**Reportable**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8390-8391 OF 2015
(@ S.L.P.(C) NOS.11203-11204 OF 2014)

State of Jammu & Kashmir ... Appellant

Versus

R.K. Zalpuri and others ... Respondent

**J U D G M E N T**

**Dipak Misra, J.**

The first respondent was served with a Memorandum of Charges on 16th September, 1996, which was unequivocally refuted by him. The Disciplinary Authority considering the denial of charges, on 12th November, 1996, appointed an Inquiry Officer, who after conducting the enquiry, submitted a report to the Disciplinary Authority which contained a finding that the employee had misappropriated a sum of Rs.2,68,317.00. After the report

was submitted, the Disciplinary Authority issued a show cause notice on 4th June, 1999, whereby it had proposed to terminate the services of the employee.

2. The first respondent submitted the reply and the Disciplinary Authority considering the explanation passed an order of dismissal on 6th September, 1999 and he stood dismissed from that day. The order passed by the State Government dismissing the employee read as follows:-

> "Whereas the commissioner of Inquiries has submitted his report to the Government and has found him guilty of having embezzled Government money to the tune of Rs.2,68,317.00 (Rupees two lacs, sixty eight thousand, three hundred and seventeen only) besides being responsible for financial mis-conduct and complete lack of devotion to duties.
>
> Whereas, after considering the report of the inquiry officer the involvement of Shri R.K. Zalpur, Senior Assistant, has been established in the embezzlement of Government money as indicated above in the office of Resident Commissioner, J&K, New Delhi.
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> Whereas after accepting the report of the inquiry officer and after establishing his involvement, the Government has decided to take action against Shri R.K. Zalpuri, Sr. Assistant in terms of clause (viii) of rule 30 of the J&K (Classification Control and Appeal) Rules, 1956 which provides dismissal from service.
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> Whereas, Shri R.K. Zalpuri was informed about

> the decision of the Government vide communication No. GAD (Admn.) TA 3391-IV dated 04.06.1999 and was called upon under rules to show cause as to why the proposed action is not taken against him.
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> Whereas Shri R.K. Zalpuri has furnished his reply to the notice served upon him, which has been considered by the Government and no merit was found in he same;
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> Now, therefore, Shri R.K. Zalpur, Senior Assistant, in the office of the Resident Commissioner, J&K, New Delhi is hereby dismissed from Government service with immediate effect in terms of clause VIII of Rule 30 of J&K Civil Service (CCA) Rules, 1956."

3. After the said order was passed, the first respondent did not prefer any departmental appeal nor did he approach any superior authority for redressal of his grievance. However, on 18th February, 2006, he filed a writ petition (S.W.P. No.352 of 2006) before the High Court challenging his dismissal from service. Various assertions were made in the writ petition with regard to the defects in conducting of the inquiry including the one that there had been violation of Rule 34 of the Jammu and Kashmir Civil Services (Classification, Control & Appeal) Rules, 1956, for he had not been afforded an opportunity of hearing in the manner provided in the said Rules. In the writ petition nothing was

stated what he had done from 1999 to 2006.

4. The State Government filed a counter affidavit wherein it had raised a preliminary objection relating to delay and laches. The stand taken by the State Government in the counter affidavit as regards the delay and laches is as follows:-

> "That, the writ petition instituted by the petitioner is liable to be dismissed at its threshold, inasmuch as the same is suffering from inordinate and unexplainable delay and latches. By virtue of the writ petition instituted in the year 2006, the petitioner has come to the court to challenge an order passed by the answering respondents way back on 06.09.1999. It is submitted that pursuant to the issuance of order impugned, the petitioner chose to sleep over the matter and acquiesced whatever rights assumed to be available to him."

5. After putting forth the submission with regard to the delay and laches, the State Government defended its action by asseverating many an aspect, which need not be adverted to.

6. The learned Single Judge *vide* order dated 14th May, 2010, opined that the show cause notice issued to the employee was not accompanied with the copies of the proceedings as envisaged under Rule 34 of the Jammu and

Kashmir Civil Services (Classification, Control & Appeal) Rules, 1956 and that did tantamount to denial of reasonable opportunity to the delinquent official, as has been held by the Constitution Bench in ***E.C.I.L. vs. B. Karunakar***[1]. On that singular ground, he allowed the writ petition and quashed the order of dismissal.

7. Being grieved by the aforesaid decision, the State Government preferred Letters Patent Appeal No.102 of 2012. In the grounds of the Letters Patent Appeal, the State had clearly asserted:-

> "That the learned Single Judge, with great respects, has not appreciated the specific and important averment made by the appellants that the respondent had slept over the matter for quite seven years and has knocked the door of the Hon'ble Court after a gap of seven years, thus there was clear unexplained huge delay and laches in filing the writ petition, the same was liable to be dismissed, however, the learned Single Judge without returning any finding on this vital issue has allowed the writ petition, therefore, the same is liable to be set aside on this ground along."

