

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 25th August, 2023

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.40 of 2022

Petitioner : Chewang Namgyal Bhutia

versus

Respondents : State of Sikkim and Others

Application under Article 226 of the Constitution of India

Appearance

Mr. B. Sharma, Senior Advocate with Mr. Safal Sharma, Ms. Shreya Sharma and Ms. Puja Kumari Singh, Advocates for the Petitioner.

Mr. Zangpo Sherpa, Additional Advocate General with Ms. Pema Bhutia, Assistant Government Advocate for the State-Respondent Nos.1, 2 and 3.

Mr. Karma Thinlay Bhutia, Senior Advocate with Mr. Yashir N. Tamang, Advocate for Respondent Nos.4 and 5.

JUDGMENT

Meenakshi Madan Rai, J.

1. The Petitioner is aggrieved by his placement in the seniority ranking as against the Respondent Nos.4 and 5, in the Respondent No.3 Department and in the Writ Petition seeks the following reliefs;

- (a) to quash the seniority list prepared vide Notification No.180/GEN/DOP, dated 02-08-2005 (Annexure P12) [*sic*, Notification No.266/GEN/DOP, dated 04-10-2005], and Notification bearing No.118/Gen/DOP, dated 07-09-2016 fixing the *inter se* seniority of members of the Sikkim State Technology Information Service (hereinafter, "TI Service");
- (b) to disqualify the Respondent Nos.4 and 5 from the TI Service as they lack qualification required vide Notification No.266/GEN/DOP, dated 04-10-2005

- (Annexure P13) [*sic*, Notification No.12/GEN/DOP, dated 17-04-2001], to be inducted into the TI Service;
- (c) to direct the Respondent Nos.1 and 2 to prepare a fresh seniority list considering the legal stand of the Petitioner and the educational qualifications of all other incumbents at the time of induction in the cadre posts; and
- (d) writ or order quashing the Office Order bearing No.68/DIT/2021, dated 02-12-2021 (Annexure P27).

2. The seminal facts as can be gauged from the pleadings is that, the Petitioner, holding a degree in Bachelor of Technology in Electronics and Communication Engineering, presently working as the Additional Director of the Respondent No.3 Department was initially employed as a Computer Instructor at the Centre for Computers & Communication Technology (CCT), an autonomous body in the Department of Science & Technology, Government of Sikkim, from 17-08-1999 (Annexure P4). On 10-01-2001, he was appointed as a Technical Assistant, Community Information Centre (hereinafter, "CIC"), Namchi, under the Respondent No.3 Department, which post he joined on 11-01-2001. Vide a Notification of the Home Department dated 16-02-2000 (Annexure P6), the Respondent No.3 Department was created and the Petitioner was inducted to the regular establishment thereof as a Technical Assistant, vide Order dated 24-05-2002 (Annexure P8).

(i) The private Respondent No.4 commenced his career as a Lecturer in Aptech Computer Centre during the year 1997 to 1999. He was appointed as Technical Assistant on temporary basis at the CIC Project on 24-10-2000, under the Respondent No.3 Department. This was extended vide Office Order No.176/(G)/DOP, dated 22-12-2000 [Annexure R1 (colly)]. He was regularized in the post of Technical Assistant under Respondent No.2, on 24-

05-2002 (Annexure R2), vide Office Order of the same date. The Respondent No.4 holds a Bachelor's degree in Electrical Engineering.

(ii) The Respondent No.5 who began his career as a Medical Equipment Engineer at Namchi Hospital in 1998-99 was appointed as a Technical Assistant at the CIC Project at Gangtok on 24-10-2000, a Pilot Project of the Central Government, implemented by the Respondent No.3 Department on the creation of the Respondent No.3 Department in 2000. He was regularised in the post of Technical Assistant on 24-05-2002 vide Office Order of the same date which stood extended. The Respondent No.5 holds a Bachelor's degree in Engineering in Medical Electronics.

