

Dr. S. PANDA, J.

Gone through the judgment rendered by the learned brother. In the judgment, he has stated some of the facts and submissions made by the respective learned counsel. However, the relevant facts and submissions made by the learned counsel for the respective parties were not reflected correctly which are vital for the adjudication of the dispute. I am not agreeing with the facts as reflected in the above decision and the conclusion arrived at basing on such facts due to non consideration of the following facts/reasons, i.e.

- (a) Suppression of facts before the Tribunal.
- (b) The reasonable period to challenge the promotional order.

2. Though three writ petitions were tagged together, however in W.P.(C) Nos. 6844 of 2018 and W.P.(C) No. 19023 of 2019 the common order dated 26.10.2017 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. Nos. 1530 (C) of 2014 and 1536 (C) of 2014 has been challenged. In the 3rd writ petition, i.e. W.P.(C) No. 13517 of 2019, the petitioner, Suresh Kumar Behera has not challenged the said order since he was not a party to the aforementioned Original Applications and he has filed the writ petition challenging the inaction of the authorities in not considering his promotion, which is bereft of the subject matter of

the aforementioned two writ petitions. Since the validity and legality of the common order passed by the learned Tribunal in O.A. Nos. 1530 (C) of 2014 and 1536 (C) of 2019 is going to be adjudicated by this Court, it is proper to deal with only two writ petitions, i.e. W.P.(C) Nos. 6844 of 2018 and W.P.(C) No. 19023 of 2013 and dispose of the same by this common order.

3. As stated above, W.P.(C) No. 6844 of 2018 has been filed challenging the order dated 26.10.2017 passed in O.A. No. 1530 (C) of 2014. The petitioner herein was the Respondent No.4 before the Tribunal. Similarly W.P.(C) No. 19023 of 2019 has been filed challenging the very same order passed in O.A. No. 1536 (C) of 2014. The petitioner herein was the Respondent No.5 before the Tribunal.

4. For convenience of adjudication, W.P.(C) No. 6844 of 2018 is taken up as the leading case.

5. The records of W.P.(C) No. 6844 of 2018 reveals that the present opposite party no.3 had approached the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 1530 (C) of 2014 challenging the order dated 14.03.2014, whereby the Government of Odisha in Home Department has rejected the representation dated 30.09.2013 submitted by the said opposite party for re-fixation of the inter-se-seniority in the rank of Assistant

Commandant of Police (A.C.P.) over Shri Ajaya Kumar Padhi and 12 other Subedars and to declare Rule-17 (ii) of the Orissa Special Armed Police (Method of Recruitment and Condition of Service) Rules, 2000 as ultravires. The present petitioner was one of respondents (Respondent No.4) in the said Original Application.

6. It may be noted here that the applicant before the Tribunal and the present writ petitioner are the recrutees of two different channels as per the statutory provision and the petitioner was promoted to the rank of Subedar in the year 2002 and to the rank of Assistant Commandant in the year 2008 as per the statutory rule governing the field, i.e. Orissa Special Armed Police (Method of Recruitment and Conditions of Service) Rules, 2000. Admittedly the applicant before the Tribunal filed the representation in the year 2009 expressing his grievance regarding promotion to the post of Assistant Commandant. However, he has not challenged the inaction of the authorities within the stipulated time before the Tribunal. He has only approached the Tribunal in the year 2014 for disposal of his representation, which was disposed by the Tribunal with a direction to consider his representation within a stipulated time. The applicant has suppressed the fact before the Tribunal that in the meantime Orissa Special Armed Police (Method of Recruitment and Conditions of Service) Rules, 2000 has already been repealed in

the year 2013 and a new rule has already been enacted and came into force since 2013.

