REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.2491-2492 OF 2021

UNION OF INDIA AND OTHERS …APPELLANTS

VERSUS

N MURUGESAN ETC. …RESPONDENTS

WITH

CIVIL APPEAL NOS. 2493-2494 OF 2021

J U D G M E N T

M.M. SUNDRESH, J.

1. Heard Shri KM Nataraj, learned Additional Solicitor General appearing for the appellant and Shri Prashant Bhushan, learned counsel for the respondent. There is no representation on behalf of Shri VS Nandakumar who has been arrayed as a private respondent and whose recruitment and selection was also challenged by Respondent No.1. We have also perused the documents filed and written submissions placed by the parties.

2. As the present appeals are filed by both contesting parties challenging the same impugned judgment, for the sake of brevity they are disposed of by a common order. Civil Appeal No. 2491-2492 of 2021 is taken up as a lead case, and the parties arrayed thereunder are to be taken in the same manner for the other cases as well.

PRIMARY FACTS:

3. Central Power Research Institute (CPRI) is an autonomous body registered as a society under the Karnataka Societies Act, 1960. It functions under the aegis of the Ministry of Power. The object of this institution is to contribute to the power sector in the country for improved planning, operation and control of power systems while serving as a national level laboratory for undertaking applied research in electrical power engineering besides functioning as an independent national testing, certification authority for electrical equipment, components to ensure reliability in power systems and to innovate and develop new products. Thus, there is an extreme element of public interest involved in the functioning of the CPRI.

4. The respondent/writ petitioner initially joined the services of CPRI way back in the year 1984 - 05.07.1984. On his request, he was voluntarily retired while working as Engineering Officer, Grade-IV w.e.f. 31.03.2008.

5. By the Office Memorandum dated 08.11.1991, the Government of India, Department of Personnel and Training introduced a procedure which states that for appointment of certain specified posts, the approval of "Appointments Committee of the Cabinet" ("ACC") consisting of the Hon'ble Prime Minister and Hon'ble Home Minister, would be required. A further Office Memorandum was issued on 03.07.2006, facilitating appointments approved by "ACC" in autonomous institutions. Needless to state, the post of Director-General is one among them.

6. An advertisement was made on 16.05.2009 to fill up the post of Director-General either by direct recruitment or on deputation in tune with CPRI (Pay, Recruitment and Promotion) Rules, 1989 (Working Rule No.1). The respondent had applied for the said post being eligible to be appointed on direct recruitment.

7. The working rule referred to above deals with various categories of officers and personnel along with the mode of recruitment, designation, the scale of pay, and the date of superannuation for the regular employees. For the post of Director-General, there are two modes of recruitments as noted earlier by us. One is by way of deputation, and the other is by direct recruitment. Qualification with respect to age restriction is 55 years for direct recruitment, while the same is extended by one more year for deputation. On the

educational qualification part, from the requisite degrees, it would also involve 15 years of experience in the fields mentioned thereunder. A performance review is also mandated on completion of one year of service after appointment as Director-General, in the case of direct recruitment. The evaluation is made by the Search-cum-Selection Committee consisting of experts in the field. The period of deputation is capped at three years, extendable up to five years.

8. From the above, we could gather in clear terms that the post of Director-General carries a very high degree of importance. The fact that the age limit is fixed at 55 years of completion, being the maximum with 15 years of experience also indicates the rationale behind the qualification fixed.

9. The Ministry of Power, after due deliberation on the recommendation made by the Search-cum-Selection Committee in favour of the respondent, sought the approval of "ACC" to the post of Director-General, CPRI from the date he assumes charge up to the date of his retirement on superannuation (31.05.2019) or until further orders, whichever is earlier.

10. The file was circulated to the Hon'ble Minister and then to the Hon'ble Prime Minister in pursuance of the recommendations made by the Cabinet Secretary. After considering the relevant materials, the Hon'ble Prime Minister as

member of the “ACC” gave his seal of approval for an initial tenure of five years or until further orders, with a further direction that the respondent would be eligible for re-appointment for a further term up to 31.05.2019, the date of his superannuation.

