

ORISSA HIGH COURT : CUTTACK**W.P.(C) No.7687 of 2008**

In the matter of an Application under Articles 226 and 227
of the Constitution of India, 1950

* * *

Smt. Sujata Mahanta
Aged about 28 years
Wife of Pranab Kumar Mahanta
At: Dubulabeda, P.O.: Uparbeda
District: Mayurbhanj ...

Petitioner

-VERSUS-

1. Collector-*cum*-Chief Executive
Zilla Parishad, Mayurbhanj
At/P.O.: Baripada
District: Mayurbhanj
 2. District Project Co-ordinator
Sarba Sikshya Abhijan
District: Mayurbhanj
 3. Block Resource Centre Co-ordinator
Kusumi, Badampahar
District: Mayurbhanj
 4. Bhagaban Giri
At/P.O.: Uparbeda
District: Mayurbhanj ...
- Opposite parties

Counsel appeared for the parties:

For the petitioner : M/s. Banshidhar Satapathy,
S.K. Sahoo, M. Pagal and A. Alli,
Advocates

For the opposite party : M/s. Ajodhya Ranjan Dash
Nos.1 to 3 and Biplab Mohanty,
Additional Government Advocates

P R E S E N T:

THE HONOURABLE MR. JUSTICE MURAHARI SRI RAMAN

Date of Hearing : 20.02.2024 :: Date of Judgment : 26.02.2024

JUDGMENT

MURAHARI SRI RAMAN, J.—

THE PRAYER IN THE WRIT PETITION:

Writ petition has been filed in the matter of Articles 226 and 227 of the Constitution of India, beseeching following relief(s):

“In the facts and circumstances of the case the humble petitioner fervently prays this Hon’ble Court to be graciously pleased to issue notice to the opposite parties, call for relevant records and after hearing the counsel of parties issue a writ in the nature of certiorari or any other appropriate writ incorporating the name of the petitioner in the List notified vide Letter dated 28.04.2008 as a disengaged Education Volunteer against Dhipasahi Education Guarantee Scheme Centre, Uparbeda deleting the name of opposite party No.4 and commanding opposite parties particularly to the Collector-cum-Chief Executive, Zilla Parisad and the District Project Co-ordinator, the opposite party Nos.1 and 2 to engage the petitioner as Gana Sikshyak under Government

Resolution No.3358, dated 16.02.2008 within a stipulated period and/or pass such other order or direction as will do complete relief to the petitioner;

And for this act of kindness, the humble petitioner shall as in duty bound ever pray.”

THE GRIEVANCE OF THE PETITIONER AS ADUMBRATED IN THE WRIT PETITION:

2. The petitioner, B.A., LL.B., claimed to have requisite qualification, being selected, was appointed to work as Education Volunteer in Dhipasahi Education Guarantee Scheme Centre at Uparbeda (“EGS Centre”, for short) under the Education Guarantee Scheme *vide* Order No. 7643, dated 19.12.2005 of the District Project Officer, Sarba Sikshya Abhijan in Kusumi Block of the district of Mayurbhanj. Pursuant thereto, she had joined on duty on 30.12.2005 and thereafter having undergone “induction training” for 10 days from 02.01.2006 to 11.01.2006 at District Institute for Education & Training, Mayurbhanj, Baripada under the District Primary Education Programme, she continued in the said Centre.

2.1. Her grievance in the present writ petition is that the opposite parties prepared a list of disengaged Education Volunteers of Kusumi Block of Mayurbhanj District for their engagement in terms of the Government Resolution No.3358, dated 16.02.2008. As name of the petitioner did not find place in the said list, but in her place the

name of one Sri Bhagaban Giri was mentioned against the EGS Centre for engagement as GANA SIKSHYAK, the petitioner seeks to replace his name with that of her name.

2.2. The petitioner submitted objection/representation before the Collector-*cum*-Chief Executive (opposite party No.1) and the District Project Officer, Sarba Sikshya Abhijan (opposite party No. 2) for incorporating her name in the list of disengaged Education Volunteers in respect of EGS Centre for giving engagement as GANA SIKSHYAK, but to no avail. Thus, this writ petition.

THE PLEADINGS AS NARRATED IN THE WRIT PETITION:

3. That the petitioner being appointed as Education Volunteer at EGS Centre, Dhipasahi, Uparbeda, Kusumi Block in Mayurbhanj district under the Education Guarantee Scheme *vide* Order No.7643, dated 09.12.2005 issued by the District Project Officer, Sarba Sikshya Abhijan, Mayurbhanj and accordingly the Block Resource Centre Co-ordinator of Kusumi, *vide* Letter No.144, dated 31.01.2005 directed the President, Village Education Committee, Dhipasahi EGS Centre, Uparbeda to execute agreement with Smt. Sujata Mahanta, the petitioner. Accordingly agreement was executed on 30.12.2005 and she having joined the EGS Centre as Education Volunteer on 30.12.2005, had undergone induction training from 01.01.2006 to 11.01.2006. It is

stated that back from training, she continued to function as such since 12.01.2006.

- 3.1. The petitioner made application to avail maternity leave from 03.03.2006 to 31.05.2006 and it is claimed that she sought to join in duties on 01.06.2005 and continued there.
- 3.2. The Government of Odisha in School and Mass Education Department *vide* Resolution No. 3358/SME, dated 16.02.2008 took decision for disengagement of Education Volunteers and to rehabilitate them as GANA SIKSHYAK. It is submitted by the petitioner that even though she was appointed as Education Volunteer in Dhipasahi EGS Centre, Uparbeda under Kusumi Block her name did not appear in the list of disengaged Education Volunteers of Kusumi Block in respect of EGS Centre, but the name of Sri Bhagaban Giri, the opposite party No.4 did find place against the said EGS Centre for engagement as GANA SIKSHYAK *vide* Notification No.2296, dated 28.04.2008 issued by the District Project Co-ordinator, Sarba Sikshya Abhijan.
- 3.3. Highlighting grievance the petitioner has stated to have raised objection by tendering representation on 02.05.2006, which she alleges to be pending.

REPLIES OF THE OPPOSITE PARTIES TO THE CONTENTS OF THE WRIT PETITION:

4. Counter affidavit has come to be filed on 23.08.2011 by the opposite party Nos.1 and 2 disputing the fact of availing maternity leave with effect from 03.03.2006 till 31.05.2006. It is contended that there was no circular/provisions for availing maternity leave by the Education Volunteers. Therefore, such leave as sought for by the petitioner is to be construed as abandonment of service. However, Sri Bhagaban Giri was engaged as Education Volunteer by the Village Education Committee of Dhipasahi EGS Centre located at Uparbeda for the reason that the petitioner abandoned the service.