(iii) A Notification of the Respondent No.2 Department dated 23-06-2003 (Annexure P9) upgraded the then existing four posts of Technical Assistants in the Respondent No.3 Department to that of Senior Technical Assistants with equivalent increase in pay scale. Vide Office Order dated 20-02-2004 of the Respondent No.2 (Annexure P10), the Petitioner and the Respondent Nos.4 and 5 were promoted on substantive basis to the said posts, on the recommendation of the Sikkim Public Service Commission (hereinafter, "SPSC"). Their names in the said Office Order were placed in the following *seriatim*;

- (i) *Sonam Tashi Wangdi (Respondent No.4);*
- (ii) *Prem Vijay Basnet (Respondent No.5); and*
- (iii) *Tsewang Namgyal Bhutia (Petitioner).*

(iv) On 22-07-2005, by a Notification bearing No.174/GEN/DOP (Annexure P11), the nomenclature of Senior Technical Assistant was changed to that of Assistant Director, while retaining the same scale of pay. Following such change, on 02-08-

2005, the private Respondents and the Petitioner were re-designated as Assistant Directors, thereby increasing the cadre posts of Assistant Directors in the IT Service from the existing five to nine. The Respondent Nos.4, 5 and the Petitioner were deemed to have been members of the TI Service with effect from 20-02-2004 as per Notification dated 02-08-2005.

(v) The festering aggrievement of the Petitioner arises from the provisional order of seniority, allegedly circulated by Respondent No.2 on 21-09-2005, amongst the stakeholders which he claims to have not received and thereby remained oblivious to the requirement to submit objections, if any, within five days of the date of the list. In the absence of objections, the seniority as per the provisional list was confirmed vide Notification No.266/GEN/DOP, dated 04-10-2005, wherein the Respondent Nos.4 and 5 were placed above him. The relevant Notification reads as follows;

**"GOVERNMENT OF SIKKIM
DEPARTMENT OF PERSONNEL, A.R. & TRAINING, PUBLIC
GRIEVANCES, CAREER OPTION, EMPLOYMENT SKILL DEVELOPMENT
AND CHIEF MINISTER'S SELF EMPLOYMENT SCHEME
GANGTOK**

NO.266/GEN/DOP

DATED: 04.10.2005

NOTIFICATION

In accordance with the Sikkim Services Regulation of Seniority Rules, 1980 the **Inter se seniority of the following Assistant Director of the Sikkim State Information Technology Service is fixed as under:-**

POSITION IN THE SENIORITY	NAME
1	Shri Tshering Samdup Bhutia
2	Shri Sonam Tashi Wangdi
3	Shri Prem Vijay Basnet
4	Shri Chewang Namgyal

NB : Shri Prem Singh Rai, Assistant Director (Officiating) whose seniority appears at Sl. No.2 shall be subject to the result of the Vigilance Case Pending against him and out come of the sealed cover procedure adopted in SPSC.

BY ORDER

....." **[emphasis supplied]**

(vi) By an Office Order dated 02-03-2009 (Annexure P14), the Petitioner along with the Respondent Nos.4 and 5 were

promoted to the post of Deputy Director on officiating capacity and thereafter in substantive capacity on 05-07-2011 (Annexure P15) on the recommendation of the SPSC. On 07-06-2013, they were appointed as Joint Directors and thereafter as Additional Directors on 07-03-2019. All orders of promotion of the Petitioner and Respondent Nos.4 and 5 (*supra*) appear to have been issued in one common order, bearing the same *seriatim* as was seen in the Notification dated 04-10-2005 (*supra*), thereby indicating their ranking in seniority.

(vii) Learned Senior Counsel for the Petitioner submits that in the first instance the Petitioner did not receive the provisional seniority list allegedly circulated on 21-09-2005 and therefore could not file his objection, consequently the settlement of *inter se* seniority vide Notification dated 04-10-2005 took him by surprise. The existence of the provisional seniority list came to light only on account to an application filed by the Petitioner under the Right to Information Act (RTI), before the SPIO of the Respondent No.2 Department (Annexure P24), on 14-02-2022. Despite his disgruntlement regarding the *inter se* seniority, he did not take any remedial measures. It was the further contention of Learned Senior Counsel that the essential qualification for holding the post of Assistant Director is a Graduate with a PG Diploma in Computer Application from a recognized University, with one year experience in Information Technology or an Electronics Graduate or Computer Science Graduate with one year experience in Information Technology, or Masters in Computer Application, as prescribed in the Schedule to the Sikkim State Information Technology Service Recruitment Rules, 2001 (hereinafter, "SSITSR Rules, 2001"). The

Petitioner, it is urged, was qualified accordingly while the Respondent Nos.4 and 5 although lacking such qualification were illegally retained in the posts of Assistant Director by the Respondent Nos.1 and 2.