11. An order of appointment was issued by the Ministry of Power vide its letter dated 22.03.2010. On 26.03.2010, the respondent accepted the offer and joined his office. He was accordingly informed of the decision made by the “ACC” regarding his appointment and tenure, even prior to his acceptance. We may also note that due intimation has been given on the terms and conditions, including the pay scale.

12. The respondent went on performing his part from the date of him taking charge without any demur. On finding his tenure coming to an end, for the first time he submitted a representation after about four years and nine months from the date of his joining, to the Secretary, Ministry of Power on 30.12.2014, taking a stand that since his appointment was made by way of direct recruitment, he should be treated as a regular employee and therefore, to be continued till the date of his superannuation. A similar request was also made to the President, CPRI Governing Council. This was followed by a series of representations, one after the other, perhaps knowing full well that time was running out.

13. Meanwhile, performance assessments were made as mandated under the rules, which were found satisfactory. On the question of considering his eligibility for a further term of extension, a detailed study was undertaken, resulting in a report dated 05.02.2015. This report in clear terms, indicated that it would not be in the interest of the institute to extend the tenure-based appointment for a further period. On such report being placed before all the authorities, including the Hon'ble Minister, a conscious decision was made by the employer to go for fresh recruitment. This decision was also approved by all the authorities. In this connection, we may note that there is no clarity with regard to the approval given by the "ACC" for the extension of service of the respondent. In pursuance of the advertisement dated 22.02.2015, the private respondent was recruited and selected as the new Director-General.

14. Under the aforesaid circumstances, the respondent filed two writ petitions before the High Court of Karnataka questioning the relieving order given to him by terming it as an order of termination with a further challenge to the report dated 05.02.2015, advertisement dated 22.02.2015, and the recruitment of the private respondent.

15. The learned Single Judge dismissed the writ petitions on the ground of delay and laches. It was further held that such a case did not require the invocation of the discretionary jurisdiction under Article 226 of the Constitution of India.

16. Aggrieved by the aforesaid, the respondent filed appeals before the Division Bench. The Division Bench allowed the appeals without granting an order of reinstatement by compensating the respondent. Thus, the other reliefs sought by the respondent were not considered and granted. Against this order of the Division Bench dated 26.04.2019, these appeals have been filed before us.

17. Before we deal with the submissions made at the Bar, it would be imperative to deal, appreciate and reiterate the general and settled principles of law while understanding the rules governing the present case.

THE INDIAN CONTRACT ACT, 1872:

18. Section 3 of the Act concerns itself with an act of communication, acceptance, and revocation of proposal. When an offer is made, it is required to be accepted by the receiver to partake the character of a concluded contract. Hence, the knowledge of the terms of the offer is a primary and essential factor for acceptance. To understand this better, when an acceptance is made in an unqualified manner, it takes in its sweep the said acceptance along with the knowledge of the terms of the offer. This is for the reason that an unaccepted offer creates neither any right nor obligation. Such an acceptance as existing under Section 7 of the Act must both be absolute and unqualified. As per Section 8, the performance of the conditions of a proposal or the acceptance of

any consideration for a reciprocal promise which may be offered with a proposal is an acceptance of the proposal. Hence, an absolute and unqualified acceptance would give birth to the contract along with the terms of the offer.

19. Section 39 deals with the effect of the refusal of the party to perform a promise wholly. Though we are not concerned with this provision, this provision is the only one that speaks of the concept of acquiescence, which could be signified by words or conduct, being an exception for terminating the contract. Under this provision, a promisee may put an end to the contract unless there exists an element of acquiescence that could be seen and exhibited through his words or conduct. Obviously, such a contract which would also involve words or conduct, is to be seen on the facts of each case.

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 to 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. 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.

25. 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.

