



2026:CGHC:3814

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 254 of 2019

1 - Hemendra Singh Thakur S/ol Pratap Singh Aged About 49 Years Presently Working At Assistant Grade -Iii, Municipal Corporation Raigarh, District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh

... Petitioner(s)

versus

1 - State Of Chhattisgarh Through The Secretary, Department Of Urban Administration, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

2 - Director Department Of Urban, Administration, Indrawati Bhawan, Atal Nagar, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

3 - Municipal Corporation Raigarh Through The Commissioner, Municipal Corporation Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh

4 - Municipal Corporation Ambikapur Through The Commissioner, Municipal Corporation Ambikapur Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

5 - Mayank Singh Aged About 42 Years R/o C.P. Singh, Working As Assistant Grade - Ii, At Municipal Corporation Raigarh, District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh

... Respondent(s)

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|--------------------------|---|--------------------------------|
| For Petitioner           | : | Ms. Hamida Siddiqui, Advocate. |
| For Respondents No.1 & 2 | : | Ms. Pallavi Das, Advocate.     |
| For Respondent No.3      | : | Dr. Sudeep Agrawal, Advocate.  |
| For Respondent No.4      | : | Shri Anurag Singh, Advocate.   |
| For Respondent No.5      | : | Shri Prateek Sharma, Advocate. |

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**Hon'ble Shri Justice Rakesh Mohan Pandey**  
**Order on Board**

**22.01.2026**

1. The petitioner has filed this petition seeking the following reliefs:

“10.1 That, this Hon'ble Court may kindly be pleased to set-aside/quash the impugned order dated 13-08-2018 (Annexure P-1), and impugned promotion order dated 05-03-2015 (Annexure P-2).

10.2 That, this Hon'ble Court may kindly be pleased to direct the respondent No.3 for considering the promotion of petitioner.

10.3 That the Hon'ble Court further pleased to grant such other relief(s) as may be deemed fit and proper in the interest of justice and fair play.”
2. The facts, in brief, are that the petitioner was appointed as a Peon in the Municipal Corporation, Raigarh. He was promoted to the post of Assistant Grade-III sometimes in the year 2012. Respondent No.5 was initially appointed as Assistant Grade-III in the Municipal Corporation, Ambikapur and later on, his services were transferred from Ambikapur to Municipal Corporation, Raigarh on 3.12.1999. The services of respondent No.5 were regularized vide order dated 17.12.2002 with effect from 1.7.2001. Respondent No.5 was promoted to the post of Assistant Grade-II vide order dated 5.3.2015 and the said order is under challenge in the present writ petition. The petitioner preferred WP(S) No. 4555 of 2018 which was disposed of vide order dated 12.7.2018 with a direction to respondent No.3 to decide the pending representation of the petitioner. The said representation was rejected vide order dated 13.8.2018, which is also under challenge in this

petition. She would submit that no seniority list was published by respondent No.3 while considering the name of respondent No.5 for promotion to the post of Assistant Grade-II. She would submit that the petitioner moved an application under the Right to Information Act to obtain seniority list, but no document was provided by the Municipal Corporation, Raigarh. She would contend that name of respondent No.5 reflects in the seniority list of Assistant Grade-III in the Municipal Corporation, Ambikapur and therefore, the order of promotion granted to respondent No.5 is illegal.

3. It is argued that the services of respondent No.5 were never absorbed by the Municipal Corporation, Raigarh, therefore, consideration of his name for promotion is *per se* illegal. She would also submit that respondent No.5 is entitled to get all service benefits from Municipal Corporation, Ambikapur and not from the Municipal Corporation, Raigarh. It is argued that as the seniority list was not published by the Municipal Corporation, Raigarh, the question of delay does not arise. She would submit that in their return, the respondents have failed to demonstrate that the name of respondent No.5 was considered for promotion in the absence of a seniority list. She would also submit that according to Circular dated 11.5.2005 on transfer from one Municipal Corporation to another, the names of transferred employees/ officers shall be placed at the bottom of the seniority list. She would pray to allow this petition.
4. On the other hand, learned counsel for the respondents would oppose. They would submit that the services of respondent No.5 were transferred to the Municipal Corporation, Raigarh on 30.12.1999 and the said order was never challenged by the petitioner. It is argued that

the services of respondent No.5 were regularized vide order dated 17.12.2002 with effect from 1.7.2001 and neither of the said orders was ever questioned by the petitioner before any forum. It is also contended that the petitioner entered service in the department in the year 1999 on the post of Peon and was promoted to the post of Assistant Grade-III on 23.6.2012. According to the provisions of Chhattisgarh Municipal Corporation (Appointment and Conditions of Service of Officers and Servants) Rules, 2007, the required experience for the promotion to the post of Assistant Grade-II is seven years of service on the post of Assistant Grade-III. They would submit that Rules of 2007 were repealed in the year 2018 and according to the provisions of Rules, 2018, the minimum required experience for promotion to the post of Assistant Grade-II was decreased to five years of service on the post of Assistant Grade-III.

