



2025:CGHC:1121-DB

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WA No. 883 of 2024**

Gaind Ram Baghel S/o Firanta Ram Aged About 63 Years R/o W.R.S. Colony,
Raipur, Tehsil And District- Raipur, Chhattisgarh.

--- Appellant**Versus**

1 - State Of Chhattisgarh Through Its Secretary, Revenue Department
Secretariat, Mantralaya, Mahanadi Bhawan, New Raipur, District - Raipur,
Chhattisgarh.

2 - The Commissioner, Land Records And Settlement, P.S. And Post- Civil
Lines Raipur, District Raipur, Chhattisgarh.

3 - The Collector, (Land Records), Raipur, P.S. And Post - Civil Lines, Raipur,
District Raipur, Chhattisgarh.

4 - Sada Ram Banjare, S/o Bhuwal Lal Aged About 61 Years R/o Village
Nakta, P.O. And P.S. - Mandir Hasoud, Tehsil And District - Raipur,
Chhattisgarh.

--- Respondent(s)

For Appellant	:	Mr. Rajesh Kesharwani, Advocate.
For Respondents No. 1 to 3	:	Mr. Shashank Thakur, Deputy Government Advocate.

Hon'ble Mr. Ramesh Sinha, Chief Justice**Hon'ble Mr. Ravindra Kumar Agrawal, Judge**

Judgment on Board

Per Ramesh Sinha, Chief Justice

07/01/2025

1. Heard Mr. Rajesh Kesharwani, learned counsel for the appellants as well as Mr. Shashank Thakur, learned Deputy Advocate General for the State/respondents No. 1 to 3.
2. Today, the matter is listed for orders on IA No. 1, which is an application for condonation of delay of 16 days in filing this appeal. For the reasons stated in the application, delay is condoned and with the consent of learned counsel for the parties, the matter is heard finally at this stage itself.
3. Challenge in this appeal is to the order dated 27.09.2024 passed by the learned Single Judge in WPS No. 1071/2013 by which the petition filed by the appellant as well as respondent No. 4 herein (writ petitioners) seeking a direction to the State that they may be given regularisation in service from their initial date of appointment i.e. 09.06.1993 and 30.06.1993, respectively, has been rejected.
4. The facts, in brief, as projected by the writ petitioners before the learned Single Judge was that they were appointed in Special Recruitment Drive initiated by the Collector on the post of Chainman on daily wages basis on 09.06.1993 and 30.06.1993 and their services were not regularised leading to filing of Writ Petition (S) No.3177/2005 before this Court in which by order dated 28.08.2006, this Court directed the State Government to consider the case of the writ petitioners in light of the decision of the Supreme Court in the matter of **Secretary, State of Karnataka v. Umadevi & Others** {(2006) 4 SCC 1} and pursuant

thereto, the writ petitioners were regularised on the post of Chairman w.e.f. 22.11.2007, which they accepted without demur and protest and thereafter after delay of six years, on 15.04.2013, they filed the writ petition claiming that the regularisation granted on 22.11.2007 be directed to be granted from retrospective date i.e. from the date of their initial appointment i.e. on 09.06.1993 & 30.06.1993 respectively.

5. The State contested the matter by filing their return stating that as the writ petitioners had already been regularised on the post of Chairman on 22.11.2007 and there was delay of six years in filing the writ petition, which they had failed to explain and they were earlier appointed on daily wages, and not appointed on sanctioned post in accordance with rules and in that view of above-stated facts, they were not entitled for retrospective regularisation from the date of their initial appointment i.e. on 09.06.1993 & 30.06.1993.
6. After hearing both the parties, the learned Single Judge, relying on the decisions rendered by the Apex Court in **Registrar General of India & Another v. V. Thippa Setty & Others** {(1998) 8 SCC 690}, **Union of India v. Sheela Rani** {(2007) 15 SCC 230}, **M. Janardhan & Others v. State of A.P. & Others** {(1994) Supp 3 SCC 298}, **Masood Akhtar Khan & Others v. State of Madhya Pradesh & Others** {(1990) 4 SCC 24}, held that the writ petitioners were initially not appointed on any sanctioned posts in accordance with rules and they were kept on daily wages on a fixed remuneration and in light of the subsequent decision of the Supreme Court in the matter of **Umadevi** (supra), the case of the writ petitioners for regularisation were considered and they were regularised by order dated 22.11.2007 with prospective effect in which there was no illegality and as such, the writ petition stood dismissed.