APPROBATE AND REPROBATE:

26. These phrases are borrowed from the Scott's law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more

vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally.

27. We would like to quote the following judgments for better appreciation and understanding of the said principle:

- ***Nagubai Ammal v. B. Shama Rao*, 1956 SCR 451**:

> "But it is argued by Sri Krishnaswami Ayyangar that as the proceedings in OS. No. 92 of 1938-39 are relied on as barring the plea that the decree and sale in OS. No. 100 of 1919-20 are not collusive, not on the ground of *res judicata* or estoppel but on the principle that a person cannot both approbate and reprobate, it is immaterial that the present appellants were not parties thereto, and the decision in *Verschures Creameries Ltd. v. Hull and Netherlands Steamship Company Ltd. [(1921) 2 KB 608]*, and in particular, the observations of Scrutton, LJ, at page 611 were quoted in support of this position. There, the facts were that an agent delivered goods to the customer contrary to the instructions of the principal, who thereafter filed a suit against the purchaser for price of goods and obtained a decree. Not having obtained satisfaction, the principal next filed a suit against the agent for damages on the ground of negligence and breach of duty. It was held that such an action was barred. The ground of the decision is that when on the same facts, a person has the right to claim one of two reliefs and with full knowledge he elects to claim one and obtains it, it is not open to him thereafter to go back on his election and claim the alternative relief. The principle was thus stated by Bankes, L.J.:
>
> > *"Having elected to treat the delivery to him as an authorised delivery they cannot treat the same act as a misdelivery. To do so would be to approbate and reprobate the same act"*.

The observations of Scrutton, LJ on which the appellants rely are as follows:

> *"A plaintiff is not permitted to 'approbate and reprobate'. The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election — namely, that no party can accept and reject the same instrument: Ker v. Wauchope [(1819) 1 Bli 1, 21] : Douglas-Menzies v. Umphelby [(1908) AC 224, 232] . The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction".*

It is clear from the above observations that the maxim that a person cannot 'approbate and reprobate' is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto. The law is thus stated in Halsbury's Laws of England, Vol. XIII, p. 464, para 512:

> *"On the principle that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais, and may conveniently be referred to here. Thus a party cannot, after taking advantage under an order (e.g. payment of costs), be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it".*

- ***State of Punjab v. Dhanjit Singh Sandhu*, (2014) 15 SCC 144**:

> **"22.** The doctrine of "approbate and reprobate" is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (Vide *CIT* v. *V. MR. P. Firm Muar* [*CIT* v. *V. MR. P. Firm Muar*, AIR 1965 SC 1216]).
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> **23.** It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground. (Vide *Maharashtra SRTC* v. *Balwant Regular Motor Service* [*Maharashtra SRTC* v. *Balwant Regular Motor Service*, AIR 1969 SC 329] .) In *R.N. Gosain* v. *Yashpal Dhir* [*R.N.*

Gosain v. *Yashpal Dhir*, (1992) 4 SCC 683] this Court has observed as under: (SCC pp. 687-88, para 10)

> "*10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage'*."

25. The Supreme Court in Rajasthan State Industrial Development and Investment Corpn. v. Diamond and Gem Development Corpn. Ltd. [Rajasthan State Industrial Development and Investment Corpn. v. Diamond and Gem Development Corpn. Ltd., (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153] , made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

26. It is evident that the doctrine of election is based on the rule of estoppel, the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of *estoppel in pais* (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when he has to speak, from asserting a right which he would have otherwise had."

- ***Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.*, (2013) 5 SCC 470**:

> **"I. Approbate and reprobate**
> **15.** A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience. [Vide Nagubai Ammal v. B. Shama Rao [AIR 1956 SC 593] , CIT v. V. MR. P. Firm Muar [AIR 1965 SC 1216] , Ramesh Chandra Sankla v. Vikram Cement [(2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706 : AIR 2009 SC 713] , Pradeep Oil

Corpn. v. MCD [(2011) 5 SCC 270 : (2011) 2 SCC (Civ) 712 : AIR 2011 SC 1869] , Cauvery Coffee Traders v. Hornor Resources (International) Co. Ltd. [(2011) 10 SCC 420 : (2012) 3 SCC (Civ) 685] and V. Chandrasekaran v. Administrative Officer [(2012) 12 SCC 133 : (2013) 2 SCC (Civ) 136 : JT (2012) 9 SC 260] .]