4.1. The Resolution dated 16.02.2008 is the guidelines issued pursuant to the policy decision of the Government of Odisha in School and Mass Education Department for engagement of disengaged Education Volunteers on abolition of EGS Scheme as GANA SIKSHYAKS.

4.2. It is further submitted by the answering opposite parties that the petitioner had served as Education Volunteer from 30.12.2005 to 02.03.2006, *i.e.*, for a period of two months and five days and abandoned the Centre since 03.03.2006. Consequently, the Village Education Committee of Dhipasahi (Upardiha) EGS Centre engaged Sri Bhagaban Giri in pursuance of Letter No.1438 dated 19.04.2006 of District Project Co-ordinator, Mayurbhanj. Sri Bhagaban Giri being asked to join as Education

Volunteer on or before 01.12.2006, he joined and worked as Education Volunteer till 31.03.2008, *i.e.*, date of abolition of EGS.

4.3. As the petitioner abandoned the service and her maternity leave was not allowed, she could not be considered for being rehabilitated as GANA SIKSHYAK in terms of Resolution dated 16.02.2008.

HEARING OF THE WRIT PETITION:

5. This matter was on board on 20.02.2024 under the heading “Admission”. It is submitted by Sri Banshidhar Satapathy, learned counsel for the petitioner that pleadings are completed and he does not wish to file any rejoinder affidavit to the counter affidavit filed on behalf of the opposite party No.1 to 2.

5.1. Sri Ajodhya Ranjan Dash, learned Additional Government Advocate has taken this Court to the Order dated 16.01.2023, wherein this Court directed for production of “entire file maintained by the Village Education Committee of Uparbeda, Dhipasahi EGS Centre containing all relevant details of the appointment of the petitioner, opposite party No.4, attendance of the volunteers in the classes, remuneration, *etc.*”. Accordingly, Sri Biplab Mohanty, learned Additional Government Advocate produced the relevant records for perusal of this Court.

5.2. While issuing notice in the instant case, *vide* Order dated 05.06.2008, an interim protection to the following effect was granted to the petitioner:

“Issue notice as above.

Accept one set of process fee.

Any appointment made to the post of Gana Sikshyak, pursuant to the Order dated 28.04.2008 passed in respect of Dhipasahi EGS Centre, Uparbeda, Annexure-9, shall be subject to result of the writ petition.”

5.3. This Court with respect to appearance of the opposite party No.4 passed the following Order on 16.01.2023:

“Mr. Adhiraj Behera, learned counsel submits on behalf of Mr. Prafulla Kumar Rath, who had appeared for the opposite party No.4 that they have no instruction in this regard from their client.”

5.4. In such view of the matter, since none appeared for the opposite party No.4, the counter affidavit filed by said opposite party is ignored.

5.5. Therefore, this Court heard Sri Banshidhar Satapathy, learned Advocate for the petitioner and Sri Ajodhya Ranjan Dash assisted by Sri Biplab Mohanty, learned Additional Government Advocates for the opposite party Nos.1 to 3.

SUBMISSIONS AND ARGUMENTS OF RESPECTIVE PARTIES:

6. Sri Banshidhar Satapathy, learned Advocate for the petitioner reiterating the contents of the petition, urged

that the petitioner had never abandoned her service, rather the record would reveal that she had submitted application clearing stating therein that she requires maternity leave from 03.03.2006 till 31.05.2006. He has seriously disputed and argued that the answering opposite parties have gone beyond the record to affirm incorrect fact to the effect that “At the time she applied for maternity leave from 03.03.2006 without mentioning specific date on end of leave as per Annexure-6”.

- 6.1. Refuting the stand of the opposite party Nos.1 and 2 at paragraph 8 of the counter affidavit that “no maternity leave was allowed to petitioner as there was no provisions in this regard in the EGS Scheme”, Sri Banshidhar Satapathy, learned Advocate submitted that said stance is not only contrary to what is spelt out in Letter bearing No.39847 (225)— Bt.-V-42/2007/F, dated 01.10.2007 issued by the Government of Odisha in Finance Department, but also runs counter to the terms of the contract executed by the petitioner and the authority.
- 6.2. It is further vehemently argued by Sri Banshidhar Satapathy, learned counsel for the petitioner that having not disputed that the petitioner after remaining in maternity leave from 03.03.2006 to 31.05.2006, she approached the authority concerned on 01.06.2006 by submitting the joining report.

6.3. It is stated by the petitioner that despite the fact that the petitioner has tendered her joining report on 01.06.2006, the authorities have proceeded to allow Sri Bhagaban Giri, the opposite party No.4, to work as Education Volunteer with effect from 01.12.2006 superseding her. Sri Bashidhar Satapathy, learned Advocate laid stress on paragraph 10 of the counter affidavit of the opposite party Nos.1 and 2, which reads as follows:

“That in reply to the averment made in paragraph 7 of the writ petition it is submitted that the VEC of Dhipasahi (Upardiha) EGS Centre had engaged Bhagaban Giri vide Letter No.1438, dated 19.04.2006 of District Project Co-ordinator, Mayurbhanj to join as Education Volunteer as on 01.12.2006 after being abandoned by the petitioner and continued up to 31.03.2008 till abolition of EGS Scheme.”

6.4. It is alleged by the learned counsel that it is ascertained by the petitioner that while she was under maternity leave the Village Education Committee, engaged Sri Bhagaban Giri-opposite party No.4 to manage the Centre for a temporary period without approval of the District Project Co-ordinator-opposite party No.2 and taking the advantage of his temporary engagement, he managed to enter his name against the Dhipasahi EGS Centre, Uperbeda ignoring the name of the a petitioner. In view of the above the petitioner being disengaged Education Volunteer of Dhipasahi EGS Centre, Uparbeda, she

deserves to be engaged as GANA SIKSHYAK in terms of Resolution dated 16.02.2008.

6.5. It is, therefore, submitted by the counsel for the petitioner that this Court, considering the plight of the petitioner, disengaged Education Volunteer, who is now entitled to be engaged as GANA SIKSHYAK in conformity with Government of Odisha in School and Mass Education Resolution No.3358/SME, dated 16.02.2008, may show indulgence by issue of writ of *mandamus* in exercise of powers under Article 226/227 of the Constitution of India.

7. *Per contra*, Sri Ajodhya Ranjan Dash, learned Additional Government Advocate submitted that the allegation of the petitioner is unfounded inasmuch as mere throwing application for maternity leave would not suffice that the same is allowed/granted; rather in absence of prior intimation and approval of the competent authority, the leave cannot be said to be authorized. The procedure for availing maternity leave being not adhered to by the petitioner, she cannot be allowed such benefit claimed for.

7.1. Advancing argument further he submitted that in order to carry on the normal function of EGS Centre and looking to the interest of the pupils, the Village Education Committee of Dhipasahi EGS Centre engaged Sri Bagaban Giri, who continued till 31.03.2008, with

effect from which the EGS Centre was closed on account of cessation of the Scheme.

