CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU

Hearing through video conferencing

O.A. No. 61/83/2021

This the 21st day of January, 2021

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)

Ab. Rehman Khadim (Aged about 54 years) S/o Gh. Mohd Khadim, R/o Aishmuqam Anantnag.

.....Applicant

(Advocate: Mr. H.A. Wani)

Versus

1. Union Territory of J&K through Commissioner/Secretary to Government Education Department, Civil Secretariat, Srinagar/Jammu-180001.
2. Director School Education Kashmir-190001.
3. Chief Education Officer, Anantnag-192101.
4. Zonal Education officer Bijbehara Anantnag-192124.
5. Headmaster Boys Middle School Tulkhan Anantnag-192124.

.....Respondents

(Advocate: Mr. Amit Gupta, ld. Additional Advocate General)

O R D E R
[O R A L]
(Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member-J)

Case of applicant Ab. Rehman Khadim is that he was appointed as teacher vide order dated 19.11.1997. As per, the facts of the case coming out from the contents of his petition and the documents attached by him, it transpires that applicant remained unauthorizedly absent from duties from May 2005 and notice was issued in local newspaper in 2009 for resumption of duties and during this period he was also placed under suspension. Thereafter the respondent department issued two notices in 2010 calling upon him to join his duties. Applicant filed an representation in 2010 before Zonal Education Officer, Bijbehara on which the ZEO issued the following order written on the representation as below:

> "Returned to Mr. Ab. Rehman Khadim, tr, on unauthorized absence R/o Grend Aishmuqam, Tehsil Pahalgam with the remark that soon after he submitted his joining report on 13.08.2009, he was necessarily required to attend this office physically to seek his further posting orders. His mere submission of joining report with subsequent absence repeats the same position as it was prior to his joining in office. Now if he really means to work/resume his duties he is directed to join his duties at Govt. M/s Takiyal against his own substantive post. Further absence would entail upon him the loss of appointment in terms of Art. 128 CSR Vol. 1. He should join without any further hitch/excuse."

2. It is the further case of applicant as averred in his O.A. that:

(i) The applicant submits that he remained in district Srinagar up to year 2004, but was again transferred back to his original

place of posting at BMS Tulkhan Anantnag vide order No. ZEO/13/2216-17-05 dated 31.05.2005.

(ii) The applicant submits that he had received salary till 2002 and the salary was withheld for which applicant approached to the authorities for releasing his salary, he was replied the same was received by the applicant, when the fact of the matter is that the salary of the applicant has been released by the concerned clerk at that time illegally for which the concerned clerk at that time illegally for which the enquiry is required to be conducted, so that culprits would be booked under the relevant provision of law and the salary be recovered from them.

3. From the perusal of the documents more particularly the facts set up in his representations and the averments made in the O.A., it transpires that the applicant has slept over his case after 2010 and now filed the present application in the year 2021 seeking the following reliefs:

" (a) To direct the respondents to allow the applicant to resume his duty on the post of teacher being duly appointed vide order No. CEO/A/Apptt.//Trs/3925-26/97 dated 1911.1997 and pay him salary and release all service benefits including promotion for which he is entitled under rules.

(b) To direct the respondents to enquire viz-aviz salary released from the year 2002-2005 in the name of applicant fraudulently and proceed against them in terms of law.

4. During the course of argument, objection has been taken by learned AAG that the O.A. is barred by period of limitation as envisaged by Section 21 of the Act since the cause of action pertains to the year 2010 whereas learned counsel for applicant submitted that there is no delay in filing the O.A. since he has filed a number of representations but the same have not been disposed of by the respondents.

5. Section 21 of the Administrative Tribunals Act, 1985, deals with the limitation. Section 21 reads as follows:-

> "21. Limitation -
> (1) A Tribunal shall not admit an application, -
>
> (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
>
> (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.
>
> (2) Notwithstanding anything contained in subsection (1), where –
>
> (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three

years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates ; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in subsection (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

6. We have heard and considered the arguments of applicant and learned counsel for respondents and gone through the material placed on record by both parties.