16. Thus, it is evident that the doctrine of election is based on the rule of estoppel—the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of *estoppel in pais* (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had."

ARTICE 226 OF THE CONSTITUTION OF INDIA:

28. We would not dwell deep into the extraordinary and discretionary nature of relief under Article 226 of the Constitution of India. This principle is to be extended much more when an element of undue delay, laches and acquiescence is involved. The following decisions of this Court would suffice:

- ***UP Jal Nigam v. Jaswant Singh,* (2006) 11 SCC 464**:

"**8.** Our attention was also invited to a decision of this Court in State of Karnataka v. S.M. Kotrayya [(1996) 6 SCC 267 : 1996 SCC (L&S) 1488] . In that case the respondents woke up to claim the relief which was granted to their colleagues by the Tribunal with an application to condone the delay. The Tribunal condoned the delay. Therefore, the state approached this Court and this Court after considering the matter observed as under: (SCC p. 268)

"Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-sections (1) or (2) of Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay."

9. Similarly in Jagdish Lal v. State of Haryana [(1997) 6 SCC 538 : 1997 SCC (L&S) 1550] this Court reaffirmed the rule that if a person chose to sit over the matter and then woke up after the decision of the Court, then such person cannot stand to benefit. In that case it was observed as follows: (SCC p. 542)

> *"The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Virpal Singh Chauhan case [Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] . The appellants desperate attempt to redo the seniority is not amenable to judicial review at this belated stage."*

10. In Union of India v. C.K. Dharagupta [(1997) 3 SCC 395 : 1997 SCC (L&S) 821] it was observed as follows: (SCC p. 398, para 9)

> *"9. We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P. Joshi [R.P. Joshi v. Union of India, OA No. 497 of 1986 decided on 17-3-1987] gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit of Joshi case [R.P. Joshi v. Union of India, OA No. 497 of 1986 decided on 17-3-1987] . In view of our finding that the benefit of the judgment of the Tribunal dated 17-3-1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief."*

11. In Govt. of WB v. Tarun K. Roy [(2004) 1 SCC 347 : 2004 SCC (L&S) 225] their Lordships considered delay as serious factor and have not granted relief. Therein it was observed as follows: (SCC pp. 359-60, para 34)

> *"34. The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in Debdas Kumar [State of WB v. Debdas Kumar, 1991 Supp (1) SCC 138 : 1991 SCC (L&S) 841 : (1991) 17 ATC 261]. The plea of delay, which Mr Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order*

should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a court of law."

- ***Eastern Coalfields Ltd. v. Dugal Kumar, (2008) 14 SCC 295:***

"**24.** As to delay and laches on the part of the writ petitioner, there is substance in the argument of learned counsel for the appellant Company. It is well settled that under Article 226 of the Constitution, the power of a High Court to issue an appropriate writ, order or direction is discretionary. One of the grounds to refuse relief by a writ court is that the petitioner is guilty of delay and laches. It is imperative, where the petitioner invokes extraordinary remedy under Article 226 of the Constitution, that he should come to the court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of the applicant.

25. Under the English law, an application for leave for judicial review should be made "promptly". If it is made tardily, it may be rejected. The fact that there is breach of public law duty does not necessarily make it irrelevant to consider delay or laches on the part of the applicant. Even if leave is granted, the question can be considered at the time of final hearing whether relief should be granted in favour of such applicant or not. (Vide R. v. Essex County Council [1993 COD 344] .)