7.2. Sri Biplab Mohanty, learned Additional Government Advocate by producing the concerned records, referred to the following Letter *vide* Memo No.28, dated 19.02.2008:

*“Office of the Block Resource Centre Co-Ordinator,
Kusumi, Badampahar*

No. (100) Dated 19.02.2008

To

*The Education Volunteer/
President Dhipasahi EGS Centre*

Sub.: Closure of EGS Centre and handing over changes thereof.

*Ref.: Letter No. 884(30)EGS/08, dated 19.01.2008
of the Director, OPEPA, Bhubaneswar
and Memo No. 485(14), dated 08.02.2008 of
the D.I. of Schools, Rairangpur*

Sir/Madam

With reference to the letter cited above I am to inform you that all the EGS Centres will be closed on 31.03.2008. Hence you are instructed to handover all the records, assets to the Headmaster Uparbeda Upper Primary School by 31.03.2008 positively extending copies of change reports to the undersigned and also to the S.I. of Schools. And also you are instructed to ensure the admission of all the students of your Centre to the nearest formal school immediately after completion of annual common

examination, 2008 and intimate the concerned CRCC regarding the admission of the students.

Yours faithfully,

*Block Resource Centre Co-ordinator,
Kusumi : Badampahar*

Memo No. 28 dated 19.02.2008

*Copy to the Headmaster, Uparbeda Nodal Upper
Primary School for information.*

Sd/- 19.02.2008

*Block Resource Centre Co-ordinator
Kusumi: Badampahar”*

7.3. Accordingly, all possible steps were taken to close the EGS Centre and the President of Dhipasahi EGS Centre, Uparbeda, Kusumi Block has directed that Sri Bhagaban Giri, who was engaged to work as Education Volunteer since 01.12.2006, has been disengaged with effect from 31.03.2008. Sri Biplab Mohanty, learned Additional Government Advocate has drawn attention of this Court to the contents of Resolution passed in the Meeting of EGS Centre held on 01.04.2004 in presence of Sri Bhagaban Giri, Education Volunteer-cum-Secretary and the President of the EGS Centre along with other members of said Centre, whereby it was decided pursuant to direction of the District Project Co-ordinator the EGS Centre was declared closed. He has also taken this Court to peruse the record where in the document titled “Charge Report of Sri Bhagaban Giri, Education

Volunteer, Dhipasahi, Uparbeda EGS Centre to the Headmaster, Uparbeda Nodal Upper Primary School” it is shown that Sri Bhagaban Giri handed over 22 items to the Headmaster and said Headmaster has acknowledged taking over the charge of 22 items from said Sri Giri on 25.04.2008. He has placed the fact borne on record to the effect that such exercise was carried by Sri Giri in pursuance of Letter No.1791/EGS/2008, dated 26.03.2008 of the District Project Co-ordinator, District Primary Education Programme, Sarba Sikshya Abhijan, Mayurbhanj, whereunder it was requested to all Block Resource Centre Co-ordinators of Mayurbhanj District “to intimate all the Education Volunteers of EGS Centre to issue certificate of the students reading in EGS Centre for mainstreaming and to hand over all the records, teaching materials, pass book including mid-day meal food staff to the Headmaster of nearest Primary School by 5th of April, 2008”. It is argued by Sri Ajodhya Ranjan Dash, learned Additional Government Advocate that since the records available at the Dhipasahi EGS Centre, Uparbeda, Kusumi Block manifest that the records are maintained by Sri Bhagaban Giri since 2006 till handing over in the year 2008 and he attended all the meetings held at the EGS Centre along with other members. Therefore, the name of the petitioner does not find place *vide* Letter No.2296 (26), dated 28.04.2008 (Annexure-9) issued by the District Project Co-ordinator, District

Primary Education Programme, Sarba Sikshya Abhijan, Mayurbhanj addressed to all Block Development Officer of Mayurbhanj District enclosing therewith the list of verified EGS Centres with names of the Education Volunteers, where the name of Sri Bhagaban Giri-opposite party No.4 appeared.

- 7.4. It is, thus, submitted that said list is in consonance with the policy decision taken by the Government of Odisha *vide* Resolution No.3358/SME, dated 16.02.2008 of the School and Mass Education Department, which has the objective to rehabilitate such disengaged Education Volunteers as GANA SIKSHYAK under the Sarba Sikshya Abhijan.
- 7.5. Therefore, the claim of the petitioner is untrue. No maternity leave was allowed to the petitioner; on the other hand, having availed leave of her own for around three months without prior approval in contravention of clause (4) of the Agreement dated 30.05.2005 entered into between the petitioner and the President of Village Education Committee read with the Letter No.398 (225)-Bt.-V-42/2007/F, dated 01.10.2007 of the Government of Odisha in Finance Department, such conduct of the petitioner is to be construed to be abandonment of service with effect from 03.03.2006 from Dhipasahi EGS Centre. It is contended by the learned Additional Government Advocate that the petitioner cannot be

found to be eligible to fall within the scope of Resolution No. 3358/SME, dated 16.02.2008 for rehabilitation of disengaged Education Volunteers *vide* Annexure-8.

7.6. Another pertinent objection has been raised by Sri Ajodhya Ranjan Dash, learned Additional Government Advocate that had the petitioner been sanguine about her claim, she should have taken appropriate step immediately in 2006 itself. Nonetheless, even though she claims to have submitted joining report on 01.06.2006 (*vide* Annexure-7) after the end of her self-claimed maternity leave from 03.03.2006 to 31.05.2006, she had filed the present writ petition on 21.05.2008, *i.e.*, around two years after the end of her leave period. It appears after publication of the policy decision of the Government of Odisha *vide* Resolution No. 3358/SME, dated 16.02.2008 to rehabilitate the disengaged Education Volunteers, she has made attempt to supersede the opposite party No.4. The Additional Government Advocate has drawn further attention of this Court to the “Proceeding Book of Uparbeda EGS Centre, Dhipasahi”, where Sri Bhagaban Giri, opposite party No.4, is seen to have taken part in the Meeting as also operated Bank Account and maintained Cash Book. It is also stated that said record stands testimony to the fact of attendance of Sri Bhagaban Giri since his engagement and receipt of remuneration. It is, therefore,

urged by the learned Additional Government Advocate that the indolent petitioner should not be protected.

RELEVANT RESOLUTION AND LETTER OF THE GOVERNMENT OF ODISHA:

8. Resolution dated 16.02.2008 stood thus:

*“Government of Orissa
Department of School & Mass Education
Bhubaneswar*

No.3358/SME, dated 16.02.2008

RESOLUTION

For the purpose of universalization of Elementary Education, Education Guarantee Scheme (EGS), an integral part of Sarba Sikshya Abhijan (SSA), was operationalised in Orissa from the year 2001-02. Due to up-gradation of E.G.S. Centres to regular schools and for various reasons, the Education Volunteers engaged in such E.G.S. Centres have been disengaged and would be facing disengagement in the above process.