(viii) It was next argued that the educational qualification of the Petitioner was overlooked by the Respondent Nos.1 and 2 while determining the seniority. That, his higher educational qualification ought to have ensured his placement as the senior most officer amongst the three of them. That, the Supreme Court in **Central Electricity Supply Utility of Odisha vs. Dhobei Sahoo and Others**¹ (Paragraphs 21 and 22) has clearly laid down that persons without the requisite qualification cannot hold a post. Learned Senior Counsel further buttressed this argument by relying on **Girish Kanjibhai Patel and Others vs. State of Gujarat and Others**² of the Gujarat High Court. That, in view of the settled legal position, the retention of Respondent Nos.4 and 5 in the Respondent No.3 Department would be perpetuating the illegality of their appointment. That, admittedly the posts held by the Petitioner and Respondent Nos.4 and 5 as Senior Technical Assistants were re-designated as Assistant Directors in 2005. All three were promoted as Deputy Directors in 2011, Joint Directors in 2013 and as Additional Directors in 2019 and Respondent Nos.4 and 5 were continuously ranked above the Petitioner in seniority, despite their lack of requisite educational qualification. That, in the year 2014, the Respondent Nos.1 and 2 inducted one Rajendra Chettri and Latta Sharma in the same service by way of parallel induction, duly relaxing the provisions of recruitment prescribed in the SSITSR

¹ (2014) 1 SCC 161

² MANU/GJ/0103/1995 : Special Civil Application Nos.9792, 11114, etc. of 1995 decided on 21-04-1995

Rules, 2001. The two officials were placed above the Petitioner and the private Respondents in seniority. It was contended by Learned Senior Counsel that although the Petitioner raised objection to the seniority ranking "right from the beginning itself" on the basis of his higher educational qualification, having made representations to Respondent Nos.2 and 3 from the year 2011 onwards, his grievances remained unredressed. That, the Petitioner had filed representation on 25-06-2011 seeking seniority above Respondent Nos.4 and 5, by virtue of his educational qualification and representation dated 09-08-2014 protesting the induction of Rajendra Chettri and Latta Sharma as the decision taken by the Authority was arbitrary followed by representations dated 21-08-2014 and 16-12-2014 requiring the authorities to prepare the seniority list strictly in accordance with Rules. That, although another provisional list was prepared in 2013 however on its confirmation vide Notification dated 07-09-2016, despite the Petitioner's protests he was still placed below the Respondent Nos.4 and 5 in the seniority ranking. That, the Petitioner is further aggrieved by the Office Order dated 02-12-2021 whereby he is required to report to the Respondent No.4 who is designated as Additional Director I, although the Petitioner himself also holds the post of Additional Director. That, this has led to his humiliation on a day to day basis as the Respondent No.4 does not even possess the requisite educational qualification. That, on 01-02-2022 the Petitioner sought information from the SPIO of Respondent No.2 Department, which was responded vide letter dated 14-02-2022. Due to incomplete information, he again filed another RTI on 18-02-2022 stating that the act of Respondent Nos.1 and 2 was *de*

hors the SSITSR Rules, 2001, and amounts to breach of Articles 14 and 16 of the Constitution of India, hence the reliefs extracted (*supra*) were sought.

3. Learned Additional Advocate General stridently repelling the contentions of the Petitioner canvassed that the Writ Petition is, in the first instance, liable to be dismissed on grounds of delay and laches. That, in the year 2005, when the seniority list of Assistant Directors under the IT Service/cadre was fixed and notified vide Notification No.266/GEN/DOP, dated 04-10-2005 (Annexure P13), the Petitioner did not raise any objection and by his actions waived any right that may have accrued to him, having acquiesced to the circumstances. That, the SSITSR Rules, 2001, does not provide for the post of Technical Assistant. When the Petitioner along with the private Respondents were inducted into the regular establishment under the Respondent No.3 Department as Technical Assistants, there was no specific Rule or educational qualifications governing their recruitment to the said posts. That, the appointments of all three were based on technical manpower requirement in the Respondent No.3 Department at the relevant time. That, it was only on 24-08-2002, that a Notification bearing No.69/GEN/DOP (Annexure R1) was issued by the Respondent No.2 Department, creating fifteen posts of Assistant/Junior Programmer in the Respondent No.3 Department, to be filled by direct recruitment, with candidates having requisite educational qualifications. That, this Notification has no bearing with the post of Technical Assistant, which had no prescribed educational qualification when the Petitioner and the private Respondents were appointed. The Respondent No.2 in the year 2003 upgraded the

