A CHAIRMAN, U.P. JAL NIGAM AND ANR.

v.

JASWANT SINGH AND ANR.

NOVEMBER 10, 2006

B [DR. AR. LAKSHMANAN AND A.K. MATHUR, JJ.]

Constitution of India—Article 226—Writ Petitions by employees challenging their age of superannuation at 58 years on the ground that the age of superannuation of the State Government employees is 60 years—Supreme C *Court in Harwindra Kumar* **v.** *Chief Engineer, Karmik & Ors., [2005] 13 SCC 300 held the superannuation age to be 60 years—Writ Petitions by employees, who retired long time back and accepted post-retirement benefits, claiming payment of salary for the two years in the light of the Supreme Court judgment—High Court allowed the Writ Petitions -Correctness of—Held, employees are* D *not entitled to any relief because of delay and laches.*

Some of the employees of appellant-organisation, who retired on attaining the age of superannuation at 58 years, filed Writ Petitions before High Court challenging the retirement age on the ground that the retirement age of State Government employees was 60 years and hence E **they should also be allowed to continue to work upto the age of 60 years. The High Court dismissed the Writ Petitions. This Court, in a batch of cases, in *Harwindra Kumar.* v. *Chief Engineer, Karmik & Ors.* [2005] 13 SCC 300 held that the employees are entitled to continue to work upto the age of 60 years. This Court further held that in case of those employees who** F **have not been allowed to continue to work by the appellant after completing the age of 58 years, they would be entitled to payment of salary for the remaining period upto the age of 60 years. On the basis of this Court's judgment in *Harwindra Kumar,* a number of writ petitions were filed by the respondents, who had retired long back and accepted the post-retirement benefits without challenging the retirement age earlier. The** G **High Court disposed of the Writ Petitions in the light of the judgment in *Harwindra Kumar.***

In appeal to this Court, the appellant-organisation contended that the respondents are guilty of delay and laches and hence they should not

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be granted any relief; that, if the relief is granted at this belated stage, it will cause a huge financial burden; that there is no sufficient fund for incurring the huge financial burden and it will completely ruin the financial condition of the organisation; and that the relief should be confined to those persons who were continuing in service and filed their writ petitions in time.

Allowing the appeals, the Court

HELD: 1.1. The respondents are guilty since they have acquiesced in accepting the retirement and did not challenge the same in time. If they were vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants did not rise to the occasion in time for filing the writ petitions, then in such cases, Court should be very slow in granting the relief to the incumbent. [923-D-E]

Harwindra Kumar v. *Chief Engineer, Karmik & Ors.*, [2005] 13 SCC 300; *M/s Rup Diamond & Ors.* v. *Union of India & Ors.*, [1989] 2 SCC 356; *State of Karnataka & Ors.* v. *S.M. Kotrayya & Ors.*, [1996] 6 SCC 267; *Jagdish Lal & Ors.* v. *State of Haryana & Ors.*, [1997] 6 SCC 538; *Union of India & Ors.* v. *C.K. Dharagupta & Ors.*, [1997] 3 SCC 395; *Government of W.B.* v. *Tarun K. Roy & Ors.*, [2004] 1 SCC 347 and *Dayal Singh & Ors.* v. *Union of India & Ors.*, [2003] 2 SCC 593, referred to.

1.2. If the respondents had challenged their retirement in time, perhaps the appellant would have taken appropriate steps to raise funds to meet the liability. [923-F]

In case, at this belated stage, if similar relief is given to the respondents, that will unnecessarily overburden the appellant-organisation and the organisation will completely collapse with the liability of payment to these persons in terms of two years' salary and increased benefit of pension and other consequential benefits. Therefore, this Court is not inclined to grant any relief to the persons who have approached the Court after their retirement age. Only those persons who have filed the writ petitions when they were in service or who have obtained interim order for their retirement should be allowed to stand to benefit and not others. [924-F-H]

Krishena Kumar v. *Union of India & Ors. etc. etc.* [1990] 4 SCC 207 referred to.

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4790 of 2006.

From the Final Judgment and Order dated 31.1.2006 of the High Court of Judicature at Allahabad in C.M.W.P. No. 5753/2006.

P.P. Rao, Dr. Sumant Bhardwaj, I.P. Singh Sheshadri Shekhar, Shamba
B Dutta, Mridula Ray Bharadwaj for the Appellants.

Rachna Gupta, Indra Pratap Singh, Syed Ali Ahmad, Syed Tanweer Ahmad, S.S. Bandyopadhyay, Shivpati B. Pandey, Shahanawaz Hasan and Mohan Pandey for the Respondent No.1.

C Shoba Dikshit, D.K, Goswami for the State of U.P.

The Judgment of the Court was delivered by

A.K. MATHUR, J. Leave granted.

D All this batch of appeals involve similar questions of law and fact, therefore, they are disposed of by this common order.

