[2023] 15 S.C.R. 404 : 2023 INSC 902

CASE DETAILS

BICHITRANANDA BEHERA

v.

STATE OF ORISSA AND OTHERS

(Civil Appeal No. 6664 of 2023)

OCTOBER 11, 2023

[VIKRAM NATH AND AHSANUDDIN AMANULLAH, JJ.]

HEADNOTES

Issue for consideration: High Court if justified in dismissing the appeal filed by the appellant against the judgment of State Education Tribunal whereby the State was directed to approve the appointment of Respondent No.5 on the post of Physical Education Trainer (PET) in the school in question and release of block grant in his favour.

Service Law – Delay/Laches – Solitary post of PET in the school in question – Respondent No.5 challenged the approval order dtd. 02.04.2005 of the appellant before the Tribunal, claiming to be continuing as the PET in the school in question w.e.f. 10.01.1993 on the basis of resolution dtd. 07.01.1993 of the Managing Committee constituted on 28.12.1992 – Claim, if belated:

Held: Appellant was appointed by the Managing Committee constituted on 15.12.1992 and given appointment on 14.05.1994 during the time when a stay order granted by the High Court in favour of the said Managing Committee was continuing i.e., since 11.01.1993 – Thus, the appointment of the appellant made by the aforesaid Managing Committee cannot be labelled illegal per se nor termed void ab initio – Further, the then incumbent who was appointed as PET in the School, continued till 15.10.1993, when he was terminated – Thus, in the absence of the post being vacant on 07.01.1993, Respondent No.5 could not have been appointed by way of the resolution dtd.07.01.1993 followed by the appointment letter issued on 10.01.1993 – Also, when the interim order dtd.11.01.1993 was vacated, the term of the Managing Committee approved on 15.12.1992 was already over – Since the Managing Committee constituted on 15.12.1992

continued for its full term by virtue of the interim order of the High Court and even in the final order disposing of the case, no adverse comment was made on actions taken by the said Managing Committee, coupled with the fact that the appellant continued to discharge the duties on the post right since his appointment, which is documented and verified, with him having been sent on election duty thrice, are sufficient pointers that the appellant had actually worked and continued on the post – Also, competent authorities came to a finding about the factum of Respondent No.5 having worked in another School during the period in question– Furthermore, in the period of over 12 years (from 07.01.1993 to 04.05.2005), Respondent No.5 had not moved before any forum, asserting his claims qua the solitary post of PET in the School in question – Respondent No.5 should have been non-suited on the ground of delay and laches, which especially in service matters is vital, juxtaposed with the sign of acquiescence – Judgments of the High Court and the Tribunal set aside – Appellant entitled to continuance on the post of PET in the School, with service counted from 14.05.1994 with all consequential benefits – However, State of Odisha to grant a lump-sum of INR 3 lakhs to Respondent No.5, this shall not constitute a precedent – Orissa Education Act, 1969 – s.24-B - Grant-in-Aid Order, 2004 – Constitution of India – Article 142 – Acquiescence. [Paras 15-18, 20, 22, 23 and 25]

LIST OF CITATIONS AND OTHER REFERENCES

Bibekananda Das v. State of Orissa 1997 (II) OLR 122 – held inapplicable.

Union of India v Tarsem Singh (2008) 8 SCC 648 : [2008] 12 SCR 104; *Union of India v. N Murugesan* (2022) 2 SCC 25; *Chairman, State Bank of India v. M J James* (2022) 2 SCC 301 – relied on.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6664 of 2023.

From the Judgment and Order dated 18.01.2017 of the High Court of Orissa at Cuttack in FAO No. 497 of 2008.

Appearances:

Soumyajit Pani, Aishwary Bajpai, Vinodh Kanna B., Advs. for the Appellant.

Bharat Sangal, Sr. Adv., Nagarkatti Kartik Uday, Ms. Babita Kushwaha, Ms. Manjula Gupta, Prem Sunder Jha, M.D. Pandey, Niranjan Sahu, Sibo Sankar Mishra, Mrs. Prabhati Nayak, Debabrata Dash, Ms. Apoorva Sharma, Raj Kumar Mehta, Ms. Himanshi Andley, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

AHSANUDDIN AMANULLAH, J.