Government after careful consideration of the problems of the Education Volunteers under the Education Guarantee Scheme, decided to rehabilitate Education Volunteers in E.G.S. Centres who have been disengaged or facing disengagement under the Education Guarantee Scheme on the following manner:

- 1. Such disengaged education volunteers will be rehabilitated as “GANA SIKSHYAKA” under Sarba Sikshya Abhijan.*

2. *Such disengaged Education Volunteers who are trained (Matric, 10th (H.S.C.)/+2 with C.T., B.A./B.Sc./B.Com. with B.Ed.) will be engaged as GANA SIKSHYAKA with a consolidated remuneration of Rs.2,000/- per month. Those who are untrained (minimum qualification of Matric, 10th (H.S.C.E.)/+2) will be engaged with a consolidated remuneration of Rs.1,750/- per month.*
3. *Such disengaged education volunteers who are having 10th Qualification (H.S.C. Examination) will have to acquire +2 qualification within a period of 3 years from their engagement as “GANA SIKSHYAKA” to be considered eligible for C.T. Training. Those who are having +2 minimum qualification will be allowed to complete C.T. Training on a distance mode either through IGNOU or from the Directorate of TE & SCERT within a period of 3 years. And after completion of C.T. Training the “GANA SIKSHYAKA” will be eligible to get consolidated remuneration of Rs.2,000/- from the date of passing C.T. Training.*
4. *The engagement of GANA SIKSHYAK will be made on basis of annual contract, honorary and would be renewed by the Zilla Parishad through the Collector-cum-Chief Executive Officer of Zilla Parishad basing on the positive certificate given by the Village Education Committee (VEC) about their attendance and performance in the school. In case of the Zilla Parishad decided not to renew the contract, appeals shall lie to the State Project Director, OPEPA.*
5. *The GANA SIKSHYAK will be engaged against the existing created vacancies of SIKSHYA SAHAYAKS and their consolidated remuneration etc. will be borne out of S.S.A. Budget. They will be engaged in the Government Primary Schools.*

6. *The GANA SIKSHYAK will be responsible for making enrolment drive in the particular educational institution, check dropout rate of the students, bring the out of school children to the school, assist the regular teachers in teaching work, besides other works as would be entrusted by the Headmaster of the school from time to time.*
7. *An agreement as may be prescribed by the Govt. between the C.E.O., Zilla Parishad-cum-Collector & GANA SIKSHYAK is to be signed on stamped paper. The State Project Director, OPEPA will furnish the draft copy of agreement to Govt. for approval.*
8. *The GANA SIKSHYAK can be removed from the engagement within the 30days prior notice, if she/he violates the conditions as stipulated in the engagement contract or considered unsuitable latter on by the authorities or on the basis of the adverse report of the Village Education Committee (VEC).*
9. *The GANA SIKSHYAK can avail casual leave of 12 days during one calendar year. She/he shall not be entitled to any other authorised absence beyond the above mentioned period. If she/he remains absent with permission and if she/he does not have authorised leave at her/his credit, the proportionate amount from the consolidated remuneration shall be deducted.*
10. *Any lady GANA SIKSHYAK who is having less than two surviving children will be entitled to avail maternity leave for 3 months.*
11. *The GANA SIKSHYAK will continue to avail of the benefits in the process of selection for engagement of SIKSHYA SAHAYAK as extended in the Government in*

School & Mass Education Department Office Order No.23845/SME, dated 04.12.2007.

12. *The engagement of GANA SIKSHYAK is co-terminus with that of SSA Scheme, or other scheme as would be decided by Govt.*
13. *This decision will be given effect to from the date of their engagement as "GANA SIKSHYAKA".*

By Order of Governor

Sd/- (S.C.Patnaik)

*Commissioner-cum-Secretary
to Govt."*

9. *Finance Department Letter No.39847 (225)-Bt.-V-42/2007/F, dated 01.10.2007 reads as follows:*

"Finance Department

No.39847 (225)/ Bt.-V-42/07 F., date : 01.10.2007

To

The All Secretaries/All Heads of the Department.

Sub.: Absence from duty on maternity ground by Female Contractual Employees engaged in Different Departments of Government.

The Government has adopted contractual mode of engagement of personnel in different Government Establishments on bare administrative necessity after abolition of regular base level vacant entry posts. The policy of Government has been set out in Finance Department Circular No.Bt-V-47/04-55764/F., dated 31.12.2004.

2. *In accordance with the above guidelines, various Departments of Government have been making contractual engagement with prior concurrence of Finance Department when there is absolute necessity in the interest of public service.*
3. *It is found necessary to extend maternity leave to female employees considering the fact that maternity is an inseparable right of a woman irrespective of her employment status. Besides, this benefit has already been extended to Sikhya Sahayaks engaged under Sarba Sikhya Abhijan Scheme in Orissa.*
4. *Now, the Government, after careful consideration have been pleased to decide that all female employees engaged in Government establishments on contract basis with consolidated remuneration and having less than two surviving children would be eligible to get full consolidated remuneration for a period not exceeding 90 days of her absence from duty on maternity ground on following conditions:*
 - i. *Prior approval of competent authority for remaining absent from duty on maternity ground shall be obtained.*
 - ii. *Detailed address of the employee during pre and post natal period shall be furnished.*
 - iii. *Such contractual, employee resumes duty after expiry of the period of absence from duty on maternity ground.*
 - iv. *A certificate from the treating physician for absence from duty on maternity ground shall be furnished.*

This shall come into force with immediate effect.

Sd/- D.P.Das
Special Secretary
to Government”

DISCUSSIONS AND ANALYSIS:

10. From the record as produced before this Court by the learned Additional Government Advocate it transpires that the petitioner having submitted application availing maternity leave from 03.03.2006 to 31.05.2006, step was taken to engage Education Volunteer and consequent thereto Sri Bhagaban Giri, opposite party No.4 joined as Education Volunteer in Dhipasahi EGS Centre, Uparbeda, Kusumi Block. The records are maintained by said opposite party No.4, who attended all the meetings till the EGS Centre was closed. It is emanating from the record that pursuant to Resolution dated 16.02.2008 of the Government of Odisha in School and Mass Education, the name of the opposite party No.4 was considered and his name found place in the list of disengaged EGS prepared by the District Project Co-ordinator, District Primary Education Programme, Sarba Sikshya Abhijan, Mayurbhanj, so as to be rehabilitated as GANA SIKSHYAK.

