



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 7648 OF 2023

1. **Pramod Vasantrao Deshmukh**
Aged about 68 years,
Occupation : Retired
R/o Saurabh Colony, VMV Road,
Amravati
2. **Nilkanth Deorao Dudhe**
Aged about 62 years,
occupation : Retired
R/o A-01 Deorshi Apartment,
Mangilal Plot Camp, Amravati
3. **Arun Babanrao Sangole,**
Aged about 63 years, occupation:
Retired, R/o Sonal Colony, Shegaon
Road, Amravati
4. **Sushma Uttamrao Patil,**
Aged about 63 years,
Occupation : Retired
R/o Anand Colony, Near Prerna
Colony, Amravati
5. **Ramkumar Narhar Kadu**
Aged about 63 years, Occ: Retired
R/o Padamsaurabh Colony,
Shegaon Road, Amravati
6. **Baburao Manoharrao Kale**
Aged about 64 years, Occ: Retired
R/o Rural Institute Colony Amravati
7. **Pramod Murlidhar Adgokar**
Aged about 63 years, Occ: Retired
R/o Gadge Nagar, Amravati
8. **Mohan Krushnarao Thakare**
Aged about 64 years, Occ.: Retired,
R/o Pote Layout, Kathora Road,
Amravati
9. **Jivan Diwakarrao Jagtap**

Aged about 60 years, Occ.: Retired
R/o Patwari Colony, Arjun Nagar
Amravati

10. **Meena Jagannath Konde,**
Aged about 62 years, Occ.:Retired.
R/o. Abhinav Colony, Shegaon
Road, Amravati
11. **Mohan Haridwar Chore,**
Aged about 62 years, Occ.: Retired
R/o Dr. Panjabrao Colony,
VMV Road, Amravati
12. **Jagdeo Goturamji Sable,**
Aged about 59 years, Occ.: Retired
R/o. Shri Ramkrushna Colony
Near Swami Samarth Mandir,
Gunvant Baba Floor Mill,
Morshi Road, Rahatgaon,
Amravati
13. **Pramod Wasudeorao Pochhi,**
Aged about 59 years, Occ.: Retired,
R/o Jalaram Nagar, Near Dastur
Nagar, Amravati

...PETITIONERS

// V E R S U S //

1. **State of Maharashtra,**
Through Secretary,
Higher and Technical Education
Department, Mantralaya Mumbai
2. **Directorate of Technical Education**
Through, Director,
3 Mahapalika Marg, Mumbai
3. **Regional Directorate of Technical
Education, Amravati**
Through, Joint Director,
Govt. Polytechnic Campus, Gadge
Nagar, Amravati
- 4 **Dr. Punjabrao Deshmukh**

- Polytechnic, Amravati,
 Though, its Principal,
 Shivaji Nagar, Amravati
 5. **Shivaji Education Society,**
 Through its Secretary,
 Shivaji Nagar, Amravati

RESPONDENTS

 Mr Z.Z. Haq, Advocate for the petitioners.
 Mr M.J. Khan, AGP for Respondent Nos. 1 to 3/State.
 Mr Akshy Naik, Sr. Advocate assisted by Mr. Kuldeep Mahalle,
 Advocate for respondent Nos.4 and 5.

CORAM : URMILA JOSHI PHALKE, J. AND
NANDESH S. DESHPANDE, JJ.

RESERVED FOR JUDGEMENT : **17.09.2025**
PRONOUNCEMENT OF JUDGEMENT : **26.09.2025**

J U D G M E N T : (PER : Nandesh S Deshpande, J.)

1. Heard.
2. **RULE.** Rule made returnable forthwith. Taken up for final disposal with the consent of learned counsel for the parties.
3. Petitioners herein are all retired employees from respondent No.4-Polytechnic Collage which is run by respondent No.5-Society. They have been appointed after following due process of law and all have superannuated without any

disciplinary action taken against them with clean and unblemished record. Petitioners have approached this Court for writ of mandamus directing respondent No.5-Shivaji Education Society, Amravati to release arrears of 10% of salary payable to the petitioners for the period from December, 2015 till the date of their superannuation along with consequential benefits and interests thereon, as applicable. The claim of the petitioners is based on a Government Resolution dated 21.08.2015 issued by the respondent No.1. It is therefore the claim of the petitioners that burden to pay said amount of 10% of the salary was on the management as per Government Resolution referred supra. It is further case of the petitioners that they have time and again inquired regarding arrears of said 10% but since they have not received the said amount, they have approached this Court by filing present writ petition.