four posts of Technical Assistants as Senior Technical Assistants, pursuant to which, the Petitioner and the private Respondents were allowed to officiate as Senior Technical Assistants. In the Office Order bearing No.547/(G)/DOP, dated 23-06-2003 (Annexure R2), the name of the Petitioner was reflected at Sl. No.4 with the names of the Respondent Nos.4 and 5 preceding him. That, subsequent thereto on the recommendation of the SPSC they were promoted as Senior Technical Assistants. Thereafter, in order to streamline the IT Service the State-Respondents re-designated the post of Senior Technical Assistants as Assistant Directors with both posts carrying the same scale of pay. The redesignation brought the Petitioner and the private Respondents under the cadre of the IT Service retrospectively with effect from 20-02-2004, vide Notification No.180/GEN/DOP, dated 02-08-2005. That, personnel directly recruited to the post of Assistant Director require the educational qualification prescribed in the Schedule to the SSITSR Rules, 2001, however the Petitioner and the private Respondents were promotees to the post, having been recruited as Technical Assistants and promoted to higher posts, on the recommendation of the SPSC, the authority vested with such powers. That, pertinently the seniority of the Assistant Director was fixed in accordance with the provisions of the Sikkim Services Regulation of Seniority Rules, 1980 (hereinafter, "Seniority Rules, 1980") and as per the order in which the names of the parties appeared in the Office Order No.1978/(G)/DOP, dated 20-02-2004. As no objection was raised at that time the State-Respondents notified the final seniority list of Assistant Directors on 04-10-2005 and the seniority having been thus fixed, has continued on the same lines, till date.

All through the promotions of the Petitioner and the private Respondents from Assistant Directors to Additional Directors, the Petitioner did not raise any objection regarding his seniority.

(i) That, two officers Rajendra Chettri and Latta Sharma, who had previously been left out, although eligible, were also inducted by way of parallel induction into the IT Service vide Office Order, dated 10-10-2014 duly relaxing the Recruitment Rules. That, to determine the *inter se* seniority of the two inducted members, provisional *inter se* seniority list was circulated amongst the members of the IT Service inviting objections upon which one Prem Singh Rai, Latta Sharma and the Petitioner raised objections, but their representations being untenable were rejected. That, consequently in the year 2016 the *inter se* seniority list of the members of the IT Service was notified vide Notification dated 07-09-2016, placing the two inducted officers at Sl. No.1 and Sl. No.3 in the *inter se* seniority list, without disturbing the then existing seniority list. That, rather belatedly the Petitioner has raised his objection claiming seniority over the private Respondents, only in the year 2014, on grounds that he possesses the requisite educational qualification. Hence, the Petition is not maintainable either in law or on facts and being mis-conceived is liable to be dismissed on grounds of delay, laches, waiver, estoppel and acquiescence.

4. Learned Senior Counsel for the Respondent Nos.4 and 5 while reiterating the facts and circumstances, already reflected hereinabove, elucidated that in fact the private Respondents were appointed to the posts of Technical Assistant prior in time to the Petitioner. That, promotions to the various posts followed, as

delineated by the Learned Additional Advocate General clearly reveals that the promotions were based on the recommendations of the SPSC and were not arbitrary or whimsical. That, all Office Orders pertaining to promotions have been issued in one order since inception, i.e., the order dated 23-06-2003. The subsequent Office Orders also were issued in the joint names of the Petitioner and the private Respondents, in the same order of seniority. Throughout the period from 2005 when the first seniority list was notified up to 2019 the Petitioner chose not to protest the order of seniority and has belatedly put forth grounds of lack of educational qualification of the private Respondents, which is not tenable. That, in fact, the private Respondents as also the Petitioner were appointed to the posts of Technical Assistant and the educational qualification for Assistant Director as prescribed in the Schedule, is for incumbents who are direct recruits to the post. That, the Petitioner and the private Respondents have reached the posts of Additional Director by virtue of promotions, based on the recommendation of the SPSC and the question of lack of educational qualification of the private Respondents for the posts of Assistant Director does not arise, as all three had faced the requisite interview/test conducted by the SPSC at various stages and on being found eligible were recruited and promoted together to the next post. Relying on the decision of this Court in **Swarna Smrity Pradhan and Others vs. State of Sikkim and Others**³, **Tseten Palzor Bhutia vs. State of Sikkim and Others**⁴ and **Bijay Kumar Pradhan and Others vs. State of Sikkim and Others**⁵ it was contended that the issue of educational qualification cannot be raised as the Petitioner