10.1. Glossing through the documents enclosed to the writ petition, it is perceived from Annexure-7, i.e., joining report dated 01.06.2006 stated to have been submitted to the Sub-Inspector of Schools, Circle-II, Kusumi Block that no acknowledgment is endorsed thereto by any

authority. For ready reference the joining report which is made part of writ petition is reproduced hereunder:

“To

*The Sub-Inspector of Schools,
Circle-II, Kusumi Block.*

Sub.: Submission of joining report

Sir,

*I have availed maternity leave from 03.03.2006 to 31.05.2006 and at present I am fit by the Doctor to resume my duty **(Copy of fitness certificate enclosed)**. The same may kindly be accepted.*

01.06.2006



Your faithfully

Sd/-

*(Smt. Sujata Mohanta)
Education Volunteer
Dhipasahi EGS Centre
Uparbeda Kusumi Block
Mayurbhanj*

Copy to: President VEC, Dhipasahi EGS Centre for favour of information.”

10.2. During the course of hearing when this Court made enquiry from the counsel for the petitioner as to why the fitness certificate stated to have been enclosed to the joining report is not furnished to this Court along with writ petition, he failed to proffer any explanation. He also expressed his inability to furnish such vital document at this stage also. Minute scrutiny of records produced by Sri Biplab Mohanty, learned Additional Government

Advocate transpires that no such document is available on record. Therefore, this Court is of the opinion that Annexure-7, i.e., joining report, dated 01.06.2006 is a self-generated document which does not even contain copy of the fitness certificate of the doctor, as claimed by the petitioner.

10.3. In the context withholding vital document, it has been observed in *Smt. Badami (deceased) by her LR Vrs. Bhali*, (2012) 6 SCR 75, as follows:

“19. Presently, we shall refer as to how this Court has dealt with concept of fraud. In *S.B. Noronah Vrs. Prem Kumari Khanna*, AIR 1980 SC 193 while dealing with the concept of estoppel and fraud a two-Judge Bench has stated that it is an old maxim that estoppels are odious, although considerable inroad into this maxim has been made by modern law. Even so, ‘a judgment obtained by fraud or collusion, even, it seems a judgment of the House of Lords, may be treated as a nullity’. (See *Halsbury’s Laws of England*, Vol. 16 Fourth Edition para 1553). The point is that the sanction granted under Section 21, if it has been procured by fraud or collusion, cannot withstand invalidity because, otherwise, high public policy will be given as hostage to successful collusion.

20. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vrs. Jagannath (dead) by L.Rs. and others*, AIR 1994 SC 853 this Court commenced the verdict with the following words:

‘Fraud-avoids all judicial acts, ecclesiastical or temporal’ observed Chief Justice Edward Coke of England about three centuries ago, It is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law. Such a judgment/decree— by the first Court or by the highest Court— has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings.’

21. In the said case it was clearly stated that **the Courts of law are meant for imparting justice between the parties and one who comes to the Court, must come with clean hands. A person whose case is based on falsehood has no right to approach the Court. A litigant who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If a vital document is withheld in order to gain advantage on the other side he would be guilty of playing fraud on Court as well as on the opposite party.**
22. In *Smt. Shrist Dhawan Vrs. M/s. Shaw Brothers*, AIR 1992 SC 1555 it has been opined that fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It has been defined as an act of trickery or deceit. The aforesaid principle has been reiterated in *Roshan Deen Vrs. Preeti Lall* AIR 2002 SC 33, *Ram Preeti Yadav Vrs. U.P. Board of High School*, (2003) 8 SC 311 and *Intermediate Education and other and Ram Chandra Singh Vrs. Savitri Devi and others*, (2003) 8 SCC 319.

23. *State of Andhra Pradesh and another Vrs. T. Suryachandra Rao, AIR 2005 SC 3110 after referring to the earlier decision this Court observed as follows:*

'In Lazaurs Estate Ltd. Vrs. Beasley, (1956) 1 QB 702, Lord Denning observed at pages 712 & 713,

'No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.'

In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity.'

24. *Yet in another decision Hamza Haji Vrs. State of Kerala & Anr., AIR 2006 SC 3028 it has been held that no Court will allow itself to be used as an instrument of fraud and no Court, by way of rule of evidence and procedure, can allow its eyes to be closed to the fact it is being used as an instrument of fraud. The basic principle is that a party who secures the judgment by taking recourse to fraud should not be enabled to enjoy the fruits thereof.*

25. **** All these reasonings are absolutely non-plausible and common sense does not even remotely give consent to them. It is fraudulent all the way. The whole thing was buttressed on the edifice of fraud and it needs no special emphasis to state that what is pyramided on fraud is bound to decay. In this regard we may profitably quote a statement by a great thinker:*

*'Fraud generally lights a candle for justice to get a look at it; and rogue's pen indites the warrant for his own arrest.' ***"*

10.4. Identical view has also been taken following aforesaid Judgment in *Smriti Madan Kansagra Vrs. Perry Kansagra*, (2021) 10 SCR 742.

10.5. Bearing in mind such discussion of the Hon'ble Supreme Court of India, as it is found in the instant case this Court does not find a scrap of paper with respect to certificate of fitness of doctor. No material particulars are also available neither in the record relating to writ petition nor in the records produced by the learned Additional Government Advocate in this regard. It is interesting to note that though in the joining report (as claimed to have been submitted to Sub-Inspector of Schools) mentions about "copy of fitness certificate enclosed" the said document does not find place. Therefore, this Court is not in a position to accept the argument of the learned counsel for the petitioner.

10.6. This Court when delved deep into the matter further, it has taken into consideration the Letter No.39847 (225)-Bt.-V-42/2007/F, dated 01.10.2007, addressed to all Secretaries/all Heads of the Department by the Government of Odisha in Finance Department, which is relied on by Sri Banshidhar Satapathy, learned Advocate for the petitioner. Paragraph 4 of said Letter dated 01.10.2007 clearly depicts that "all female employees engaged in Government establishments on contract basis with consolidated remuneration and having less

than two surviving children would be eligible to get full consolidated remuneration for a period not exceeding 90 days of her absence from duty on maternity ground” *inter alia* on the conditions that “prior approval of competent authority for remaining absent from duty on maternity ground shall be obtained”. This apart such employee is required to furnish “detailed address of the employee during pre and post natal period” and “a certificate from the treating physician for absence from duty on maternity ground shall be furnished”.

10.7. The record is silent about “prior approval of competent authority for remaining absent from duty on maternity ground” and “certificate from treating physician for absence from duty on maternity ground”. Besides this there is no detailed address contained in the application for maternity leave *vide* Annexure-6.

10.8. It is trite that whenever any benefit is claimed, the person claiming benefit is required to comply with conditions and adhere to the procedure laid for availing such benefit. In the instant case, material available on record does not evince the fact that the petitioner has at any point of time was being treated or under care of any physician during 03.03.2006 to 31.05.2006.