7. In **Esha Bhattachargee Vs. Managing Committee of Raghunathpur Nafar Academy and Others (2013) 12 SCC 649**, the Hon'ble Apex Court observed that : "*The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be*

exhibited in a non-challant manner requires to be curbed, of course, within legal parameters."

8. In **Chennai Metropolitan Water Supply and Sewarage Board and Others Vs. T.T. Murali Babu (2014) 4 SCC 108**, it was held by the Hon'ble Apex Court as under:-

> "*13. First, we shall deal with the facet of delay. In Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others[AIR 1969 SC 329] the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp[(1874) 5 PC 221], which is as follows:-*
> *"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."*

14. In State of Maharashtra v. Digambar[(1995) 4 SCC 683], while dealing with exercise of power of the High Court under Article 226 of the Constitution, the Court observed that power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.

15. In State of M.P. and others etc. etc. v. Nandlal Jaiswal and others etc. etc(AIR 1987 SC 251) the Court observed that:

"it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic."

It has been further stated therein that: "if there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction."

Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the

rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold".

9. It is settled law that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21 (1) or Section 21 (2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21 (1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation.

10. In the instant case, applicant approached the respondents in the year 2010, therefore the cause of action occurred to the applicant in the year 2010. Applicant has not given any reason, let alone a plausible reason to explain the delay in filing the present O.A. from 2010 but chosen to say that he was filing representations which have not been considered by the respondents.

11. On consideration of the case set up by the applicant, we are of the view that the approach of the applicant from the beginning has been lackadaisical and indolent which is responsible for the inordinate delay in approaching this Tribunal. Delay and laches, on part of the applicant to seek remedy is written large on the face of record. To repeat the observations of Hon'ble Apex Court - In our considered opinion, such delay does not

deserve any indulgence and on the said ground alone the writ court should have thrown the petition.

12. The applicant has not adduced sufficient cause that prevented him from filing the Application within the prescribed period of limitation. In a recent decision in **SLP (C) No.7956/2011 (CC No.3709/2011) in the matter of D.C.S. Negi vs. Union of India & Others**, decided on 07.03.2011, it has been held as follows:- "*A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21 (1) or Section 21 (2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21 (1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21 (3)*".

13. Applicant has not given any sufficient reason, let alone a plausible reason to explain the delay in filing the present O.A. from the year 2010.

The argument of applicant that his representations have not been disposed of by the respondents and therefore the O.A. is within the period of limitation is devoid of force of law and to be rejected. Section 21 of the Act clearly lays down that no application shall be admitted in case a representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

14. Even, the fact of his making representations does not help the cause of applicant in taking the stand that his claim is not barred by period of limitation. On the question of filing representations and the legal effect, it was held by Hon'ble Apex Court in:

i. **Union of India & Others Vs. M.K. Sarkar (2010) 2 SCC 58**:-
"*15. 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. Neither a court's direction to consider a representation issued without examining the merits, nor a*

decision given in compliance with such direction, will extend the limitation, or erase the delay and laches"

ii. **Jacob vs. Director of Geology and Mining, (2008) 10 SC 115 that:-** "*The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.*

10. 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. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person

directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action."

15. In the light of the aforesaid observation of the Hon'ble Supreme Court, we are not satisfied that the applicant had sufficient cause for not making the original application within the period of limitation envisaged by Section 21 of the Act. No reason is forth coming in the O.A. to make out sufficient case that the O.A. is within the period of limitation.

16. In the light of the aforesaid settled principle of law and facts of the case as noted above, we are of the view that the applicant has failed to make out a sufficient cause for not making the original application within the period of limitation as envisaged by Section 21 of the Act. Accordingly, the OA, being barred by period of limitation, is dismissed. There shall be no order as to costs.

(ANAND MATHUR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

Arun