³ MANU/SI/0026/2022 : WP(C) No.14 of 2008 decided on 10-05-2022

⁴ 2022 SCC OnLine Sikk 67 : MANU/SI/0040/2022 : WP(C) No.10 of 2020 decided on 27-06-2022

⁵ MANU/SI/0049/2023 : WP(C) No. 24 of 2020 decided on 07-07-2023

has slept over his rights thus the rights that have accrued to the private Respondents cannot be disturbed. The Petition accordingly be dismissed.

5. The rival submissions of Learned Counsel for the parties were heard at length. Pleadings and documents have been duly perused and citations made at the Bar considered.

6. While addressing first, the issue of educational qualification, it is evident that the Petitioner and the private Respondents hold Degrees in Engineering in different fields, as already reflected hereinabove. The Petitioner was initially appointed on 11-01-2001 in Namchi, while Respondent Nos.3 and 4 were initially appointed on 24-10-2000 at Gangtok, to the posts of Technical Assistant in the Pilot Project of the CIC. They were inducted into the regular establishment of the Respondent No.3 Department as Technical Assistants in the pay scale of ₹ 5500-175-9000 with effect from 24-05-2002, vide Office Order No.74/GEN/DOP for the Petitioner, vide Office Order No.73/GEN/DOP for the Respondent No.4 and vide Office Order No.72/GEN/DOP for the Respondent No.5. Thereafter, their services were absorbed under the Respondent No.3 Department where they were firstly promoted as Senior Technical Assistants on officiating capacity and confirmed in the said post on 20-02-2004 pursuant to a recommendation of the departmental promotion committee of the SPSC held on 18-02-2004, with seniority fixed on merit. Although the Petitioner claims that he did not receive the provisional seniority list of 2005 circulated on 21-09-2005 requiring the recipient thereof to furnish their objection, if any, by five days, it is evident that the permanent seniority list of the Assistant Directors to which post the

Petitioner and the private Respondents had been promoted by that time, was notified in the Government Gazette on 04-10-2005. Under Section 3(39) of the General Clauses Act, 1897, "Official Gazette" or "Gazette" shall mean the Gazette of India or the Official Gazette of a State. Under Section 81 of the Indian Evidence Act, 1872, the Court shall presume genuineness of every document purporting to be in the Official Gazette, read with Section 114 of the said Act and Illustration (e) thereto, the Court can presume that the Official Gazette was notified on the date as appearing in the Official Gazette [See **State of Andhra Pradesh (Now State of Telengana) vs. A. P. State Wakf Board and Others**⁶]. Suffice it however to remark here that the presumption is rebuttable by production of evidence to the contrary. It is settled law that once it has been notified in the Government Gazette no person can claim ignorance of the contents of such Notification. Thus, from the documents that have been furnished before this Court it is seen that the public were notified of the settlement of seniority vide Notification in the Government Gazette (*supra*) and no evidence to the contrary has been furnished by the Petitioner. Thus, the decision of the Government qua the seniority of the Petitioner and the private Respondents became valid and effective as a consequence.

7. Vide Office Order No.1978/(G)/DOP, dated 20-02-2004, on the basis of the recommendation of the SPSC vide their letter No.SPSC/3/(403)02/7889, dated 18-02-2004, the Governor promoted the Petitioner and private Respondents as Senior Technical Assistants on substantive basis in the pay scale of ₹ 7000-225-11500 with immediate effect and with the name of

⁶ 2022 SCC OnLine SC 159

Respondent No.4 at Sl. No.1, Respondent No.5 at Sl. No.2 and that of the Petitioner at Sl. No.3.

(i) On 22-07-2005, a Notification re-designated the post of Senior Technical Assistants held by the parties to Assistant Directors with the same pay scale of ₹ 7000-225-11500.