4. The respondents herein had filed their reply in pursuance to the notice issued by this Court. Wherein, it is stated that there is no dispute about their entitlement. However, the claim being time barred is liable to be rejected. The relevant

averment in the reply of the respondent Nos.4 and 5 appearing in paragraph No.4 is as under:-

“Thus, in the humble opinion of the answering respondents the petitioners are entitled to the arrears only for a period of three years prior to the date of filing of the instant writ petition.”

5. We have heard Mr. Z.Z. Haq, learned counsel for the petitioners, as also Mr. M.J. Khan, AGP for State and Mr. Akshay Naik, learned Senior counsel assisted by Mr. Kuldeep Mahalle, Advocate for respondent Nos. 4 and 5.

6. Learned counsel for the petitioners placed his reliance on the Government Resolution issued by State of Maharashtra dated 21.08.2015 wherein clause 10 stipulates that those non government grant-in-aid institutions which come under Directorate of Technical Education and which receive 90% grant from the State, would be liable to pay remaining 10 % from the society level. It is this government resolution which is bone of contention between the parties.

7. The Counsel for petitioners further submits that one Government Aided Technical Institutes Employees Welfare Board (GATIWEB) had filed a writ petition before Aurangabad Bench bearing Writ Petition No.10874/2017 challenging the said G.R. which was decided by the Aurangabad Bench on 10.06.2024. The Aurangabad Bench of this Court dismissed the writ petition and upheld the validity of G.R.. In the backdrop of these facts, learned counsel for the petitioners submits that their claim for 10% of arrears of salary is a continuing wrong and therefore, he would be covered by Judgment of the Hon'ble Supreme Court reported in the case of *Keraleeya Samajam and another Vs. Pratibha Dattatray Kulkarni (dead) through Lrs and ors.*, reported in, *2021 SCC OnLine SC 853*. He placed his reliance on paragraph Nos.4 and 6 there of. He further placed his reliance on the judgement of Hon'ble Supreme Court in the case of *Rushibhai Jagdishbhai Pathak Vs. Bhavnagar Municipal Corporation*, reported in, *(2022) 18 SCC 144*, more particularly paragraph Nos. 9, 10 and 11.

8. Per contra Mr. Akshay Naik, learned Senior Advocate, on the other hand, strongly opposed the contentions raised by learned counsel for the petitioners and states that no relief regarding arrears of salary (10%) was sought before the Aurangabad Bench. In this regard, he points out the prayer clause in the said petition filed before Aurangabad Bench. He also submits that present writ petition which is filed on 26.10.2023 is filed before the decision of the Aurangabad Bench i.e. during pendency thereof. He further submits that there is difference between 'continuing wrong' and 'recurring wrong' and therefore, petition is liable to be dismissed. He placed his reliance on the judgment of Hon'ble Supreme Court in the case of ***Rushibhai Jagdishbhai Pathak Vs. Bhavnagar Municipal Corporation***, reported in, ***(2022) 18 SCC 144, Union of India and others .v/s. Tarsem Singh***, reported in, ***(2008) 8 SCC 648***, judgment in Writ Petition No.2103/2009 (Yashwantrao Chavan Abhiyantriki Mahavidyalaya Shikshaketar Karmachari Sanghatan through its Secretary Vs. State of Maharashtra and ors.) (Nagpur Bench), judgment in WP No.8966/2022 (Shishuvihar Shaishanik Sanstha Chalisgaon Taluka Chalisgaon and another Vs. The State of

Maharashtra and ors.) (Aurangabad Bench), Judgment in the case of *Rajneesh Kumar and another .v/s. Ved Prakash*, reported in, **2024 SCC Online SC page 3380** and Judgment in WP No.5317/2021 (Smt. Maya Pingle .v/s. State of Maharashtra and others) of Nagpur Bench.

9. In sum and substance, it is the contention of learned Senior Advocate for respondent Nos.4 and 5 that the employees were working in the college for a substantial period after the coming into force of the government Resolution dated 21.08.2015 they did not assert their right during their period they were serving in the institute and now has chosen to do the same after their retirement. He therefore, submits that their claim is hopelessly time barred and inasmuch as at the most arrears for the preceding three years from filing of the petition can be given to them.