26. In R. v. Dairy Produce Quota Tribunal, ex p Caswell [(1990) 2 AC 738 : (1990) 2 WLR 1320 : (1990) 2 All ER 434 (HL)] , AC at p. 749, the House of Lords stated [Ed.: Quoting from O'Reilly v. Mackman, (1982) 3 All ER 1124 at p. 1131a-b.] : (All ER p. 441a-b)

"The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision."

27. The underlying object of refusing to issue a writ has been succinctly explained by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd [1874 LR 5 PC 221 : 22 WR 492] , thus: (LR 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 it relates to the remedy."

(emphasis supplied)

28. This Court has accepted the above principles of English law. In Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110 : (1969) 2 SCR 824] and Rabindranath Bose v. Union of India [(1970) 1 SCC 84 : (1970) 2 SCR 697] this Court ruled that even in cases of violation or infringement of fundamental rights, a writ court may take into account delay and laches on the part of the petitioner in approaching the court. And if there is gross or unexplained delay, the court may refuse to grant relief in favour of such petitioner."

- ***State of J&K v. R.K. Zalpuri,* (2015) 15 SCC 602:**

"20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwala [City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwala, (2009) 1 SCC 168] , wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus: (SCC p. 175, para 30)

"*30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:*
(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
(b) the petition reveals all material facts;
(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;
(d) person invoking the jurisdiction is guilty of unexplained delay and laches;
(e) ex facie barred by any laws of limitation;
(f) grant of relief is against public policy or barred by any valid law; and host of other factors."

21. In this regard reference to a passage from *Karnataka Power Corpn. Ltd.* v. *K. Thangappan* [Karnataka *Power Corpn. Ltd.* v. *K. Thangappan*, (2006) 4 SCC 322 : 2006 SCC (L&S) 791] would be apposite: (SCC p. 325, para 6)

> *"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party."*

After so stating the Court after referring to the authority in *State of M.P.* v. *Nandlal Jaiswal* [*State of M.P.* v. *Nandlal Jaiswal*, (1986) 4 SCC 566] restated the principle articulated in earlier pronouncements, which is to the following effect: (SCC p. 326, para 9)

> *"9. … the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. 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."*

22. In *State of Maharashtra* v. *Digambar* [*State of Maharashtra* v. *Digambar*, (1995) 4 SCC 683] a three-Judge Bench laid down that: (SCC p. 692, para 19)

> *"19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the*

person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct."

23. Recently in *Chennai Metropolitan Water Supply and Sewerage Board* v. *T.T. Murali Babu* [*Chennai Metropolitan Water Supply and Sewerage Board* v. *T.T. Murali Babu*, (2014) 4 SCC 108 : (2014) 1 SCC (L&S) 38] , it has been ruled thus: (SCC p. 117, para 16)

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant—a litigant who has forgotten the basic norms, namely, 'procrastination is the greatest thief of time' and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."

24. At this juncture, we are obliged to state that the question of delay and laches in all kinds of cases *would* not curb or curtail the power of the writ court to exercise the discretion. In *Tukaram Kana Joshi* v. *Maharashtra Industrial Development Corpn.* [*Tukaram Kana Joshi* v. *Maharashtra Industrial Development Corpn.*, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] it has been ruled that: (SCC pp. 359-60, para 12)

"12. … Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause of action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party

interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience."

And again: (SCC p. 360, para 14)

"14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide Durga Prashad v. Controller of Imports and Exports [Durga Prashad v. Controller of Imports and Exports, (1969) 1 SCC 185] , Collector (LA) v. Katiji [Collector (LA) v. Katiji, (1987) 2 SCC 107 : 1989 SCC (Tax) 172] , Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur [Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur, (1992) 2 SCC 598] , Dayal Singh v. Union of India [Dayal Singh v. Union of India, (2003) 2 SCC 593] and Shankara Coop. Housing Society Ltd. v. M. Prabhakar [Shankara Coop. Housing Society Ltd. v. M. Prabhakar, (2011) 5 SCC 607 : (2011) 3 SCC (Civ) 56] .)"