7. The case of the present opposite party no.3 before the Tribunal was that he was appointed as a Sergeant on 04.09.1985 as per the provision of Orissa Special Armed Police Act, 1946 and Orissa Police Rules. He was promoted to the rank of Reserve Inspector in OSAP cadre as per the Home Department Notification dated 12.12.2002. The post of Reserve Inspector is included in Group-B of the Orissa Special Armed Police Service along with two other posts such as Subedar and Subedar Major. The service condition of the Reserve Inspector as well as Subedar and Subedar Major are governed under the Orissa Special Armed Police (Method of Recruitment and Conditions of Service) Rules, 2000, which was effective from 03.09.2001. As per Rule-5 (v) and (vi), promotion to the post of Subedar/ Subedar Major and Reserve Inspector are affected through separate channel such as the post of Subedar/ Subedar Major is filled up by way of promotion of Jemadars, whereas the post of Reserve Inspector is filled up by way of promotion of Sergeant. Thereafter, the next promotion, i.e. Assistant Commandant is affected in the ratio of 2:1 from the category of Subedar/Subedar Major and Reserve Inspector.

8. The applicant has further averred before the Tribunal that the Respondents 3 to 15 including the present petitioner (R-4)

were appointed as Jemadars in the year 1990. However pursuant to the DPC/Selection committee meeting held on 15.07.2002 under the Chairmanship of the DG & I.G. of Police, the name of the applicant was recommended for promotion to the post of Reserve Inspector and the name of respondents 3 to 15 were also recommended for promotion to the rank of Dy. Subedar. According to the applicant without waiting for the concurrence of the OPSC, or preparation of the select list in terms of Rule-12 and 13 of the Orissa Special Armed Police Rules, 2000, a notification was issued on 27.08.2002 giving promotion to respondent nos. 3 to 15 to the rank of Dy. Subedar. However on 12.12.2002 notification of promotion of the applicant to the rank of Reserve Inspector was issued. According to the applicant, since for appointment to the post of Jemadar and Sergeant were through separate channel, the combined gradation list was never prepared, nor there inter se seniority have been fixed in Group-B of the Orissa Special Police Service. However following the provisions of the Orissa Special Armed Police Act, 1946 and Orissa Police Rules and keeping in view the appointment of the applicant as Sergeant, five years prior to the appointment of respondent nos. 3 to 15, the applicant was senior to respondents nos. 3 to 15.

9. Thereafter for promotion to the rank of Assistant Commandant in the year 2008, nomination roll was called for on

11.02.2008 of the Reserve Inspectors as well as Subedars, who were within the zone of consideration as per Rule-5 (iv) of 2000 Rules. Accordingly a list was circulated, where the name of the applicant finds place at Sl. No.33 and the name of the respondents find place from Sl. No.42 onwards. Thereafter promotion to the rank of Assistant Commandant of Police in Group-A of the service under the OSAP Rule, 2000 was considered by convening a DPC, which recommended the name of the applicant as well as the name of the respondents 3 to 15 for promotion. Notification dated 07.08.2008 was issued by the Government. Consequent to it, a notification was issued by the State Police Headquarter on 16.08.2008 where respondent nos. 3 to 15 were assigned higher position than the applicant. According to the applicant the assignment of higher position is on the basis of notification issued in the rank of Subedar on 27.08.2002 in favour of the respondents 3 to 15, whereas the notification was issued in favour of the applicant to the rank of Reserve Inspector on 12.12.2002.

10. The applicant challenged the inaction of the authorities by filing O.A. No. 536 (C) of 2014. The Tribunal vide order dated 14.02.2014 directed for disposal of the representation within a stipulated period. The same was, however rejected vide order dated 14.03.2014. The applicant challenged the same in O.A. No. 1530 (C) of 2014/ Since the representation of the applicant was rejected

keeping in view of Rule-17 (ii) of the Orissa Special Armed Police (Method of Recruitment and Condition of Service) Rules, 2000, the applicant challenged such provision of the rule and also prayed to fix the seniority of applicant above respondents 3 to 15.

11. The stand of the State respondents before the Tribunal was that promotion to the rank of Asst. Commandant was considered taking into consideration the length of service in the rank of Subedar/ Subedar Major and Reserve Inspector. Since the length of service of respondents 3 to 15 in the feeder cadre was more than the applicant, no illegality has been committed in fixing the respondents 3 to 15 above the applicant.