10. We have appreciated the respective contentions of the parties. The petitioners are pressing their claim on the GR cited supra which is dated 21.08.2015. As as can be seen from Annex-1 at page 14 of the petition, petitioners have retired on various dates

right from 30.04.2019 till 30.09.2022. It is, therefore, clear that the petitioners were working with respondent 5 for substantial period ranging from 4 years to 7 years after coming into force of the government resolution dated 21.08.2015. Even though the petitioners have stated that they were time and again approaching the employer i.e. respondent Nos. 4 and 5 for arrears of 10 % of the salary as per G.R dated supra, careful perusal of the petition would reveal that the first of such communication is of 12.06.2023 and thereafter, of 03.08.2023. It is thus, clear that the petitioners have wilfully chosen not to assert their right till June, 2023 and thereafter subsequently.

11. Learned counsel for the petitioners relied upon judgement reported in ***Tarsem Singh*** (supra) to support his contention that a belated service claim is to be normally rejected on the ground of delay and laches but there is one exception to the said rule and i.e. relating to continuing wrong. Paragraph 7 of the said judgment reads as under:

“7. To summarize, 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 latches/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.”

12. He also relied on the judgment in ***Keraleeya Samajam (supra)*** . It states that the employees cannot be made to suffer due to lapse and inaction on the part of the employers and cannot

be denied the arrears of salary. Therefore, it is the submission of petitioners that they are entitled for arrears of salary.

13. Learned counsel for the respondent Nos.4 and 5 has relied upon judgment of *Rushibhai Jagdishbhai Pathak (supra)*.

The paragraph Nos.8 to 13 are relevant which reads thus:-

“8. The doctrine of delay and laches, or for that matter statutes of limitation, are considered to be statutes of repose and statutes of peace, though some contrary opinions have been expressed. The courts have expressed the view that the law of limitation rests on the foundations of greater public interest for three reasons, namely,

(a) that long dormant claims have more of cruelty than justice in them;

(b) that a defendant might have lost the evidence to disapprove a stale claim; and

(c) that persons with good causes of action (who are able to enforce them) should pursue them with reasonable diligence.

Equally, change in de facto position or character, creation of third-party rights over a period of time, waiver, acquiescence, and need to ensure certitude in dealings, are equitable public policy considerations why period of limitation is prescribed by law. Law of limitation does not apply to writ petitions, albeit the discretion vested with a constitutional court is exercised with caution as delay and laches principle is applied with the aim to secure the quiet of the community, suppress fraud and perjury, quicken diligence, and prevent oppression. Therefore, some decisions and judgments do not look upon pleas of delay and laches with favour, especially and rightly in cases where the persons suffer from adeptness, or incapacity to approach the courts for relief. However, other decisions, while accepting the rules of limitation as well as delay and laches, have observed that such rules are not meant to destroy the rights of the parties but serve a larger public interest and are founded on public policy. There must be a lifespan during which a person must approach the court for

their remedy. Otherwise, there would be unending uncertainty as to the rights and obligations of the parties.

9. Referring to the principle of delay and laches, this Court, way back in *Moons Mills Ltd. v/s. M. R. Mehar*, had referred to the view expressed by Sir Barnes Peacock in *Lindsay Petroleum Company vs. Prosper Armstrong Hurd* in the following words: (*Lindsay Petroleum Company Case*, PC pp. 239-40)

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

10. At the same time, the law recognises a ‘continuing’ cause of action which may give rise to a ‘recurring’ cause of action as in the case of salary or pension. This Court in *M.R. Gupta v. Union of India* has held that so long as the employee is in service, a fresh cause of action would arise every month when they are paid their salary on the basis of a wrong computation made contrary to the rules. If the employee’s claim is found to be correct on merits, they would be entitled to be paid according to the properly fixed pay-scale in future and the question of limitation would arise for recovery of the arrears for the past period. The Court held that the arrears should be calculated and paid as long as they have not become time-barred. The entire claim for the past period should not be rejected.

11. Relying upon the aforesaid ratio, this Court in the case of *Union of India v.s Tarsem Singh*, while referring to the decision in *Shiv Dass .vs. Union of India* quoted the following passages from the latter decision:

“8...The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

xx xx xx

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. ... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years.”

12. In *Tarsem Singh (supra)*, reference was also made to Section 22 of the Limitation Act, 1963, and the following passage from *Balakrishna Savalram Pujari Waghmare and Others v. Shree Dhyaneshwar Maharaj Sansthan*, which had explained the concept of continuing wrong in the context of Section 23 of the Limitation Act, 1908, corresponding to [Section 22](#) of the Limitation Act, 1963, observing that: (*Balkrishna Savalram Pujari Waghmare case, SCC OnLine SC Para 31*)

“31...It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury.”