Heard learned counsel for the parties.

2. Leave granted.

3. The present appeal is directed against the Judgment dated 18.01.2017 in F.A.O. No.497 of 2008 (hereinafter referred to as the "Impugned Judgment") passed by the High Court of Orissa at Cuttack (hereinafter referred to as the "High Court") whereby the appeal filed by the appellant against judgment dated 15.11.2008 in GIA Case No.39 of 2005 of the State Education Tribunal, Orissa (hereinafter referred to as the "Tribunal") directing the Respondents No.1 & 2 to approve the appointment of Respondent No.5 on the post of Physical Education Trainer (hereinafter referred to as "PET") in the Gram Panchayat School, Sailo at Nadhana (hereinafter referred to as the "School"), District Puri and release of block grant in his favour with effect from[1] 01.01.2004, has been dismissed.

THE FACTUAL PRISM:

4. The School was established in the year 1987 and was also recognized. On 29.11.1990, the first Managing Committee of the School was constituted and as a stop-gap arrangement, a retired government school Physical Education Trainer was appointed on the post of PET on 18.05.1991. The Managing Committee was reconstituted by the Inspector

1 Hereinafter shortened and referred to as "w.e.f.".

of Schools, Puri Circle, Puri *vide* order dated 15.12.1992. However, the Inspector of Schools on 28.12.1992 modified the composition of the Managing Committee by substituting some names. The approval given to the Managing Committee constituted on 28.12.1992 was challenged by the Secretary of the Managing Committee constituted on 15.12.1992, in O.J.C. No.80 of 1993 before the High Court, which by interim order dated 11.01.1993, stayed the operation of the order dated 28.12.1992 reconstituting the Managing Committee. The Managing Committee constituted on 15.12.1992 appointed the appellant on the post of PET on 14.05.1994. However, the interim order dated 11.01.1993 of the High Court was vacated on 18.12.1995, as term of the Managing Committee approved on 15.12.1992 stood expired. When on the recommendation of the proposal submitted by the outgoing Managing Committee, the new Managing Committee was reconstituted and approved on 03.07.1996, the same was again challenged in O.J.C. No.6687 of 1996. By a common order dated 23.07.1999 in both the Writ Petitions (O.J.Cs. No.80 of 1993 and 6687 of 1996), the High Court quashed the order of approval dated 03.07.1996 and directed the Inspector of Schools to remain in-charge of the management of the School. Later, when applications were invited to receive block grant(s) under the Grant-in-Aid Order, 2004 with effect from 01.01.2004, the Inspector of Schools passed an order on 02.04.2005 approving the appointment of teaching and non-teaching staff, where the name of appellant found place and he was held entitled to receive the Block Grant.

5. This led to Respondent No.5 filing GIA Case No.39 of 2005 under Section 24-B of the Orissa Education Act, 1969 challenging the approval order of the appellant before the Tribunal. The Respondent No.5 claimed to be continuing as the PET in the school in question w.e.f. 10.01.1993 on the basis of Resolution dated 07.01.1993 issued by the Managing Committee constituted on 28.12.1992. The Tribunal *vide* judgment dated 15.11.2008 quashed the order dated 02.04.2005 by which approval was given to the service of the appellant and further directed approval of the appointment of Respondent No.5 and for release of block grant in his favour w.e.f. 01.01.2004. The challenge by the instant appellant to the same before the High Court came to be rejected by the Impugned Judgment.

SUBMISSIONS BY THE APPELLANT:

6. Learned counsel for the appellant submitted that the advertisement dated 20.04.1994 was issued by the Managing Committee constituted on 15.12.1992 much after stay was granted in its favour, and interviews were conducted on 11.05.1994 for the PET and 3 other posts.

7. It was submitted that the appellant, along with three others, was appointed on 14.05.1994 and was still working, being duly qualified and rendering service uninterruptedly.