12. With regard to Rule-17 (ii) of Orissa Special Armed Police (Method of Recruitment and Condition of Service) Rules, 2000, the Tribunal relied on the earlier decision rendered in O.A. No. 941 of 2014 and batch of cases, on 08.05.2017 and observed that Rule-17 (ii) has already been quashed. Thereafter the Tribunal observed that since Rule-17 (ii) of the rule has already been quashed, the length of service in the feeder cadre cannot be a criteria for consideration of promotion. According to the Tribunal, as per Rule-5 (iv), promotion to the rank of Asst. Commandant shall be made from two category of posts, such as Sevedar/Subedar Major and Reserve inspector, maintaining the ratio of 2:1 from both category keeping in view the sanctioned strength of respective feeder cadre of their base level, i.e.

Jemadar in the category of Subedar/Subedar Major and sergeant. The Tribunal further observed that the promotion of the applicant as well as private respondents ought to have been considered keeping in view the above ratio notwithstanding the length of service as provided under Rule-17 (ii) of the 2000 Rules.

13. The Tribunal accordingly directed the state respondents to take appropriate action for modification of the Rules as per the direction given in O.A. No. 941 of 2014 and batch of cases and, thereafter to proceed to re-consider seniority of the applicant vis-à-vis the respondents 3 to 15 in accordance with rule.

14. Since discussions have been made to the submissions made by the respective counsel in the 1st part of the judgment, instead of delving into those submissions, this Court thinks it proper to summaries the gist of arguments to the extent that though the present petitioner was arrayed as a respondent to the said Original Application, neither any notice was issued to him, nor he was declared as ex-parte. Similarly the applicant before the Tribunal suppressed the fact that at the time of filing of the Original Application, 2000 Rule had already been repealed and 2013 Rule has already been enacted. The state respondents have also not brought this fact to the notice of the Tribunal. The applicant has also got next promotion basing on the 2013 Rules. Such suppression of fact led to the direction issued by the Tribunal to modify the Rule,

which had already been repealed. The Tribunal also directed to reconsider the seniority of the applicant vis-à-vis the respondents, who have already been promoted since 2008 and they were holding such promotional posts for more than reasonable period. In the O.A. the opposite party no.3 has not challenged the promotion of petitioner to the rank of Subedar in the year, 2002 to the rank of Asst. Commandant in the year 2008 and to the rank of Dy. Commandant in the year, 2014. Further he has not challenged the gradation list at any point of time, on the other hand the Tribunal has directed to reconsider the seniority of Opposite Party no.3, though in similar case (O.A. No. 2507 of 2015), the Tribunal has dismissed the Original Application on the ground that the matters of seniority cannot be challenged at a belated stage.

15. Here in the instant case, opposite party no.3, the applicant before the Tribunal has stated that he had filed a representation before the authority in the year 2009. However, he was not aware about the decision taken on such representation for which he filed another representation in the year 2013 indicating therein that he had filed a representation in the year 2009, which was pending. According to him, he reiterated the earlier grievance in the representation of the year 2013. When no decision was taken, he approached the Tribunal in the year 2014 in O.A. No. 536 (C) of 2014. Pursuant to the direction given by the Tribunal on 14.02.2014

for disposal of the representation within a stipulated period, the representation of the opposite party no.3 was rejected. The opposite party no.3 challenged such rejection order, wherein the impugned order was passed. The aforesaid action of the opposite party no.3 will not save the limitation as stipulated under Section 21 of the Administrative Tribunal Act. For ready reference, Section 21 of the Administrative Tribunal Act is quoted as hereunder:-

21. Limitation.—(1) A Tribunal shall not admit an application:-

- (a) *in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;*
 - (b) *in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.*
- (2) *Notwithstanding anything contained in sub-section (1), where:*
- (a) *the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and*

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

16. In view of the aforesaid provision, a person has to approach the adjudicating authority in clean hand. The Tribunal should have examined the period of limitation as stated above. However, in the present case, though the applicant has approached the Tribunal within the period of limitation on its 2nd representation, however, while filing the 1st representation in the year 2009, he has not approached the Tribunal for disposal of the representation or challenging the action/promotion within the period of limitation. The above fact clearly reveals that the applicant before the Tribunal is a *fence-sitter* as observed in the case of Siba Sankar Mohapatra (*supra*). He has waited from 2009 to 2013 without any rhyme and

reason. He should not be allowed to take advantage of his own delay and latches in approaching this Hon'ble Court at this belated stage.