8. The Division Bench that heard the Letters Patent Appeal recorded a singular submission on behalf of the learned counsel for the State which was to the effect that it

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1 AIR 1994 SC 1074

had been left without any remedy to proceed against the delinquent government servant and, therefore, the order passed by the Learned Single Judge needed modification. The Division Bench dealing with the said submission opined thus:-

> "Learned Single Judge has quashed Respondent's dismissal from Government service on the ground that copy of the proceedings prepared under Rule 33 was not supplied to the Respondent before passing final orders on the provisional conclusion reached at on the basis of the inquiry to show cause as to why the proposed penalty be not imposed on him.
>
> Although the Appellants' dismissal was set aside by the Court finding non-compliance of the provisions of the Rule 34 of the Jammu and Kashmir Civil Service (Classification, Control and Appeal) Rules, 1956, yet it cannot be said that the Appellants have been left without any remedy to proceed against the delinquent employee on complying with the requirement of Rule 34.
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> The Learned State counsel's contention that the Appellants have been left without any remedy to proceed against the respondent may not, therefore, be a correct proposition of law.
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> However, to set the records straight and allay, the State Government's apprehension that they were without any remedy, we dispose of this appeal by providing that quashing of Respondent's dismissal will not operate as impediment for the Appellants to proceed against the Respondent for his misconduct after complying with the requirement of Rule 34 of the Jammu and Kashmir Civil Services (Classification, Control

and Appeal) Rules, 1956."

9. It is apt to note here that an application for review being Review (LPA) No.03 of 2012 was filed wherein a stand was taken pertaining to delay which we think should be reproduced. It reads as under:-

> "The appellants filed detailed reply to the maintainability of the said writ petition. In the objection, it was specifically pleaded before the writ court that the Respondent had slept over the matter and the writ petition is suffering from inordinate and unexplained delay and laches, therefore, the writ petition filed in the year 2006 against the order passed way back in 1999 is liable to be dismissed."

10. The Division Bench considered the application for review and ultimately dismissed the same on the ground that there was no palpable error warranting review of the order. The principal order and the order passed in the review are the subject matters of assail in the present appeals.

11. We have heard Mr. Sunil Fernandes, learned counsel for the appellant-State and Mr. Gagan Gupta, learned counsel for the first respondent.

12. On a perusal of the factual exposition, it is quite vivid that the first respondent was dismissed from service on

6th September, 1999, and he preferred the writ petition on 18th February, 2006, after a lapse of almost five and a half years. The plea relating to delay was specifically taken in the counter affidavit as a preliminary objection, but the learned Single Judge chose not to address the same. The appellate-Bench has noted the submission and modified the order and an application for review was filed with the stand that the plea pertaining to delay and laches had not been considered, but the review application, as we find from the record, was dismissed on the ground that the review could not be treated like an appeal in disguise.

13. Learned counsel for the appellant-State would contend that when a categorical stand was taken in the counter affidavit and a specific stance had been put forth in the intra-Court appeal as is manifest from the record, the High Court should have taken into consideration the same and not recorded a finding on a ground which was not taken in the grounds of appeal.

14. Learned counsel for the respondent-employee, *per contra*, would contend that the delay and laches cannot alone defeat the cause of justice and in any case, when

substantial justice has been done this Court should not interfere in exercise of jurisdiction under Article 136 of the Constitution of India.

15. We have noted that the High Court has rejected the application for review on the ground that it cannot sit in appeal and the parameters of review are not attracted. In this context, we may refer to the Constitution Bench judgment in ***Shivdeo Singh and Others vs. State of Punjab and Others***[2], wherein it has been observed that nothing in Article 226 of the Constitution precludes a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave palpable errors committed by it.

16. In this regard, reference to ***Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma and Others***[3], would also be apt. In the said case, it has been held thus:-

> "It is true as observed by this Court in *Shivdeo Singh v. State of Punjab*, there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of

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[2] AIR 1963 SC 1909,
[3] (1979) 4 SCC 389,

> review. The power of review may be exercised to the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate Court to correct all manner or errors committed by the subordinate Court."

17. In ***M/s. Thungabhadra Industries Ltd. vs. The Government of Andhra Pradesh represented by the Deputy Commissioner of Commercial Taxes***[4]**,** this Court while discussing about the concept of review, has ruled that:-

> "a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions, entertained about it, a clear case of error apparent on the face of the record would be made out".

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[4] AIR 1964 SC 1372

18. Almost fifty-five years back, in ***Satyanarayan Laxminarayan Hegde vs. Mallikarjun Bhavanappa Tirumale***[5], it was laid down that:-

> "an error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established by lengthy and complicated arguments and such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ".