8. Learned counsel submitted that though the claim of the Respondent No.5 is based on his appointment letter and joining letter of the year 1993, but he has failed to produce any document to establish his continuity in service from 1993 to 2005 or even thereafter. It was contended that the appointment letter and resolution of the Managing Committee in favour of the Respondent No.5 was void and fabricated as Respondent No.5 was appointed within 14 days of the constitution of the Managing Committee on 28.12.1992 i.e., on 10.01.1993 which is one day before the stay order of the High Court dated 11.01.1993. It was submitted that despite the dates clearly indicating a sham process of appointment, the Tribunal and the High Court granted relief to the Respondent No.5 only on the basis of the aforesaid two documents without any document/record showing that the Respondent No.5 actually performed his duties in the School so as to entitle his service being approved, which is a condition precedent for salary in the shape of grant-in-aid/block grant. It was contended that after due verification/perusal of the Managing Committee's Resolution Book and Staff Attendance Register from 1994 to 2005 and other material(s) like Inspection Report dated 11.07.2006, it was established that Respondent No.5 was appointed and also worked, as a teacher in another school *viz*. the Sri Thakur Nigamananda High School, Terundia.

9. Learned counsel submitted that facts have been duly verified from the records of advertisement, resolution, appointment letter, attendance register and renewal register pertaining to the appellant by the competent authority; and in this background, he was approved by the order dated 02.04.2005 as eligible to receive block grant.

10. Learned counsel further submitted that the Inspector of Schools in his counter affidavit has clearly stated that there is no other appointee and also no record available, either in the School or in the Inspectorate, relating to the appointment of Respondent No.5. Thus, it was contended that the Tribunal has not given any finding with regard to the records relating to the appointment of Respondent No.5 and the High Court has also clearly erred in ignoring the relevant factual matrix as disclosed in the concerned contemporaneous records duly verified by the competent authority of the State. It was further contended that the two fora below have wrongly interpreted the term 'Competent Management' in the order dated 23.07.1999, which was only in reference to sending of a proposal with regard to the future reconstitution of the Managing Committee and has no relevance on the issue of appointment having been made by the Managing Committee constituted on 15.12.1992, which in no way can be said to be incompetent or illegal even on the principle of '*de facto doctrine'*, more so, when the Managing Committee constituted on 15.12.1992 had managed the school for six years and the High Court has not invalidated any action or decision taken by it during the said period.

11. It was contended that even on merit, on the day the Respondent No.5 is said to have been appointed i.e., 10.01.1993, he did not possess BPED or CPED qualification and thus, could not have been appointed. He further submitted that the recommendation for renewal in favour of the appellant was sent every year as per the requirement and he was also assigned election duty on three occasions.

SUBMISSIONS OF THE STATE:

12. Learned counsel for the State has filed the counter-affidavit. The State has supported the case put forth by the appellant.

SUBMISSIONS ON BEHALF OF RESPONDENT No.5:

13. Learned counsel for Respondent No.5, *per contra*, submitted that the High Court in its order dated 23.07.1999 has noted that the Managing Committee constituted on 28.12.1992 was the only competent Managing Committee which has appointed the Respondent No.5, hence the same is valid. It was submitted that the appellant, having been appointed by the Managing Committee constituted on 15.12.1992, could

