junior employee, was conferred the benefit of ad hoc promotion from 15.11.1983. It is not in dispute that the respondents were aware of the same. There is no cavil over the fact that they were senior to Madhav Singh Tadagi in the SAS Group III and all of them were considered for regular promotion in the year 1989 and after their regular promotion their seniority position had been maintained. We have stated so as their inter-se seniority in the promotional cadre has not been affected. Therefore, the grievance in singularity is non-conferment of promotional benefit from the date when the junior was promoted on ad hoc basis on 15.11.1983.'

12. It can be stated with certitude that when a junior in the cadre is conferred with the benefit of promotion ignoring the seniority of an employee without any rational basis the person aggrieved can always challenge the same in an appropriate forum, for he has a right to be considered even for ad hoc promotion and a junior cannot be allowed to march over him solely on the ground that the promotion granted is ad hoc in nature. Needless to emphasise that if the senior is found unfit for some reason or other, the matter would be quite different. But, if senior incumbents are eligible as per the rules and there is no legal justification to ignore them, the employer cannot extend the promotional benefit to a junior on ad hoc basis at his whim or caprice. That is not permissible.

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

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A 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*,¹ 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: -

D “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. E The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.”

F 14. In *Union of India and Others v. M.K. Sarkar*,² 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. G Neither a court’s direction to consider a representation issued

1. (2008) 10 SCC 115..

H 2. (2010) 2 SCC 59.

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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*,³ 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*⁴ 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*.⁵

17. In *Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and Others*,⁶ a three-Judge Bench of this Court reiterated the principle stated in *Jagdish Lal v. State of Haryana*⁷ 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*,⁸ this Court, testing the equality clause on the bedrock of delay and laches

3. (2006) 4 SCC 322.

4. (1977) 3 SCC 396.

5. (1976) 3 SCC 579.

6. (2011) 4 SCC 374.

7. (1977) 6 SCC 538.

8. (2007) 10 SCC 137.

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A 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.”

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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*.⁹

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20. In *New Delhi Municipal Council v. Pan Singh and Others*,¹⁰ 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.

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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*,¹¹ 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

9. (2009) 15 SCC 321.

10. (2007) 9 SCC 278.

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11. (1975) 1 SCC 152.

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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 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. Any one 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

A 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.

B 23. We will be failing in our duty if we do not state something about the benefit of promotion conferred on the junior employee. We have been apprised by the learned counsel for the State that the promotion extended to him on 15.11.1983 has been cancelled and, as further put forth by the learned counsel for the respondents, the same is under assail before the High Court. The said Madhav Singh Tadagi was neither a party before the tribunal nor before the High Court and he is also not a party before this Court. As presently advised, we refrain ourselves from expressing any opinion on the cancellation of promotion and the repercussions of the same.

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D As the matter is sub-judice before the High Court, suffice it to say that the High Court shall deal with the same in accordance with the settled principles of law in that regard. We say no more on the said score. However, we irrefragably come to hold that the direction given by the tribunal which has been concurred with by the High Court being absolutely unsustainable in law is bound to be axed and we so do.

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24. Consequently, the appeals are allowed and the orders passed by the High Court and that of the tribunal are set aside.

F There shall be no order as to costs.

R.P.

Appeals allowed.