All these respondents are the employees of the Uttar Pradesh Jal Nigam (hereinafter to be referred to as 'the Nigam') and they were retired on attaining the age of superannuation at 58 years. Some of them filed writ petitions in
E the High Court of Judicature at Allahabad challenging the retirement of the employees of the Nigam on attaining the age of 58 years whereas the State Government employees were allowed to continue up to the age of 60 years and therefore, they should also be allowed to continue up to the age of 60 years. The writ petitions filed before the High Court failed and against that Civil Appeal No.7840 of 2002 and batch of other appeals were filed before
F this Court. This Court disposed of the case of *Harwindra Kumar* along with other appeals and held that employees of Nigam are entitled to continue up to 60 years. This has been reported in [2005] 13 SCC 300. The operative portion of the said judgment reads as under :

G "10. For the foregoing reasons, we are of the view that so long as Regulation 31 of the Regulations is not amended, 60 years which is the age of superannuation of government servants employed under the State of Uttar Pradesh shall be applicable to the employees of the Nigam. However, it would be open to the Nigam with the previous approval of the State Government to make suitable amendment in
H Regulation 31 and alter the service conditions of employees of the

Nigam, including their age of superannuation. It is needless to say that if it is so done, the same shall be prospective.

11. For the foregoing reasons, the appeals as well as writ petitions are allowed, orders passed by the High Court dismissing the writ petitions as well as those by the Nigam directing that the appellants of the civil appeals and the petitioners of the writ petitions would superannuate upon completion of the age of 58 years are set aside and it is directed that in case the employees have been allowed to continue up to the age of 60 years by virtue of some interim order, no recovery shall be made from them but in case, however, they have not been allowed to continue after completing the age of 58 years by virtue of erroneous decision taken by the Nigam for no fault of theirs, they would be entitled to payment of salary for the remaining period up to the age of 60 years which must be paid to them within a period of three months from the date of receipt of copy of this order by the Nigam. There shall be no order as to costs."

It appears that during the pendency of the appeals and writ petitions before this Court and after disposal of the same by this Court, a spate of writ petitions followed in the High Court by the employees who had retired long back. Some of the petitions were filed by the employees who retired on attaining the age of 58 years long back. However, some were lucky to get interim orders allowing them to continue in service. Number of writ petitions were filed in the High Court in 2005 on various dates after the judgment in the case of *Harwindra Kumar* (supra) and some between 2002 and 2005. All those writ petitions were disposed of in the light of the judgment in the case of *Harwindra Kumar* (supra) and relief was given to them for continuing in service up to the age of 60 years. Hence, all these appeals arise against various orders passed by the High Court from time to time.

So far as the principal issue is concerned, that has been settled by this Court. Therefore, there is no quarrel over the legal proposition. But the only question is grant of relief to such other persons who were not vigilant and did not wake up to challenge their retirement and accepted the same but filed writ petitions after the judgment of this Court in the case of *Harwindra Kumar* (supra). Whether they are entitled to same relief or not ? Therefore, a serious question that arises for consideration is whether the employees who did not wake up to challenge their retirement and accepted the same, collected their post retirement benefits, can such persons be given the relief in the light

A of the subsequent decision delivered by this Court ?

The question of delay and laches has been examined by this Court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces B with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that about 9 C writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 30.6.2005 and 31.7.2005. Two writ petitions were filed wherein no relief of interim order was passed. They were granted interim order. Thereafter a spate of writ petitions followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 & 2006 much after their retirement. D Whether such persons should be granted the same relief or not ?

Learned senior counsel for the appellants has invited our attention to various decisions to impress upon that persons who are guilty of such laches and acquiesced with the situation should not be granted any relief because it is going to cost the Nigam a heavy financial burden to the tune of Rs.17,80, E 43,108/-. Therefore, relief should be confined to those persons who were continuing in service and filed their writ petitions in time but not to all and sundry who woke up to file the writ petitions much after their retirement. In this connection, our attention was invited to a decision of this Court in the case of *M/s. Rup Diamonds & Ors.* v. *Union of India & Ors.*, reported in F [1989] 2 SCC 356, wherein their Lordships observed that those people who were sitting on the fence till somebody else took up the matter to the court for refund of duty, cannot be given the benefit. In that context, their Lordships held as follows :

> "Petitioners are re-agitating claims which they had not pursued for G several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate

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delay in preferring the present writ petition which is brought after a year after the first rejection. As observed by the Court in Durga Prashad case, the exchange position of this country and the policy of the government regarding international trade varies from year to year. In these matters it is essential that persons who are aggrieved by orders of the government should approach the High Court after exhausting the remedies provided by law, rule or order with utmost expedition. Therefore, these delays are sufficient to persuade the Court to decline to interfere. If a right of appeal is available, this order rejecting the writ petition shall not prejudice petitioners' case in any such appeal."

Our attention was also invited to a decision of this Court in the case of *State of Karnataka & Ors.* v. *S.M.Kotrayya & Ors.*, reported in [1996] 6 SCC 267. In that case the respondents woke up to claim the relief which was granted to their colleagues by the Tribunal with an application to condone the delay. The Tribunal condoned the delay. Therefore, the State approached this Court and this Court after considering the matter observed as under :

"Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-section (1) or (2) of Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay."