Entertainment of writ petition on the objection of delay and laches:

11. This Court is not persuaded by the cause shown for availing around 90 days' leave on maternity ground inasmuch as the petitioner even though claims to have submitted joining report on 01.06.2006, she has not shown promptness in approaching the appropriate forum for ventilation of her grievance. As it seems, as is urged by the Additional Government Advocate, that the petitioner has filed the writ petition on 21.05.2008, *i.e.*, after publication of Resolution No.3358/SME, dated 16.02.2008, whereby policy decision was taken by the Government in the School and Mass Education Department to rehabilitate disengaged Education Volunteer to be engaged as GANA SIKSHYAK. It is borne on the record that by the date of closure of the Dhipasahi EGS Centre at Uparbeda in Kusumi Block of Mayurbhanj district on 31.01.2008, Sri Bhagaban Giri-opposite party No.4 was continuing as Education Volunteer since 2006. The records produced by the Additional Government Advocate reveals that he was operating the Bank Account as also maintaining other records. The opposite party No.4 was attending the meetings of Village Education Committee. Therefore, it appears false claim has been made by the petitioner in the present case by not furnishing material documents, like prior approval of competent authority for remaining absent from duty on maternity ground and certificate from the treating physician for absence from duty on

maternity ground as predicated in Letter dated 01.10.2007 issued by the Finance Department.

11.1.No explanation or justification is found mentioned in the writ application filed by the petitioner with respect to delay in approaching this Court.

11.2.Sri Ajodhya Ranjan Dash, learned Additional Government Advocate for the opposite parties is correct in raising objection as to entertainment of writ petition to show indulgence in the matter since the petitioner failed to apprise this Court with regard to inordinate delay in filing writ petition. Whereas the cause of action for the petitioner to claim for resumption of duty arose on 01.06.2006, the writ petition has been filed on 21.05.2008. No cause is shown by the petitioner that led to the delay in filing writ petition.

11.3.It may be noted that writs are not a device to restart proceedings after unreasonable and inordinate delay. It is often seen that litigants, who sleep over their right of appeal/revision or any other statutory mode for redressal, decide at a much later time after unreasonable and inordinate time to re-agitate the matter especially against the Government or its functionalities. Such a device seldom requires to be attended to. Invocation of the extraordinary jurisdiction of the High Court by filing writ petition under Article 226 of the Constitution of India craving for direction for

consideration of fresh plea or evidence with a hope to re-enliven the proceeding, which had lapsed with the passage of time, is liable to be deprecated. The Hon'ble Supreme Court as also this Court has consistently held that indolent person is not to be protected and delay and laches on part of the litigant disentitles him to any relief.

11.4. In *K.V. Raja Lakshmiah Vrs. State of Mysore*, AIR 1967 SC 973, the Supreme Court which held that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic and that the Court may decline to intervene and grant relief in exercise of its writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The Court observed that if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also causing injustice to the third parties. See also *State of Madhya Pradesh Vrs. Nandlal Jaiswal*, AIR 1987 SC 251.

11.5. Regard may be had to *Northern Indian Glass Industries Vrs. Jaswant Singh*, 2002 Supp (3) SCR 534, wherein the Hon'ble Court cautioned that the High Court cannot ignore the delay and laches in approaching the Writ Court and there must be satisfactory explanation by the petitioner as to how he could not come to the Court well in time. In *P.S. Sadasivaswamy Vrs. State of Tamil Nadu*,

(1975) 1 SCC 152, it was laid down that 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 should 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 the relief.

11.6. In *New Delhi Municipal Council Vrs. Pan Singh and others*, (2007) 9 SCC 278, it was opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the Court took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

11.7. It is also well-settled principle of law that 'delay defeats equity'. The principle underlying this rule is that the one who is not vigilant and diligent and does not seek intervention of the Court within reasonable time from

the date of accrual of cause of action or alleged violation of constitutional, legal or other right is not entitled to relief under Article 226 of the Constitution. Another reason for the High Court's refusal to entertain belated claim is that during the intervening period rights of third parties may have crystallized and it will be inequitable to disturb those rights at the instance of a person who has approached the Court after long lapse of time and there is no cogent explanation for the delay.

11.8. In *Shankara Co-op. Housing Society Ltd. Vrs. M. Prabhakar and Others*, (2011) 5 SCC 607, the Supreme Court reiterated settled position of law and affirmed the well-established criteria which has to be considered before exercise of discretion under Article 226 of the Constitution of India. The relevant portion is extracted herein below:

“53. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are:

1. *there is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts;*
2. *the principle on which the court refuses relief on the ground of laches or delay is that the*

rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the Petitioners;

3. *the satisfactory way of explaining delay in making an application under Article 226 is for the Petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the Petitioner chooses to believe in regard to the remedy;*
4. *no hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts;*
5. *that representations would not be adequate explanation to take care of the delay.”*

11.9. A reference to the decision of the Hon'ble Supreme Court in the case of *Union of India Vrs. M.K. Sarkar, (2010) 2 SCC 59* in support of the view that delay and laches would not protect the indolent to approach Writ Court. It has been observed thus:

“15. When a belated representation in regard to a ‘stale’ or ‘dead’ issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the ‘dead’ issue or time-barred dispute. The

issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a Court's direction. Neither a Court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. *A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct 'consideration' without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the Court does not expressly say so, that would be the legal position and effect."*

11.10. In *C. Jacob Vrs. Director of Geology and Another*, (2008) 10 SCC 115, it has been observed thus:

"6. *Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a*

writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters.

Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation.

The Courts/Tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'.

If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the

representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.”

11.11. A Constitution Bench of the Hon’ble Supreme Court of India in *Senior Divisional Manager, Life Insurance Corporation of India Ltd. Vrs. Shree Lal Meena*, (2019) 4 SCC 479, considering the principle of delay and laches, opined as under:

“36. We may also find that the appellant remained silent for years together and that this Court, taking a particular view subsequently, in *Sheel Kumar Jain v. New India Assurance Company Limited*, (2011)12 SCC 197 would not entitle stale claims to be raised on this behalf, like that of the appellant. In fact the appellant slept over the matter for almost a little over two years even after the pronouncement of the judgment.

37. Thus, the endeavour of the appellant, to approach this Court seeking the relief, as prayed for, is clearly a misadventure, which is liable to be rejected, and the appeal is dismissed.”