29. The aforesaid principle is also required to be adopted while considering a case involving approbation and reprobation.

DOCTRINE OF FAIRNESS:

30. The doctrine of fairness is inbuilt in every employer and employee relationship. The said doctrine has to be applied after the relationship come into being rather than at the stage of recruitment. While dealing with recruitment, on the question of suitability and adequacy, substantial discretion is appropriately conferred on the employer. At that stage, the question is with respect to the need of the employer to complete a particular type of work. In an employer and employee relationship, the doctrine of fairness has to be applied with more vigour when it involves an instrumentality of the state. Therefore, a State is not expected to act adversely to the interest of the employee, and any discrimination should be a valid one. Ultimately, one has to see the overwhelming public interest as every action of the instrumentality of the state is presumed to be so. While applying the said principle, one has to be conscious of the fact that there may not be a legitimate expectation on the part of an employee as against the statute. We would like to refer to the following judgment of this court on the above principle.

- ***Assistant Excise Commissioner and Others v. Issac Peter and Other, Issac Peter ; Assistant Excise Commissioner*, (1994) 4 SCC 104**:

> "**26.** Learned counsel for respondents then submitted that doctrine of fairness and reasonableness must be read into contracts to which state is a party. It is submitted that the state cannot act unreasonably or unfairly even while acting under a contract involving State power. Now, let us see, what is the purpose for which this argument is addressed and what is the implication? The purpose, as we can see, is that though the contract says that supply of additional quota is discretionary, it must be read as obligatory — at least to the extent of previous year's supplies — by applying the said doctrine. It is submitted that if this is not done, the licensees would suffer monetarily. The other purpose is to say that if the state is not able to supply so, it would be unreasonable on its part to demand the full amount due to it under the contract. In short, the

duty to act fairly is sought to be imported into the contract to modify and alter its terms and to create an obligation upon the state which is not there in the contract. We must confess, we are not aware of any such doctrine of fairness or reasonableness. Nor could the learned counsel bring to our notice any decision laying down such a proposition. Doctrine of fairness or the duty to act fairly and reasonably is a doctrine developed in the administrative law field to ensure the rule of law and to prevent failure of justice where the action is administrative in nature. Just as principles of natural justice ensure fair decision where the function is quasi-judicial, the doctrine of fairness is evolved to ensure fair action where the function is administrative. But it can certainly not be invoked to amend, alter or vary the express terms of the contract between the parties. This is so, even if the contract is governed by statutory provisions, i.e., where it is a statutory contract — or rather more so. It is one thing to say that a contract — every contract — must be construed reasonably having regard to its language. But this is not what the licensees say. They seek to create an obligation on the other party to the contract, just because it happens to be the state. They are not prepared to apply the very same rule in converse case, i.e., where the state has abundant supplies and wants the licensees to lift all the stocks. The licensees will undertake no obligation to lift all those stocks even if the state suffers loss. This one-sided obligation, in modification of express terms of the contract, in the name of duty to act fairly, is what we are unable to appreciate. The decisions cited by the learned counsel for the licensees do not support their proposition. In Dwarkadas Marfatia v. Board of Trustees of the Port of Bombay [(1989) 3 SCC 293] it was held that where a public authority is exempted from the operation of a statute like Rent Control Act, it must be presumed that such exemption from the statute is coupled with the duty to act fairly and reasonably. The decision does not say that the terms and conditions of contract can be varied, added or altered by importing the said doctrine. It may be noted that though the said principle was affirmed, no relief was given to the appellant in that case. Shrilekha Vidyarthi v. State of UP [(1991) 1 SCC 212 : 1991 SCC (L&S) 742] was a case of mass termination of District Government Counsel in the State of UP It was a case of termination from a post involving public element. It was a case of non-government servant holding a public office, on account of which it was held to be a matter within the public law field. This decision too does not affirm the principle now canvassed by the learned counsel. We are, therefore, of the opinion that in case of contracts freely entered into with the state, like the present ones, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms and conditions of the contract, merely because it happens to be the state. In such cases, the mutual rights and liabilities of the parties are governed by the terms of the contracts (which may be statutory in some cases) and the laws relating to contracts. It must be remembered that these contracts are entered into pursuant to public auction, floating of