7. Mr. Kesharwani, learned counsel for the appellant/writ petitioner No. 2 submits that the learned Single Judge failed to consider the fact that the action of the respondent authorities was discriminatory as such, the similarly situated employees who were appointed in pursuance of Special Drive initiated to clear backlog vacancies reserved for SC/ST candidates have already been regularised from the date of their initial appointment and also paid regular pay and allowances from the date of their appointment but the appellant has been deprived of the same. It is further submitted that the appellant was appointed against regular sanctioned post of Chainman. He has drawn attention of this Court to the order dated 14.09.1998 (Annexure P/2) issued by the Deputy Secretary to the Government of Madhya Pradesh, General Administration Department, which relates to appointment of SC/ST/OBC candidates under the special recruitment drive. In the said order, it is stated that whenever special recruitment drive is initiated, the appointment has to be made on regular pay scale and not on daily wages basis. He further submits that the conduct of the respondent/State in not regularising the appellant from his initial date of appointment is a continuous wrong which can be challenged at any point of time before the writ Court and the learned Single Judge has failed to consider this aspect. In support of his contentions, reliance has been placed by him on the decision of the Supreme Court in ***M.R.Gupta v. Union of India*** {1995 LawSuit (SC) 785}.
8. On the other hand, Mr. Shashank Thakur, learned counsel for the State/respondents No. 1 to 3 submits that the learned Single Judge has committed no illegality or irregularity by rejecting the claim of the appellant. The appellant has approached the writ Court in a much belated stage and no retrospective effect can be given with regard to

regularisation. In support of his contentions, he relies on the decision of the Supreme Court in **Sheela Rani** (supra), **Regional Manager, APSRTC v. N. Satyanarayana & Others** {(2008) 1 SCC 210} and **Bichitrananda Behera v. State of Orissa & Others** {2023 SCC OnLine SC 1307}.

9. We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.
10. It is not in dispute that initially, the appellant as well as respondent No. 4 were appointed on daily wages basis on 09.06.1993 and 30.06.1993, respectively on the post of Chainman and their services came to be regularised on 22.11.2007 only after filing of WPS No. 3177/2005 in light of the judgment passed by the Apex Court in **Uma Devi** (supra). WPS No. 1071/2013 was filed on 15.04.2013 after lapse of six years from the date of their regularisation. Had the appellant any grievance with regard to the date of his regularisation, he ought to have approached the learned Single Judge immediately on passing of the order of regularisation. The delay has not been explained and as such, on the ground of delay and laches, the writ petition has been dismissed which warrants no interference. The Apex Court, in **Bichitranand Behera** (supra) has held as under:

“21. Profitably, we may reproduce relevant passages from certain decisions of this Court:

(A) Union of India v Tarsem Singh, (2008) 8 SCC 648:

“To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said

rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

(B) *Union of India v N Murugesan, (2022) 2 SCC 25:*

"Delay, laches and acquiescence

20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration

of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the court.

Laches

21. The word "laches" is derived from the French language meaning "remissness and slackness". It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.

22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.

23. A defence of laches can only be allowed when there is no statutory bar. The question as to whether there exists a clear case of laches on the part of a person seeking a remedy is one of fact and so also that of prejudice. The said principle may not have any application when the existence of fraud is pleaded and proved by the other side. To determine the difference between the concept of laches and acquiescence is that, in a case involving mere laches, the principle of estoppel would apply to all the defences

that are available to a party. Therefore, a defendant can succeed on the various grounds raised by the plaintiff, while an issue concerned alone would be amenable to acquiescence.

Acquiescence

24. We have already discussed the relationship between acquiescence on the one hand and delay and laches on the other.

25. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis.”