17. This Court vide order dated 08.05.2018 while issuing notice passed an interim order staying the impugned order. Due to non appearance of lawyers, the interim order was however vacated. Thereafter though interim order was restored, but when the matter is pending subjudice before this Court, the opposite party-State implemented the order of the Tribunal.

18. With regard to suppression of facts and approaching the Court of law in an unclean hand, the Apex Court in the case of ***M/s Prestige Lights Ltd. Vs. State Bank of India, reported in (2007) 8 SCC 449*** observed at paragraphs-33 and 34 to the following extent:-

33. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in [*R v. Kensington Income Tax Commissioners*](#), [(1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136], in the following words: "(I)t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should made a full and fair disclosure of all the material facts□ facts, not law. He must not misstate the law if he can help it□ the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the

facts have not been fully and fairly stated to it, the Court will set aside, any action which it has taken on the faith of the imperfect statement". (emphasis supplied)

34. *It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.*

Similar view has also been expressed in the case of **K.D. Sharma Vs. Steel Authority of India Ltd & Ors, reported in 2008 12 SCC 481**, wherein the Apex Court relying on the decision rendered in the case of **R v. Kensington Income Tax Commissioners (supra)**, at paragraphs 24, 25 and 28 observed as follows:-

24. *The jurisdiction of the Supreme Court under [Article 32](#) and of the High Court under [Article 226](#) of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the*

facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

25. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of [R. v. Kensington Income Tax Commissioners](#), (1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136 in the following words:

"[I]t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- it says facts, not law. He must not misstate the law if he can help it; the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it the Court will set aside any action which it has taken on the faith of the imperfect statement".

(emphasis supplied)

28. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under [Article 32](#) or of a High Court under [Article 226](#) of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot

be allowed to play 'hide and seek' or to 'pick and choose' the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts".

In the case of ***Dalip Singh v. State of U.P. and others, reported in (2010) 2 SCC 114***, the Apex Court by relying on various decisions including the decision in the case of Prestige Lights Ltd. (supra), K. D. Sharma (supra) and R v. Kensington Income Tax Commissioners (supra), at paragraphs, 1, 6 and 9 observed as follows:-

1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and

suppression of facts in the court proceedings. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

4. *[In Prestige Lights Ltd. V. State Bank of India](#) (2007) 8 SCC 449, it was held that in exercising power under [Article 226](#) of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under [article 226](#) of the Constitution is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under [Article 226](#) of the Constitution. This Court referred to the judgment of Scrutton, L.J. in *R v Kensington Income Tax Commissioners* (1917) 1 K.B. 486, and observed:*

"In exercising jurisdiction under [Article 226](#) of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous

litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

9. [In K.D. Sharma v. Steel Authority of India Ltd. and others](#) (2008) 12 SCC 481, the court held that the jurisdiction of the Supreme Court under [Article 32](#) and of the High Court under [Article 226](#) of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the Writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in [G. Jayshree and others v. Bhagwandas S. Patel and others](#) (2009) 3 SCC 141.

In the case of **Kishore Samrite v. State of U.P. & Others**, reported in (2013) 2 SCC 398, the Apex Court at paragraphs-33 and 34 held as follows:-

33. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently

false statements, cannot claim relief, especially under [Article 136](#) of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make “full and true disclosure of facts”. (Refer : [Tilokchand H.B. Motichand & Ors. v. Munshi & Anr.](#) [1969 (1) SCC 110]; [A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr.](#) [(2012) 6 SCC 430]; [Chandra Shashi v. Anil Kumar Verma](#) [(1995) SCC 1 421]; [Abhyudya Sanstha v. Union of India & Ors.](#) [(2011) 6 SCC 145]; [State of Madhya Pradesh v. Narmada Bachao Andolan & Anr.](#) [(2011) 7 SCC 639]; [Kalyaneshwari v. Union of India & Anr.](#) [(2011) 3 SCC 287]).

34. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiolem*, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon

the litigant to disclose the true facts and approach the court with clean hands.

19. With regard to reasonable period to challenge the promotional order, the relevant paragraphs of the decision rendered by the Apex Court in the case of ***Siba Sankar Mohapatra and others Vrs. State of Orissa, reported in 2010 (12) SCC 471*** is relevant to be quoted.

16. *The question of entertaining the petition disputing the long standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in [Ramchandra Shanker Deodhar & Ors. v. State of Maharashtra & Ors.](#) AIR 1974 SC 259, considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the Court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in [Tilokchand Motichand v. H.B. Munshi](#), AIR 1970 SC 898, wherein it has been observed that the principle, on which the Court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under:-*

"A party claiming fundamental rights must move the Court before others' rights come out into existence. The action of the Courts cannot harm innocent parties if their rights emerge by reason of delay on the part of person moving the court."

17. This Court also placed reliance upon its earlier judgment of the Constitution Bench in [R.N. Bose v. Union of India & Ors.](#) AIR 1970 SC 470, wherein it has been observed as under:-

"It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be defeated after the number of years."

18. [In R.S. Makashi v. I.M. Menon & Ors.](#) AIR 1982 SC 101, this Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees. The Court referred to its earlier judgment in [State of Madhya Pradesh & Anr. v. Bhailal Bhai](#) etc. etc., AIR 1964 SC 1006, wherein it has been observed that the maximum period fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under [Article 226](#) of the Constitution can be measured. The Court observed as under:-

"We must administer justice in accordance with law and principle of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a

long time ago would not be set-aside after the lapse of a number of years..... The petitioners have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the Court with the challenge against the seniority principles laid down in the Government Resolution of 1968... We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 2, 1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition, in so far as it related to the prayer for quashing the said Government resolution, should have been dismissed." (Emphasis added)

19. The issue of challenging the seniority list, which continued to be in existence for a long time, was again considered by this Court in [K.R. Mudgal & Ors. v. R.P. Singh & Ors.](#) AIR 1986 SC 2086. The Court held as under:-

"A government servant who is appointed to any post ordinarily should at least after a period of 3-4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity..... Satisfactory service conditions postulate that there shall be no sense of uncertainty amongst the Government servants created by writ petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him, should approach the Court as early as possible otherwise in addition to creation of sense of insecurity in the mind of Government servants, there shall also be administrative complication and difficulties.... In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on

behalf of the respondents to the writ petition on the ground of laches." (Emphasis added)

20. While deciding the case, this Court placed reliance upon its earlier judgment in [Malcom Lawrance Cecil D'Souza v. Union of India & Ors.](#) AIR 1975 SC 1269, wherein it had been observed as under:-

"Although security of service cannot be used as a shield against the administrative action for lapse of a public servant, by and large one of the essential requirement of contentment and efficiency in public service is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in a seniority list after having been settled for once should not be liable to be re-opened after lapse of many years in the instance of a party who has itself intervening party chosen to keep quiet. Raking up old matters like seniority after a long time is likely to resort in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time." (Emphasis added)

21. [In B.S. Bajwa v. State of Punjab & Ors.](#) AIR 1999 SC 1510, this Court while deciding the similar issue re-iterated the same view, observing as under:-

"It is well settled that in service matters, the question of seniority should not be re-opened in such situations after the lapse of reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This

along was sufficient to decline interference under [Article 226](#) and to reject the writ petition". (Emphasis added)

22. [In Dayaram Asanand v. State of Maharashtra & Ors.](#) AIR 1984 SC 850, while re-iterating the similar view this Court held that in absence of satisfactory explanation for inordinate delay of 8-9 years in questioning under [Article 226](#) of the Constitution, the validity of the seniority and promotion assigned to other employee could not be entertained.