11.12. In *State of Uttaranchal Vrs. Sri Shiv Charan Singh Bhandari*, (2013) 12 SCC 179 while considering the issue regarding delay and laches it has been observed that even if there is no period prescribed for filing the writ petition under Article 226 of the Constitution of India, yet it should be filed within a reasonable time. Relief to a

person, who puts forward a stale claim can certainly be refused relief on account of delay and laches. Anyone who sleeps over his rights is bound to suffer. At this juncture, it is useful to refer to *Ex. Capt. Harish Uppal Vrs. Union of India, 1994 Supp. (2) SCC 195*, wherein the following was the observation:

“8. *The petitioner sought to contend that because of laches on his part, no third party rights have intervened and that by granting relief to the petitioner no other person’s rights are going to be affected. He also cited certain decisions to that effect. This plea ignores the fact that the said consideration is only one of the considerations which the court will take into account while determining whether a writ petition suffers from laches. It is not the only consideration. It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of Constitution of India— and that is what precisely the Delhi-High Court has done. We cannot say that the High Court was not entitled to say so in its discretion.*”

11.13. In the case of *State of Maharashtra Vrs. Digambar, (1995) 4 SCC 683* it has been laid down as follows:

“14. *How a person who alleges against the State of deprivation of his legal right, can get relief of*

compensation from the State by invoking writ jurisdiction of the High Court under Article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decisions of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blameworthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a Welfare State, is also difficult to comprehend. Where the relief sought under Article 226 of the Constitution by a person against the Welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal

right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blameworthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State.”

11.14. In *Chennai Metropolitan Water Supply and Sewerage Board Vrs. T.T. Murali Babu* reported in (2014) 4 SCC 108, the Hon’ble Supreme Court held as follows:

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinise whether the lis is 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.”

11.15. The Madras High Court in the case of S. Vaidhyanathan Vrs. Government of Tamil Nadu, 2018 SCC OnLine Mad 11463, held as under:

“13. Though reasonable time is not prescribed in the rules framed under Article 229 of the Constitution of India, the words ‘reasonable time’, as explained in Veerayeeammal Vrs. Seeniammal reported in (2002) 1 SCC 134, at Paragraph 13, is extracted hereunder:

‘13. The word ‘reasonable’ has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word ‘reasonable’. The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the ‘reasonable time’ is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other

words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's The Law Lexicon it is defined to mean:

'A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea.'

14. *There is an inordinate delay and laches on the part of the appellant. What is laches is as follows:*

'Laches or reasonable time are not defined under any Statute or Rules. 'Latches' or 'Lashes' is an old French word for slackness or negligence or not doing. In general sense, it means neglect to do what in the law should have been done for an unreasonable or unexplained length of time. What could be the latches in one case might not constitute in another. The latches to non-suit, an aggrieved person from challenging the acquisition proceedings should be inferred from the conduct of the land owner or an interested person and that there should be a passive inaction for a reasonable length of time. What is reasonable time has not been explained in any of the enactment. Reasonable time depends upon the facts and circumstances of each case.'

15. *Statement of law has also been summarized in Halsbury's Laws of 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." ***"*

11.16. Pertinent in the present context to take note of the following observation of the Allahabad High Court *vide Judgment dated 18th March, 2021 rendered in Ganga Sahay and 2 Others Vrs. Deputy Director of Consolidation and 14 Others, WRIT - B No. 302 of 2021:*

"13. Law has long set its face against delay in approaching the court. The courts have consistently declined to condone the delay and denied relief to

litigants who are guilty of laches. Litigants who are in long slumber and not vigilant about their rights are discouraged by the courts. Belated claims are rejected at the threshold. Rip Van Winkles have a place in literature, but not in law.

14. *All this is done on the foot of the rule of delay and laches. Statutes of limitation are ordained by the legislature, rule of laches was evolved by the courts. Sources of the law differ but the purpose is congruent. Statutes of limitation and the law of delay and laches are rules of repose.*
15. *The rule of laches and delay is founded on sound policy and is supported by good authority. The rule of laches and delay is employed by the courts as a tool for efficient administration of justice and a bulwark against abuse of process of courts.*
16. *Some elements of public policy and realities of administration of justice may now be considered.*
17. *While indolent litigants revel in inactivity, the cycle of life moves on. New realities come into existence. Oblivious to the claims of the litigants, parties order their lives and institutions their affairs to the new realities. In case claims filed after inordinate delay are entertained by courts, lives and affairs of such individuals and institutions would be in a disarray for no fault of theirs. Their lives and affairs would be clouded with uncertainty and they would face prospects of long and fruitless litigation.*
18. *The delay would entrench independent third party rights, which cannot be dislodged. The deposit of subsequent events obscures the original claim and alters the cause itself. The refusal to permit agitation*

of stale claims is based on the principle of acquiescence. In certain situations, the party by its failure to raise the claim in time waives its right to assert it after long delay.

19. *The rule of delay and laches by preventing the assertion of belated claims puts to final rest long dormant claims. This policy of litigative repose, creates certainty in legal relations and curtails fruitless litigation. It ensures that the administration of justice is not clogged by pointless litigation.”*

11.17. While considering the issue of delay and laches in *State of Odisha Vrs. Laxmi Narayan Das, (2023) 10 SCR 1049 = 2023 INSC 619*, referring to *Union of India Vrs. N. Murugesan, (2022) 2 SCC 25*, it was observed that a neglect on the part of a party to do an act which law requires must stand in his way for getting the relief or remedy. The Court laid down two essential factors, *i.e.* first, the length of the delay and second, the developments during the intervening period. Delay in availing the remedy would amount to waiver of such right. Relevant paragraphs 20 to 22 of the above mentioned case are extracted below:

“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.

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.*

37. *We have already dealt with the principles of law that may have a bearing on this case. *** there was an unexplained and studied reluctance to raise the issue.****

38. **** Hence, on the principle governing delay, laches *** Respondent No. 1 ought not to have been granted any relief by invoking Article 226 of the Constitution of India.”.*

11.18. Given the position of law as discussed above on the question of exercise of discretion under Article 226/227 of the Constitution of India, it is difficult to ignore the delay and laches on part of the instant petitioner, as it is apparent on record that there is no explanation in the writ petition. The explanation for laches is self-serving and lacks credibility. It may worthy of repeat that after 01.06.2006, when the petitioner has stated to have joined the service (in fact, there was no resumption in service as per records), she had arisen from slumber in 2008 by claiming that she has made representation dated 02.05.2008 (Annexure-1) to the opposite party Nos.1 and 2. In the meantime, the EGS Centre has been closed on abolition of the Scheme and Sri Bhagaban Giri, opposite party No.4, who was engaged as Education Volunteer since 2006 continued in Dhipasahi EGS Centre, Uparbeda under Kusumi Block in Mayurbhanj District. Subsequent events carry weight in deciding whether to exercise power under Article 226/227 of the Constitution of India.