not have been so appointed without lawful termination of the service of Respondent No.5 and most importantly, the order dated 23.07.1999, having not been challenged, had attained finality. With regard to the qualification of Respondent No.5 i.e., his non-fulfilment of the criteria of appointment on 10.01.1993, learned counsel submitted that, later, on 03.06.1996, Respondent No.5 did acquire the training qualification of B.P.Ed. which was permissible for in-service candidates as per Rule 16 of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974. In this connection, reliance was placed by learned counsel on the decision in ***Bibekananda Das v State of Orissa,*** **1997 (II) OLR 122,** holding that a teacher appointed prior to 18.12.1993, without having the training/qualification for the post, cannot be terminated or denied approval, but such employee was to be allowed to undergo training in course of his employment and on completion of the training, he/she would become entitled to trained scale of pay. Thus, it was submitted that Respondent No.5's appointment cannot be said to be illegal for lack of training/qualification at the time of appointment and moreover, it was submitted that in the counter-affidavit filed on behalf of the Board of Secondary Education, Orissa, it has been stated that both the appellant and the Respondent No.5 were untrained at the time of their respective appointments and thus, no benefit on this score can accrue to the appellant. Even apropos the stand of the appellant and the Inspector of Schools showing that Respondent No.5 was continuing in service from 04.01.1995 to 18.08.2002 in the Sri Thakur Nigamananda High School, Terundia, it was contended that the same is false and fabricated as the said school obtained permission only in 2000 and recognition was granted in 2002. On this issue, it was submitted that at best, even if the Respondent No.5 was appointed in some other school, still his appointment in the present school would not be nullified, as there can be, possibly, a charge of misconduct, for which proceedings can be or could have been initiated, but no such proceedings have in fact been initiated. Insofar as the stand taken by the appellant that he has continuity on the post is concerned, learned counsel submitted that continuing in service for a long period would not make an *ab initio* invalid appointment valid.

ANALYSIS, REASONING AND CONCLUSION:

14. Having considered the matter, the Court finds that in the face of competing submissions and rival claims of the appellant and the Respondent No.5, a balanced view is to be taken of the events which have actually taken place, keeping in mind the law.

15. On the factual scenario, the appellant was appointed by the Managing Committee constituted on 15.12.1992 and given appointment on 14.05.1994 during the time when a stay order granted by the High Court in favour of the Managing Committee constituted on 15.12.1992 was continuing i.e., since 11.01.1993. Thus, the appointment made by the said Managing Committee (constituted on 15.12.1992) of the appellant cannot be labelled illegal *per se* nor termed void *ab initio*. From the record it also transpires that the then incumbent, namely Kapil Sasmal, who was appointed as PET in the School, continued till 15.10.1993, when he was terminated by the Managing Committee for absence *vide* resolution No.39 dated 15.10.1993. Thus, in the absence of the post being vacant on 07.01.1993, the appointment of Respondent No.5 on the said single post held by Mr. Kapil Sasmal, Respondent No.5 could not have been appointed by way of the resolution dated 07.01.1993 followed by the appointment letter, which came to be issued on 10.01.1993. We may, in addition, note that when the interim order dated 11.01.1993 passed in OJC No.80 of 1993 was vacated, the term of the Managing Committee approved on 15.12.1992 was already over. Therefore, from 11.01.1993 till 14.12.1995, the Committee constituted on 15.12.1992 was functioning in terms of the interim order of the High Court. It is also noteworthy that the High Court only took a view with regard to reconstitution of the Managing Committee and even in its final order dated 23.07.1999, there is no whisper that any/all action(s) taken by the Managing Committee constituted on 15.12.1992, even though in terms of the interim order of the High Court, would lose their efficacy and/or validity.

16. It is also noted that the Respondent No.5, for the first time, raised the issue before the Tribunal challenging the approval order dated 02.04.2005 of the appellant on the basis of resolution dated 07.01.1993 of the Managing Committee constituted on 28.12.1992. In the period of over 12 years (from 07.01.1993 to 04.05.2005), Respondent No.5 had not moved before any

forum, be it a Court of Law or a Tribunal or an Authority asserting his claims *qua* the solitary post of PET in the School in question.

17. On the legal aspect, since the Managing Committee constituted on 15.12.1992 continued for its full term by virtue of the interim order of the High Court dated 11.01.1993 and even in the final order disposing of the case on 23.07.1999, no adverse comment made on actions taken by the said Managing Committee, coupled with the fact that the appellant continued to discharge the duties on the post right since his appointment on 14.05.1994, which is documented in the school register and verified by the Inspector of Schools, with his having been sent on election duty thrice, in our view, are sufficient pointers that the appellant had actually worked and continued on the post. Further, there was no complaint before any authority, either with regard to the appellant not joining or discharging his duty or the Respondent No.5 being prevented from joining or discharging his duty, from any quarter, much less, Respondent No.5 himself, till 2005. Even with regard to the finding of Respondent No.5 having worked in another school during the period in question, such finding has not really been contested. In any event, the material sought to disprove such factual assertion is not quite forthcoming from the record.