(C) Chairman, State Bank of India v M J James, (2022) 2 SCC 301:

"36. What is a reasonable time is not to be put in a straitjacket formula or judicially codified in the form of days, etc. as it depends upon the facts and circumstances of each case. A right not exercised for a long time is non-existent. Doctrine of delay and laches as well as

acquiescence are applied to non-suit the litigants who approach the court/appellate authorities belatedly without any justifiable explanation for bringing action after unreasonable delay. In the present case, challenge to the order of dismissal from service by way of appeal was after four years and five months, which is certainly highly belated and beyond justifiable time. Without satisfactory explanation justifying the delay, it is difficult to hold that the appeal was preferred within a reasonable time. Pertinently, the challenge was primarily on the ground that the respondent was not allowed to be represented by a representative of his choice. The respondent knew that even if he were to succeed on this ground, as has happened in the writ proceedings, fresh inquiry would not be prohibited as finality is not attached unless there is a legal or statutory bar, an aspect which has been also noticed in the impugned judgment. This is highlighted to show the prejudice caused to the appellants by the delayed challenge. We would, subsequently, examine the question of acquiescence and its judicial effect in the context of the present case.

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38. In Ram Chand v. Union of India [Ram Chand v. Union of India, (1994) 1 SCC 44] and State of U.P. v. Manohar [State of U.P. v. Manohar, (2005) 2 SCC 126] this Court observed that if the statutory authority has not performed its duty within a reasonable time, it cannot justify the same by taking the plea that the person who has been deprived of his rights has not approached the appropriate forum for relief. If a statutory authority does not pass any orders and thereby fails to comply with the statutory mandate within reasonable time, they normally should not be permitted to take the defence of laches and delay. If at all, in such cases, the delay furnishes a cause of action, which in some cases as elucidated in Union of India v. Tarsem Singh [Union of India v. Tarsem Singh, (2008) 8 SCC 648 : (2008)

2 SCC (L&S) 765] may be continuing cause of action. The State being a virtuous litigant should meet the genuine claims and not deny them for want of action on their part. However, this general principle would not apply when, on consideration of the facts, the court concludes that the respondent had abandoned his rights, which may be either express or implied from his conduct. Abandonment implies intentional act to acknowledge, as has been held in para 6 of Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. [Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409 : 1979 SCC (Tax) 144] Applying this principle of acquiescence to the precept of delay and laches, this Court in U.P. Jal Nigam v. Jaswant Singh [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] after referring to several judgments, has accepted the following elucidation in Halsbury's Laws of England : (Jaswant Singh case [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] , SCC pp. 470-71, paras 12-13)

"12. The statement of law has also been summarised in Halsbury's Laws of England, Para 911, p. 395 as follows:

'In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

- (i) acquiescence on the claimant's part; and*
- (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 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.'

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?"

39. Before proceeding further, it is important to clarify distinction between "acquiescence" and "delay and laches". Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot

afterwards complain. [See Prabhakar v. Sericulture Deptt., (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149. Also, see Gobinda Ramanuj Das Mohanta v. Ram Charan Das, 1925 SCC OnLine Cal 30 : AIR 1925 Cal 1107] In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, [See Vidyavathi Kapoor Trust v. CIT, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. [See Krishan Dev v. Ram Piari, 1964 SCC OnLine HP 5 : AIR 1964 HP 34] Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. [See "Introduction", U.N. Mitra, Tagore Law Lectures — Law of Limitation and Prescription, Vol. I, 14th Edn., 2016.] However, acquiescence will not apply if lapse of time is of no importance or consequence.

40. Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person. [See Vidyavathi Kapoor Trust v. CIT, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] Given the aforesaid legal position, inactive acquiescence on the part of the respondent can be inferred till the filing of the appeal,

and not for the period post filing of the appeal. Nevertheless, this acquiescence being in the nature of estoppel bars the respondent from claiming violation of the right of fair representation.”

11. So far as the existence of the order dated 14.09.1998 (Annexure P/2 to writ petition) passed by the then State Government is concerned, if the appellant places reliance on the said order, he ought to have approached the competent Court of law at that point of time only claiming regularisation which is missing in this case and amounts to acquiescence or waiver of his rights. Further, regularisation with retrospective effect upsets the chances of seniority of other candidates who are appointed on regular basis and the same cannot be ignored.
12. Hence, applying the ratio laid down by the Apex Court in the aforesaid case, we do not find any illegality or irregularity in the order passed by the learned Single Judge and as such, this appeal stands **dismissed**.

Sd/-
(Ravindra Kumar Agrawal)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

Head Note

Delay, laches and acquiescence is an important factor which has to be borne in mind while deciding a claim especially when the claim is sought to be made applicable with retrospective effect.