19. We have referred to the aforesaid authorities as we are of the convinced opinion that in the present case, there was a manifest error by the High Court, for it had really not taken note of the stand and stance that was eloquently put by the State as regards the delay and laches. The averments in the writ petition were absolutely silent and nothing had been spelt out why the delay had occurred. The Single Judge, as stated earlier had chosen not to address the said issue. The Division Bench in appeal addressed the submission, totally being oblivious of the ground pertaining to delay and laches clearly stated in the memorandum of appeal, and modified the order passed by

[5] AIR 1960 SC 137

the Learned Single Judge as if that was the sole submission. It needs no special emphasis to state that in the obtaining factual matrix, the application for review did not require delving deep into the factual matrix to find out the error. It was not an exercise of an appellate jurisdiction as is understood in law. It can be stated with certitude that it was a palpable error, for the principal stand of the State was not addressed to and definitely it had immense significance and hence, the same deserved to be addressed to. Therefore, we are compelled to think that the order required review for the purpose of consideration of the impact of delay and laches in preferring the writ petition. Be that as it may, we shall proceed to deal with the repercussions of delay and laches, as we are of the considered opinion that the same deserves to be addressed to in the present case.

20. Having stated thus, it is useful to refer to a passage from ***City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwala and Others***[6], wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

"The Court while exercising its jurisdiction under

[6] (2009) 1 SCC 168

Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors."

21. In this regard reference to a passage from ***Karnataka Power Corpn. Ltd Through its Chairman & Managing Director & Anr Vs. K. Thangappan and Anr***[7] would be apposite:-

> "Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party".

After so stating the Court after referring to the

[7] (2006) 4 SCC 322

authority in ***State of M.P. v. Nandalal Jaiswal***[8] restated the principle articulated in earlier pronouncements, which is to the following effect:-

> "the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction".

22. In ***State of Maharashtra V Digambar***[9] a three-judge bench laid down that:-

> "*19*. 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

[8] (1986) 4 SCC 566
[9] (1995) 4 SCC 683

> 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."

23. Recently in ***Chennai Metropolitan Water Supply and Sewerage Board & Ors. Vs. T.T. Murali Babu***[10], it has been ruled thus:

> "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 scrutinise 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".

24. At this juncture, we are obliged to state that the question of delay and laches in all kinds of cases would not

[10] (2014) 4 SCC 108

curb or curtail the power of writ court to exercise the discretion. In ***Tukaram Kana Joshi And Ors. Vs. Maharashtra Industrial Development Corporation & Ors***[11] it has been ruled that:-

> "Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience".

And again:-

> "No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial jus-

[11] (2013) 1 SCC 353

> tice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide *Durga Prashad* v. *Chief Controller of Imports and Exports*[12], *Collector (LA)* v. *Katiji*[13], *Dehri Rohtas Light Railway Co. Ltd.* v. *District Board, Bhojpur*[14], *Dayal Singh* v. *Union of India*[15] and *Shankara Coop. Housing Society Ltd.* v. *M. Prabhakar*[16].)"

25. Be it stated, in the said case the appellants were deprived of the legitimate dues for decades and the Maharashtra Industrial Development Corporation had handed over the possession of the property belonging to the appellant to the City Industrial Development Corporation of Maharashtra without any kind of acquisition and grant of compensation. This court granted relief reversing the decision of the High Court which had dismissed the writ petition on the ground of delay and non-availability of certain documents. Therefore, it is clear that the principle of delay and laches would not affect the grant of relief in all types of cases.

26. In the case at hand, the employee was dismissed from

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[12] (1969) 1 SCC 185
[13] (1987) 2 SCC 107
[14] (1992) 2 SCC 598
[15] (2003) 2 SCC 593
[16] (2011) 5 SCC 607

service in the year 1999, but he chose not to avail any departmental remedy. He woke up from his slumber to knock at the doors of the High Court after a lapse of five years. The staleness of the claim remained stale and it could not have been allowed to rise like a phoenix by the writ court.

27. The grievance agitated by the respondent did not deserve to be addressed on merits, for doctrine of delay and laches had already visited his claim like the chill of death which does not spare anyone even the one who fosters the idea and nurtures the attitude that he can sleep to avoid death and eventually proclaim "Deo gratias" – 'thanks to God'.

28. Another aspect needs to be stated. A writ court while deciding a writ petition is required to remain alive to the nature of the claim and the unexplained delay on the part of the writ petitioner. Stale claims are not to be adjudicated unless non-interference would cause grave injustice. The present case, need less to emphasise, did not justify adjudication. It deserved to be thrown overboard at the very threshold, for the writ petitioner had accepted the order of

dismissal for half a decade and cultivated the feeling that he could freeze time and forever remain in the realm of constant present.

29. In view of our aforesaid analysis the appeals are allowed and the judgment and orders passed by the High Court are set aside. There shall be no order as to costs.

.....J.
[Dipak Misra]

.....J.
[Prafulla C. Pant]

New Delhi
October 08, 2015.