23. [In P.S. Sadasivaswamy v. State of Tamil Nadu](#) AIR 1975 SC 2271, this Court considered the case where the petition was filed after lapse of 14 years challenging the promotion. However, this Court held that aggrieved person must approach the Court expeditiously for relief and it is not permissible to put forward stale claim. The Court observed as under :-

"A person aggrieved by an order promoting a junior over his head should approach the Court at least within 6 months or at the most a year of such promotion."

24. The Court further observed that it was not that there was any period of limitation for the Courts to exercise their powers under [Article 226](#) nor was it that there could never be a case where the Courts cannot interfere in a matter after certain length of time. It would be a sound and wise exercise of jurisdiction for the Courts to refuse to exercise their extraordinary powers under [Article 226](#) in the case of persons who do not approach it expeditiously for relief and who standby and allow things to happen and then approach the Court to put forward stale claim and try to unsettle settled matters.

25. A similar view has been re-iterated by this Court in [Smt. Sudama Devi vs. Commissioner & Ors.](#) (1983) 2 SCC 1; [State of U.P. vs. Raj Bahadur Singh & Anr.](#) (1998) 8 SCC 685; and [Northern Indian Glass Industries vs. Jaswant Singh & Ors.](#) (2003) 1 SCC 335.

26. [In Dinkar Anna Patil & Anr. vs. State of Maharashtra](#), AIR 1999 SC 152, this Court held that delay and laches in challenging the seniority is always fatal, but in case the party satisfies the Court regarding delay, the case may be considered.

27. [In K.A. Abdul Majeed vs. State of Kerala & Ors.](#) (2001) 6 SCC 292, this Court held that seniority assigned to any employee could not be challenged after a lapse of seven years on the ground that his initial appointment had been irregular, though even on merit it was found that seniority of the petitioner therein had correctly been fixed.

28. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the Court is guilty of delay and the laches. The Court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum. (vide [Aflatoon & Ors. vs. Lt. Governor, Delhi & Ors.](#) AIR 1974 SC 2077; [State of Mysore vs. V.K. Kangan & Ors.](#), AIR 1975 SC 2190; [Municipal Council, Ahmednagar & Anr. vs Shah Hyder Beig & Ors.](#), AIR 2000 SC 671; [Inder Jit Gupta vs. Union of India & Ors.](#) (2001) 6 SCC 637; [Shiv Dass vs. Union of India & Ors.](#), AIR 2007 SC

1330; Regional Manager, A.P.SRTC vs. N. Satyanarayana & Ors. (2008) 1 SCC 210; and City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla & Ors. (2009) 1 SCC 168).

29. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In *K.R. Mudgal* (supra), this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.

20. Non consideration of the above aspect by the Tribunal, so also suppression of fact that 2000 Rule has already been repealed by the date of filing the Original Applications and new Rule has already come into force, is an apparent error on the face of it. The other points raised by the learned Counsel for the opposite parties regarding challenge can be made in respect of a repealed Act/Rule is for academic purpose only, as each case is to be considered on its own facts and circumstances. The applicant has obtained the impugned order from the Tribunal by suppression of fact and settled position continuing for more than a reasonable period. Due to such

suppression of fact, the Tribunal directed the state respondents to take appropriate action for modification of the Rule, when the said Rule has already been repealed much before such direction was issued and due to such direction the settled position will be unsettled. As such the impugned order is liable to be interfered with in exercise of the power conferred under Article 227 of the Constitution of India.

21. Accordingly, this Court sets aside the order dated 26.10.2017 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. Nos. 1530 (C) of 2014 and 1536 (C) of 2014. This Court also sets aside the consequential steps taken/orders passed pursuant to the impugned order passed by the Tribunal and directs the authorities to restore the position of the parties back before the impugned order was passed by the Tribunal. The interim order passed by this Court will continue.

With the above observation/direction, W.P.(C) Nos. 6844 of 2018 and W.P.(C) No. 19023 of 2019 stand disposed of.

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Dr. S. PANDA, J.