Similarly, in the case of *Jagdish Lal & Ors.* v. *State of Haryana & Ors.* reported in [1997] 6 SCC 538, this Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the Court, then such person cannot stand to benefit. In that case it was observed as follows :

A " The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Vir Pal Singh Chauhan case. The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage."

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In the case of *Union of India & Ors.* v. *C.K. Dharagupta & Ors.*, reported in [1997] 3 SCC 395, it was observed as follows :

" We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P.Joshi gives relief only to Joshi, the benefit of
C the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K.Dharagupta (since retired) is seeking benefit of Joshi case. In view of our finding that the benefit of the judgment of the Tribunal dated 17-3-1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief."

D In the case of *Government of W.B.* v. *Tarun K. Roy & Ors.* reported in [2004] 1 SCC 347, their Lordships considered delay as serious factor and have not granted relief. Therein it was observed as follows :

" The respondents furthermore are not even entitled to any relief
E on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in Debdas Kumar. The plea of delay, which
F Mr.Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation
G only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others there from who may be found to be entitled thereto by a court of law."

The statement of law has also been summarized in Halsbury's Laws of
H England, Para 911 , pg. 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. "

In view of the statement of law as summarized above, the respondents are guilty since the respondents has 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 while 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 repercussion on the financial management of the Nigam. Why the Court should come to the rescue of such persons when they themselves are guilty of waiver and acquiescence.

As against this, our attention was invited to a decision of this Court in the case of *Dayal Singh & Ors.* v. *Union of India & Ors.* reported in [2003] 2 SCC 593. In that case their Lordships observed that when the High Court

A exercised discretion and condoned the delay, it is not proper for the Supreme Court at the SLP stage to set aside the High Court's order on that ground alone and more so, where the impugned judgment is legally sustainable. This case does not provide any assistance to the respondents.

Learned counsel for the appellants has also pointed out that at this B belated stage if the relief is given to the respondents who have retired and accepted the retirement, that will cause a huge burden to the Nigam to the tune of Rs.17,80,43,108/- and there is no sufficient funds for incurring such a huge amount at this belated stage. This will completely ruin the financial condition of the Nigam if all the persons who were not vigilant and did not C take up their cause before the Court, it would prove a great set back to the Nigam. In this regard, a reference was made to a decision of this Court in the case of *Krishena Kumar* v. *Union of India & Ors. etc. etc.* reported in [1990] 4 SCC 207. In that case the question was to grant pensionary benefit to the provident fund holders of the railways. A submission was made if the Court feels that a positive direction cannot be given to the government, it was D prayed that at least an option should be given to the respondents either to withdraw the benefit of switching over to pension from everyone or to give it to the petitioners as well, so that the discrimination must go. This Court negatived the submission and it was observed as follows :

> " We are not inclined to accept either of these submissions. The E PF retirees and pension retirees having not belonged to a class, there is no discrimination. In the matter of expenditure includible in the Annual Financial Statement, this Court has to be loath to pass any order or give any direction, because of the division of functions between the three co-equal organs of the government under the F Constitution."

Therefore, in case at this belated stage if similar relief is to be given to the persons who have not approached the Court that will unnecessarily overburden the Nigam and the Nigam will completely collapse with the liability of payment to these persons in terms of two years' salary and increased benefit of pension G and other consequential benefits. Therefore, we are not inclined to grant any relief to the persons who have approached the Court after their retirement. Only those persons who have filed the writ petitions when they were in service or who have obtained interim order for their retirement, those persons should be allowed to stand to benefit and not others. We have been given a chart of those nine persons, who filed writ petitions and obtained stay & are H

continuing in service. They are as follows: A

1. Shri Bhawani Sewak Shukla
2. Shri Vijay Bahadur Rai
3. Shri Girija Shanker
4. Shri Yogendra Prakash Kulshersht B
5. Shri Vinod Kumar Bansal
6. Shri Pradumn Prashad Mishra
7. Shri Banke Bihari Pandey C
8. Shri Yashwant Singh
9. Shri Chandra Shekhar

And the following persons filed Writ Petitions before retirement but no stay order granted.

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1. Shri Gopal Singh Dangwal (W/P No. 35384/05 vide order dated 5.5.2005)
2. Shri R.R. Gautam (W/P No. 45495/05 vide order dated 15.6.05)

The benefits shall only be confined to above mentioned persons who have filed writ petitions before their retirement or they have obtained interim order before their retirement. The appeals filed against these persons by the Nigam shall fail and the same are dismissed. Rest of the appeals are allowed and orders passed by the High Court are set aside. There would be no order as to costs. E

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It is submitted that contempt petitions were filed before the High Court. In view of the order passed in this batch of appeals, the contempt petitions will not survive and the same are dismissed.

B.S. Appeals disposed of.

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