13. Accordingly, in *Tarsem Singh* it has been held that principles underlying 'continuing wrongs' and 'recurring/successive wrongs' have been applied to service law disputes. A 'continuing wrong' refers to a single wrongful act which causes a continuing injury. 'Recurring/successive wrongs' are those which occur periodically, each wrong giving rise to a distinct and separate cause of action.

14. In Writ Petition No.2103/2009 between *Yashwantrao Chavan Abhiyantriki Mahavidyalaya Shikshaketar Karmachari Sanghatan through its Secretary Vs. State of Maharashtra and ors.*, the Coordinate Bench of this Court observed that there cannot be a parity between the persons vigilant and non-vigilant in invoking protection of their rights. The said Bench has relied upon judgment of Hon'ble Supreme Court reported in *1997 (11) SCC 13, 2007 (9) SCC 274 and 1995 (5) SCC page 628* in this regard.

15. Another coordinate Bench of this Court at Aurangabad in judgement in Writ Petition No.8966/2022 in paragraph No.11 has recorded that arrears of salary is monetary claim. Respondent Nos. 4 was not being paid in accordance with law. There is no reason forthcoming as to why he waited till 2021 for claiming the arrears. He should have promptly approached the Court of law

when he was denied regular scale. Thereafter this Court relying on the judgment of ***Tarsem Singh and Keraleeya Samajam*** has directed that Education Officer should pay claim to the extent preceding three years prior to the date of the petition. In the said judgment coordinate Bench has observed that when it comes disbursement of arrears which is monetary claim, the impediment of limitation cannot be overlooked.

16. Next judgment relied by learned counsel for the respondents is ***2024 SCC Online SC 3380 Rajneesh Kumar and another Vs. Ved Prakash***. In which in paragraph No.12 Hon'ble Supreme Court has emphasised importance of enacting periods of limitation. Paragraph 12 reads as under:-

*“12. As regards the law of limitation, we may refer to the decision of this Court in ***Bharat Barrel & Drum MFG Co. V. The Employees States Insurance Corporation, (1971) 2 SCC 860***, wherein this Court held as under :-*

“The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain

dormant without asserting them in a Court of law. The principle which forms the basis of this rule is expressed in the maximum vigilantibus, non dormientibus, jura subveniunt (the law give help to those who are watchful and not to those who sleep). Therefore, the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claim.”

17. The next judgment relied upon by learned counsel for the respondent Nos.4 and 5 is of coordinate Bench of this Hon'ble Court in Writ Petition No.5317/2021. In this petition which also the bench held that petitioners therein would be entitled to actual difference for a period of three years prior to filing of the petition.

18. The crux of the matter is whether a wrong of non-payment of arrears of salary would be a continuous cause of action for continuing wrong or recurring wrong. Hon'ble Supreme Court in ***M.R.Gupta Vs. Union of India*** reported in (1995) 5 SCC 628 has held that so long as the employee is in service, a fresh cause of action would arise every month when they are paid salary on the basis of wrong computation made contrary to the rules. If the employees' claim is found to be correct on merits, they would be

entitled to be paid according to the properly fixed pay scale in future and the question of limitation would arise for recovery of the arrears for the past period. The Court held that arrears should be calculated and paid as long as they have not become time barred.

19. As can be seen from the judgment of *Rushibai Pathak (supra)* a continuing wrong refers to a single wrongful act which causes a continuing injury. “Recurring/successive wrong” are those which occur periodically each wrong giving rise to a distinct and separate cause of action. Therefore, insofar as consequent relief of recovery of arrears for past period is concerned the principles relating to the recurring/ successive wrong will apply. It is further held that the High Courts will restrict the consequential relief relating to arrears normally to a period to three years prior to date of filing of the writ petition.