CONCLUSION & DECISION:

12. Having analysed the pleading, carefully scrutinised the documents enclosed to the brief by respective parties, perused the records produced by the Additional Government Advocate and noticed the judgment rendered by this Court, it is baffling to note that even though the writ petition has been filed by the petitioner affirming by way of affidavit that she had submitted joining report dated 01.06.2006 enclosing therewith “copy of fitness certificate”, no such document is forthcoming. At the stage of hearing also when asked by this Court, learned counsel for the petitioner expressed his helplessness to furnish such vital document to justify the leave from 03.03.2006 to 31.05.2006 on account of maternity ground. Had the record not been called for *vide* Order dated 16.01.2023 directing the Additional Government Advocate “to produce the entire file maintained by the Village Education Committee of Uparbeda, Dhipasahi EGS Centre containing all relevant details of the appointment of the petitioner, opposite party No.4, attendance of the volunteers in the classes, remuneration, *etc.*” correct affairs would not have come to fore. Since nothing tangible is available on record to show that the petitioner has complied with the terms of conditions stipulated in the Letter dated 01.10.2007 of the Finance Department (which was relied on by Sri Banshidhar Satapathy, Advocate appearing on behalf of

the petitioner), this Court is of the opinion that the so-called joining report available at Annexure-7 of the writ petition is inchoate and cannot be taken into consideration as evidence. There is no truthfulness in the statement at paragraph 5 of the writ petition as asserted by the petitioner that “she joined in duties on 01.06.2006 and continued there to the best of satisfaction of all concerned”. Added to this, even after Sri Bhagaban Giri-opposite party No.4 was allowed to function as the Education Volunteer with effect from 31.12.2006 pursuant to execution of an agreement, the petitioner kept silent; nevertheless, she has stated to have approached the Collector-cum-Chief Executive, Zilla Parishad, Mayurbhanj and the District Project Co-ordinator, Sarba Sikshya Abhijan, Mayurbhanj by way of representation dated 02.05.2008 to incorporate her name in the list of disengaged Education Volunteers. Thereafter on 21.05.2008 she filed this writ petition with prayer to direct the Collector-cum-Chief Executive (opposite party No.1) and the District Project Co-ordinator (opposite party No.2) to engage the petitioner as GANA SIKSHYAK in tune with Resolution No.3358/SME, dated 16.02.2008.

12.1. It may be noteworthy to have regard to the following observation of the Hon’ble Supreme Court of India in the case of *Sarvepalli Radhakrishnan University Vrs. Union of*

India, (2019) 1 SCR 920 rendered in the context of false affidavit asserting fact to mislead the Court:

*“11. *** The brazen attempt by the College in taking this Court for a ride by placing on record maneuvered documents to obtain a favourable order is a clear-cut act of deceit. The justification given by the College regarding the absence of certain residents has turned out to be a concocted story. Had we not initiated an enquiry by the Committee of Experts, the fraud played by the College on this Court would not have come to light. It is trite that every litigant has to approach the Court with clean hands. A litigant who indulges in suppression of facts and misrepresentation is not entitled for any relief. The conduct of the College in this case to mislead this Court for the purpose of getting a favourable order is reprehensible and the College deserves to be dealt with suitably.*

12. *In Re. Suo Motu Proceedings against R. Karuppan, Advocate, (2001) 5 SCC 289, this Court observed as under:*

‘13. Courts are entrusted with the powers of dispensation and adjudication of justice of the rival claims of the parties besides determining the criminal liability of the offenders for offences committed against the society. The courts are further expected to do justice quickly and impartially not being biased by any extraneous considerations. Justice dispensation system would be wrecked if statutory restrictions are not imposed upon the litigants, who attempt to mislead the Court by filing and relying upon false evidence

particularly in cases, the adjudication of which is dependent upon the statement of facts. If the result of the proceedings are to be respected, these issues before the courts must be resolved to the extent possible in accordance with the truth. The purity of proceedings of the court cannot be permitted to be sullied by a party on frivolous, vexatious or insufficient grounds or relying upon false evidence inspired by extraneous considerations or revengeful desire to harass or spite his opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of irresponsible statements, without any regard to accuracy.'

In Mohan Singh Vrs. Amar Singh case, (1998) 6 SCC 686 it was observed by this Court:

*'36. *** Tampering with the record of judicial proceedings and filing of false affidavit in a court of law has the tendency of causing obstruction in the due course of justice. It undermines and obstructs free flow of the unsoiled stream of justice and aims at striking a blow at the rule of law. The stream of justice has to be kept clear and pure and no one can be permitted to take liberties with it by soiling its purity.' ***"*

12.2.As the petitioner has not brought on record pertinent material to demonstrate that prior approval of competent authority was obtained for remaining absent from duty on maternity ground. In furtherance thereto, no iota of evidence is placed to evince that the absence from duty was on account of maternity ground supported by

certificate from the treating physician. Scrutiny of records clearly indicates that the application for availing maternity leave does not disclose detailed of address of the petitioner during pre and post natal period. The records produced by the Additional Government Advocate manifestly lead to indicate that the petitioner has not resumed in duty after expiry of the period of absence from duty on maternity ground. Having not fulfilled the conditions stipulated in the Government of Odisha in Finance Department Letter No.39847 (225)-Bt.-V-42/2007/F, dated 01.10.2007, there is no scope to grant any relief to the petitioner.

13. This matter can be considered on different prism. It is quite clear from the discussion made in foregoing paragraphs that the writ petition is not entertainable on finding delay and laches in approaching the Writ Court invoking Article 226/227 of the Constitution of India.

13.1. It deserves to be quoted from *State of Jammu & Kashmir Vrs. R.K. Zalpuri*, (2015) 15 SCC 602, while the Supreme Court of India was considering the issue regarding delay and laches while initiating a dispute before the Court. It was opined that the issue sought to be raised by the petitioners therein was not required to be addressed on merits on account of delay and laches. The relevant paragraphs thereof are extracted below:

“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, needless to emphasise, did not justify adjudication. It deserves 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.”

13.2. In *Karnataka Power Corporation Ltd. Vrs. K. Thangappan*, AIR 2006 SC 1581 it is held that 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 of India. 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 petitioner to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Of course, the discretion has to be exercised judicially and reasonab

- 14.** Under aforesaid premises, this Court is, therefore, declines to direct the authorities concerned, the opposite party No.1-Collector-cum-Chief Executive, Zilla Parishad and the opposite party No.2-District Project Co-ordinator, to engage the petitioner as GANA SIKSHYAK in terms of Resolution No.3358/SME, dated 16.02.2008 by incorporating the name of Smt. Sujata Mahanta in place of Sri Bhagaban Giri, the opposite party No.4.
- 15.** Accordingly, the writ petition stands disposed of in the above terms, but in the circumstances, there shall be no order as to costs.
- 16.** Records received from Mr. Biplab Mohanty, learned Additional Government Advocate be returned to him forthwith.

**(MURAHARI SRI RAMAN)
JUDGE**