18. An issue that deserves some attention, as per Respondent No.5, is that since the Sri Thakur Nigamananda High School, Terundia got permission in 2000 and received recognition in 2002, the Respondent No.5 could not have been working there from 04.01.1995 to 18.08.2002. In this context, it is not incorrect to point out that it is fairly well-known that schools are started much prior to getting official permission/recognition, which follows after many years, if at all. Moreover, in the present case, the competent authorities have come to a finding, upon scrutiny and verification of relevant records about the factum of Respondent No.5 having worked in the Sri Thakur Nigamananda High School, Terundia from 04.01.1995 to 18.08.2002, which this Court has no reason to disbelieve.

19. The decision by a Division Bench of the High Court in ***Bibekananda Das*** (*supra*), is not of any help to the Respondent No.5 as we have not delved into the issue of eligibility for appointment on the post of PET on the relevant date(s).

20. On an overall circumspection, thus, in the present case the Respondent No.5 should have been non-suited on the ground of delay and laches, which especially in service matters, has been held consistently to be vital, juxtaposed with the sign of acquiescence. To the mix, we add that the State has supported the factual circumstances concerning the appointment of the appellant, his continuance in service as also the Respondent No.5 having worked during the said period in another school *viz.* the Sri Thakur Nigamananda High School, Terundia. Notably, the Respondent No.5 does not, from the record before us, appear to have approached the authorities in the interregnum.

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

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

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

arrears normally to a period of three years prior to the date of filing of the writ petition."

(emphasis supplied)

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

"Delay, laches and acquiescence

20. *The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the court.*

Laches

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

22. *Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a partic-*

ular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.

23. *A defence of laches can only be allowed when there is no statutory bar. The question as to whether there exists a clear case of laches on the part of a person seeking a remedy is one of fact and so also that of prejudice. The said principle may not have any application when the existence of fraud is pleaded and proved by the other side. To determine the difference between the concept of laches and acquiescence is that, in a case involving mere laches, the principle of estoppel would apply to all the defences that are available to a party. Therefore, a defendant can succeed on the various grounds raised by the plaintiff, while an issue concerned alone would be amenable to acquiescence.*

Acquiescence

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

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

(emphasis supplied)

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

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

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

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

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

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

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

(ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.'

13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in

accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?"

39. *Before proceeding further, it is important to clarify distinction between "acquiescence" and "delay and laches". Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. [See Prabhakar v. Sericulture Deptt., (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149. Also, see Gobinda Ramanuj Das Mohanta v. Ram Charan Das, 1925 SCC OnLine Cal 30 : AIR 1925 Cal 1107] In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, [See Vidyavathi Kapoor Trust v. CIT, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. [See Krishan Dev v. Ram Piari, 1964 SCC OnLine HP 5 : AIR 1964 HP 34] Acquiescence can be either direct with full knowledge and*

express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. [See "Introduction", U.N. Mitra, Tagore Law Lectures — Law of Limitation and Prescription, Vol. I, 14th Edn., 2016.] However, acquiescence will not apply if lapse of time is of no importance or consequence.

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

(emphasis supplied)

22. For reasons aforesaid, the judgments of the High Court as also the Tribunal deserve to be, and are accordingly, set aside.

23. The appellant is held entitled to continuance on the post of PET in the School, with service counted from 14.05.1994. As a sequel thereto, all consequential benefits, to be determined as per records, shall flow.

24. The appeal stands allowed in the afore-mentioned terms. No order as to costs.

25. However, for complete justice, we cannot leave Respondent No.5 in the lurch, given the time taken by the adjudicatory process. As such, in exercise of power under Article 142 of the Constitution of India, we direct

the State of Odisha to grant a lump-sum of INR 3 lakhs to Respondent No.5. Further, if any monies were paid to Respondent No.5, the same shall also not be recovered. This paragraph shall not constitute precedent.

Headnotes prepared by:
Divya Pandey

Appeal allowed.