5. Heard learned counsel for the parties and perused the documents present on the record with utmost circumspection.
6. Respondent No.5 was promoted to the post of Assistant Grade-II by respondent No.3 vide order dated 5.3.2015. At the relevant time, the Rules of 2007 were in existence. The relevant provisions prescribing the requisite qualification and experience for promotion to the post of Assistant Grade-II are reproduced herein-below:

छत्तीसगढ़ नगर पालिक निगम ,अधिकारियों तथा सेवकों की नियुक्ति तथा सेवा की शर्तें) नियम 2007'

अनुसूची तीन

( नियम 10 (1) देखिये )

| स.क. | पद का नाम जिस पर पदोन्नति की जायेगी | पद का नाम जिससे पदोन्नति की जायेगी | कॉलम ( 2 में दशाये गये पद पर पदोन्नति के लिये , कॉलम (3) में दशाये गये पद पर अपेक्षित सेवा के न्यूनतम वर्ष |
|------|-------------------------------------|------------------------------------|------------------------------------------------------------------------------------------------------------|
| (1)  | (2)                                 | (3)                                | (4)                                                                                                        |

|    |                             |                                                |                                                                   |
|----|-----------------------------|------------------------------------------------|-------------------------------------------------------------------|
| 1. | ... ..                      |                                                |                                                                   |
| 6. | सहायक ग्रेड -2 /<br>लेखापाल | सहायसक ग्रेड -3 केशियर / डाटा<br>एन्ट्री ऑरेटर | 07 वर्ष का अनुभव तथा कम्प्यूटर<br>एप्लीकेशन में डिग्री उत्तीर्ण । |

7. A bare reading of the above-quoted provision would make it clear that the required experience for promotion from the post of Assistant Grade-III to the post of Assistant Grade-II was seven years. The petitioner was promoted to the post of Assistant Grade-III on 23.6.2012 thus, as on 5.3.2015, the petitioner was not eligible for promotion to the post of Assistant Grade-II. It is also argued by counsel for the petitioner that the order of transfer as well as absorption of services of respondent No.5 are bad in law. The petitioner never challenged the order of transfer or order of absorption, or regularization of respondent No.5 before any forum. Even in the present petition, those orders have not been challenged and only order of promotion dated 5.3.2015 has been challenged after a lapse of four years. Therefore, the contention made by counsel for the petitioner appears to be misconceived. The circular referred by counsel for the petitioner dated 11.5.2005 and Annexure-P/7 dated 9.6.1999 deals with transfer of employees of Municipalities and Nagar Panchayats and are not applicable to the facts of the present case. Learned counsel for the respondents have vehemently argued that the petition filed by the petitioner suffers from delay and laches.
8. In the matter of ***Bichitrananda Behera Vs. State of Orissa and others*** reported in **2023 Livelaw (SC) 883**, the Hon'ble Supreme Court held in para 21 as under:-

*“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 अनुसूची – चार*

9. ( नियम 11 देखिये )d 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 particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.*

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

### **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 nonexistent. 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.

**X            x            x**

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 1213)*

*“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.”

10. The fallout of the above-discussed facts and law can be summarized as under:

“(I) The petitioner never challenged the order of transfer or the order of confirmation of respondent No.5 and therefore, those orders have attained finality.

(II) The petitioner was promoted to the post of Assistant Grade-III sometimes in the year 2012 whereas, respondent No.5 was appointed to the post of Assistant Grade-III in the year 1999.

Respondent No.5 was transferred from Municipal Corporation, Ambikapur to Raigarh as Assistant Grade-III.

(III) Respondent No.5 was promoted to the post of Assistant Grade-II vide order dated 5.3.2015 and on the said date, the petitioner was not eligible for promotion to the post of Assistant Grade-II as he did not have completed seven years of service on the post of Assistant Grade-III.”

11. The petitioner challenged the order of promotion dated 5.3.2015 by filing the writ petition in the year 2019 without explaining the delay part properly. The petitioner has pleaded in para 7 of the writ petition that it is declared that there is no delay in filing the writ petition.
12. Taking into consideration the above-discussed facts, I do not find any good ground to interfere into the matter. Accordingly, this petition fails and is hereby **dismissed**.

Sd/-

**(Rakesh Mohan Pandey)**  
Judge

Nimmi