(ii) On the recommendation of the SPSC, the Petitioner, Respondent Nos.4 and 5 on 02-08-2005 were appointed as Senior Technical Assistants which had been re-designated as Assistant Directors, the promotion effective retrospectively from 20-02-2004.

(iii) On 04-10-2005, vide Notification No.266/GEN/DOP, the Respondent No.2 in accordance with the Seniority Rules, 1980, settled the *inter se* seniority of the Petitioner and the Respondent Nos.4 and 5 in the following order;

1. *Shri Tshering Samdup Bhutia*
2. *Shri Sonam Tashi Wangdi*
3. *Shri Prem Vijay Basnet*
4. *Shri Chewang Namgyal*

As admitted by all parties, there was no objection to the Notification dated 04-10-2005 and the ranking in seniority.

(iv) On 02-03-2009, vide Office Order bearing No.2021/G/DOP, the Petitioner and the private Respondents were promoted to the post of Deputy Directors in the pay scale of ₹ 9000-300-13800 in officiating capacity showing the same order of seniority.

(v) On 05-07-2011, vide Office Order No.5954/G/DOP, on the recommendation of the SPSC, the Petitioner and the Respondent Nos.4 and 5 were promoted from their post of Deputy Director (officiating) to substantive capacity in the PB-3 ₹ 15600-

39100 and GP ₹ 6200 with the order of seniority remaining as earlier indicated.

(vi) This was followed by Office Order No.630/G/DOP, dated 07-06-2013, whereby the Petitioner and the private Respondents were promoted to the post of Joint Director in Selection Grade II in the PB-3 of ₹ 15600-39100 and GP ₹ 7200 on officiating capacity. The *seriatim* of seniority continued in the same order as settled on 04-10-2005. On 18-12-2017, vide Office Order No.4332/G/DOP, the Petitioner and the private Respondents were promoted in the substantive capacity of Joint Directors with the existing seniority.

(vii) Office Order No.6202/G/DOP, dated 07-03-2019, the Petitioner and the private Respondents were promoted on officiating capacity to the post of Additional Directors in Level 20 of the Pay Matrix. Ultimately, on 02-05-2022, it is seen that by an Office Order bearing No.1337/G/DOP the private Respondent No.4 and the Petitioner were promoted to the substantive capacity of Additional Directors with the Respondent No.4 at Sl. No.2, Petitioner in Sl. No.3 while one Prem Singh Rai is found at Sl. No.1.

(viii) Relevantly, it may be noticed that vide Notification bearing No.20/GEN/DOP, dated 09-08-2014, the Government deemed it expedient to induct one Rajendra Chettri, Joint Director, Human Resource Development Department and one Latta Sharma, Deputy Director, Excise (Abkari) Department, respectively, in the SSITSR Rules, 2001. The recruitment, as already seen, was by promotion and parallel induction by relaxing the provisions of the "Method of recruitment" prescribed under Rule 7 of the Sikkim State Information Technology Service Rules, 2013, read with the Schedule to the said Rules. The *inter se* seniority of these two

officers was to be from 01-05-2010 and 13-06-2011 respectively. Admittedly they were placed above the Petitioner and private Respondents in terms of seniority.

8. The entire exercise hereinabove of reflecting the dates of promotions to various posts of the Petitioner and the private Respondents is for the purpose of showcasing the fact that the Petitioner opted to remain in a state of *rip van winkleism* and to justify his lackadaisical manner of not approaching the relevant authorities with his grievances pertaining to seniority, he rather incongruously stated that he was awaiting the decision in Writ Petition, WP(C) No.20 of 2013 filed by Rajendra Chettri and Another against the State of Sikkim (subsequently withdrawn by him on 14-08-2014). It was also urged that he had sought information under the RTI Act, a copy of which relevantly is not filed along with the Writ Petition. Vide communication dated 14-02-2022, addressed to the SPIO of the Respondent No.2 Department, one Bindhya Gurung, SCS, Under Secretary to the Government of Sikkim, informed that two Notifications dated 04-10-2005 and 22-08-2007 pertaining to *inter se* seniority list of Assistant Directors was enclosed. Dissatisfied with the information, he filed another application under the RTI Act requesting information of the fact that the *inter se* seniority of Rajendra Chettri and Latta Shama was circulated amongst the members of the IT Service on 02-12-2014. The File notings of the Respondent No.2 Department (Annexure P-26), reveal that on 22-07-2016 a seniority list of members of IT Service with details as discussed was prepared and the File was resubmitted. The Petitioner has failed to enlighten this Court as to the outcome of the File notings or whether he continued to pursue

the concerned Department with regard to the settlement of *inter se* seniority.