20. Learned counsel for the petitioner has tried to bring his case in one of the exceptions in the judgment of *Tarsem singh* on premise that it is continuing wrong. However, in view of

dictum laid by Supreme Court in various judgments referred supra we are unable to accept his contentions. The case would not be a continuous wrong but of a recurring wrong. Since petitioners as stated above even though continuing in service with the respondent No.4 for considerable period of time did not choose to assert their rights. In our view, therefore, they are not entitled for arrears of salary for more than period of three years preceding the filing of the petition. Our view finds support in a recent judgment of the Hon'ble Supreme Court in ***State of Kerala and Ors. Vs. Krishnan N.V., Civil Appeal No.10898/2025*** In which in paragraph No. 8 and 9 Hon'ble Supreme Court relied upon its earlier judgement in State of U.P. vs. Rajmati Singh. Paragraph 8 and 9 reads as under:-

“8. Whether repeated representations can justify delay and laches in approaching the Tribunal/court? The law on this issue is well settled. Reference can be made to the judgment of this Court in State of U.P. V. Rajmati Singh reported in 2022 INSC 1261, whereby dealing with the issue of delay and laches, it was held as under:-

“12. In our considered view, the respondent like any vigilant citizen, specially given that she does not belong to economically or socially backward segments of the society, was expected to assert her rights before an appropriate forum within a reasonable time. Repeated representations neither give rise nor revive the cause of action, if it had already arisen in the past. The respondent's difficulties do not end there, given that her services were brought to an end when she was denied to resume her duties in the year

1974. She was, thus, required to seek a declaration of her continuity or have a writ of mandamus issued for her reinstatement. She did not do either.

(9) Further reliance is placed on the judgment passed by this Court in State of Orissa vs. Laxmi Narayan Das reported in 2023 INSC 619. It has been opined therein as under:-

“16... 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... A court is not expected to give indulgence to such indolent persons who compete with ‘Kumbhkarna’ or for that matter ‘Rip Van Winkle’. In our considered opinion, such delay does not deserve any indulgence and on the said ground along the writ court should have thrown the petition overboard at the very threshold.”

“21. Further more we cannot overlook the fact that we are exercising extra ordinary jurisdiction under Article 226 of the Constitution of India which apart from being a discretionary relief is also an equitable remedy. In this regard it would be fruitful to rely upon the observations of Hon’ble Supreme Court in judgment of *P.S. Sadasivaswamy Vs. State of Tamil Nadu* reported in *1975 (1) SCC 152* “It is not that ‘here is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a

matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse their exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claim and try to unsettle settled matters.”

22. Further in *Tridip Kumar Dingal and others Vs. State of West Bengal and others* reported in (2009) 1 SCC 768, Hon’ble Supreme Court states that while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ-Court. It is well settled that power to issue a writ of discretionary. One of the grounds for refusing reliefs under Article 32 of 226 of the Constitution is that the petitioner is guilty of delay and laches. It further observed that if the petitioner wants to invoke jurisdiction of a writ Court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate

delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime.

23. This principle or law is further enunciated by the Supreme Court in judgment *State of Uttaranchal and Another vs. Shiv Charan Singh Bhandari and others* reported in **(2013) 12 SCC 179** by stating that delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by the an applicant deserves consideration. Delay and /or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant. Further more in a recent judgment in the case of *Mrinmoy Maity Vs. Chhanda Koley and others* reported in **2024 (4) SCR 506** an applicant who approaches the court

belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action. The discretion to be exercised would be with care and caution. If the delay which has occasioned in approaching the writ court is explained which would appeal to the conscience of the court, in such circumstances it cannot be gainsaid by the contesting party that for all time to come the delay is not be condoned.

24. Thus, for filing a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be

seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death.

25. Thus, it is settled principle of law even that there is no prescribed period of limitation writ Court has to be approached within the reasonable time and inordinate delay in approaching the case can be crucial fact while adjudicating the claims of the rival purpose. In the present matter as can be seen that the petitioners herein have retired on various dates the earliest being April, 2019. They have chosen not to approach this Court till 26.10.2023 i.e. when the petition was filed. It can thus, be safely said that the petitioners and more particularly the petitioner Nos.1 to 7 have slept over their rights for more than three years i.e. reasonable period for filing any legal proceeding to assert their rights if any. However, since the entitlement of the petitioners is not disputed by the respondents and they only raise an objection regarding the claim being barred by limitation as the petitioners have not approached this Court within three years.

26. In view of dictum of the Supreme Court we are afraid that relief prayed in the petition cannot be granted in its entirety. However, the petitioners are entitled for arrears of salary payable to them preceding three years from the date of filing of the petition i.e. 26.10.2023. We therefore, pass the following order:-

ORDER

- i. Writ petition is partly allowed.
- ii. It is hereby directed that respondent No.5 should release arrears of 10% of the salary payable to the petitioners for the period of three years preceding 26.10.2023 i.e. date when petition is filed, if not paid earlier.

Rule accordingly. Parties to bear their own costs.

[NANDESH S. DESHPANDE, J] [URMILA JOSHI PHALKE, J.)