9. What ultimately emerges from the entire gamut of facts and circumstances is that the Petitioner has chosen to slumber over his rights. It is a settled legal proposition that *vigilantibus non dormientibus aequitas subvenit lex*, in other words equity aids the vigilant and not those who sleep over their rights.

10. The argument that the appointment of the Respondent Nos.4 and 5 were *de hors* the Rules without relaxing the relevant Rules appears to be initially impressive, however it is to be noted that the parties rose to the rank of Additional Directors from that of Technical Assistants. For the post of Technical Assistant, none of the parties have placed before this Court the prescribed educational qualification. Secondly, vide the Office Orders reflected hereinabove, the promotions of the Petitioner and the private Respondents have been made on the basis of the recommendation of the SPSC, the concerned authority, who after examining their competence evidently made the recommendations. The Petitioner cannot belatedly claim ignorance and aggrievement after having acquiesced through the years to the decision of the SPSC and acceptance of the settled seniority as seen from the foregoing submissions.

(i) The Supreme Court in ***Union of India and Others vs. N. Murugesan and Others***⁷ has discussed the meaning of delay, laches and acquiescence and held as follows;

"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

⁷ (2022) 2 SCC 25

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.

.....

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."

On careful consideration of the observations *supra* and on examining the conduct of the Petitioner, it cannot but be held that the Petitioner was guilty of delay, laches and acquiescence.

11. In *Anil Kumar Vitthal Shete and Others vs. State of Maharashtra and Another*⁸ it was observed by the Supreme Court that the employer has the option to adopt a policy for fixing service conditions of its employees. Such policy must however be in consonance with the Constitution and not arbitrary, unreasonable or otherwise objectionable. On the anvil of the above settled positions of law, I am of the considered opinion that the argument pertaining to educational qualification is irrelevant in the facts and circumstances of the case.

(i) That apart, the Supreme Court has also observed in *M/s. Tilokchand Motichand & Others vs. H.B. Munshi and Another*⁹, while considering the delay in seeking relief in service matters that if there is no period prescribed what is the standard for the Court to follow in matters of delay, it was opined that utmost expedition is the *sine qua non* for such claims. The party aggrieved must move the Court at the earliest possible time and explain satisfactorily all semblance of delay. That, where there is appearance of avoidable delay and this delay affects the merits of the claim, this Court will consider it and in a proper case hold the party disentitled to invoke the extraordinary jurisdiction.

(ii) The Petitioner has failed to take steps right from his inception to the service and settlement of seniority on 04-10-2005. During the interregnum, the parties have risen from the post of Assistant Director to that of Deputy Director to Joint Directors and ultimately as Additional Director as already discussed *supra*. By his consistent inaction the Petitioner has exhibited not only acquiescence and waiver to the above circumstances but also is

⁸ (2006) 12 SCC 148

⁹ (1969) 1 SCC 110

guilty of delay and laches. He cannot in the year 2022 wake up from his deep slumber, flex his muscles and claim his rights. It would be unjust at this juncture to deprive the Respondents of the rights which had accrued to them over a long period of time. They ought to be entitled to sit back and consider that the appointments and promotions effected long time ago would not be set aside after the lapse of a number of years. [see **Rabindranath Bose and Others vs. The Union of India and Others**¹⁰].

(iii) It is also relevant to notice that in **P. S. Sadasivaswamy vs. State of Tamil Nadu**¹¹, the Supreme Court while considering the petition which was filed after a lapse of fourteen years challenging a promotion, observed as follows;

“2. 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 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.”

12. In light of the foregoing discussions, the Writ Petition lacking in merit deserves to be and is accordingly dismissed.

13. Parties to bear their own costs.

**(Meenakshi Madan Rai)
Judge**

25-08-2023

Approved for reporting : **Yes**

ds

¹⁰ (1970) 1 SCC 84

¹¹ (1975) 1 SCC 152