> tenders or by negotiation. There is no compulsion on anyone to enter into these contracts. It is voluntary on both sides. There can be no question of the State power being involved in such contracts. It bears repetition to say that the state does not guarantee profit to the licensees in such contracts."

WORKING RULES :

31. We have already discussed the qualification *qua* the post of Director-General. Recruitment to the post of Director-General is to be made under the working rules either directly or on deputation. This is on an all-India basis through a duly constituted Search-cum-Selection Committee. The only exception is by way of a contractual appointment which is for a very brief and temporary period, which can be appointed by the President, CPRI, with the approval of the Government of India.

32. The rules *per se* do not prohibit a tenure appointment. The definition of direct recruitment would mean recruitment through a process stipulated under the rules. Therefore, by no stretch of the imagination, one can interpret that all direct recruitments are to be made by regular employment. Therefore, direct recruitment can also be made for filing up the post on a tenure basis. Hence, in the absence of any statutory bar under the rules, a tenure appointment made through direct recruitment by following the due procedure cannot be termed as contrary to law. In a direct recruitment the appointment on a regular or tenure basis is the discretion of the employer, especially when the rules do not prohibit. Rule 48 speaks of the age of superannuation for a regular employee,

which will be the completion of sixty years. There is no difficulty in appreciating the said rule, which deals with a regular employee alone and therefore can have no application while dealing with an appointment made on a tenure basis. After all, a Court of law cannot give a different status to an employee than the one which was conferred and accepted especially when the same is not prohibited under the rules.

SUBMISSIONS OF THE PARTIES:

SUBMISSIONS OF THE APPELLANTS:

33. The learned Additional Solicitor General appearing for the appellants submitted that the relief sought by the respondent cannot be granted on the ground of delay, laches, and acquiescence. Similarly, the principle governing approbation and reprobation would also disentitle the relief, especially when Article 226 of the Constitution is invoked. The rules do not prohibit a tenure-based appointment. The respondent made a request only after enjoying his tenure near the end of the period. It was also only made for continuance till the date of superannuation. The impugned order passed by the appellants is only a relieving order. The performance assessment under the rules after the first year or subsequent thereto has nothing to do with the assessment made for re-appointment. The initial appointment itself was by way of re-employment. The appointment order clearly states that the respondent is appointed for an initial tenure of five years or until further orders and re-appointment will be based on

suitability. Clause 48 of the rules is only applicable to regular employees, indicating the upper age limit to remain in service and thus, cannot be an enabling one to a tenure-based appointee. The recommendation of the Search-Cum-Selection Committee and by way of the cabinet note is not binding while considering the tenure of the respondent. All the materials were placed before the "ACC", and thereafter, a conscious decision was taken on both occasions. Suitability and adequacy are the discretion of the employer alone. There is no arbitrariness involved in not considering the extension. The Division Bench has not considered the materials in the correct perspective.

34. On the relief sought by the respondent, it is submitted that even the period of superannuation is over, and the private respondent has been selected on merit on the recommendation of the Search-cum-Selection Committee. No specific plea has been raised with respect to his continuance as the representation was made on the ground that the respondent should be considered as a regular employee. Thus, the appeals filed by the respondents are also to be dismissed.

SUBMISSIONS BY THE RESPONDENTS:

35. Mr. Prashant Bhushan, in his own inimitable style, submitted that the Division Bench has gone through the files while recording its findings which do not warrant any interference. There is a clear violation of Articles 14 and 16 of the

Constitution of India. On the first occasion, there is nothing to infer that relevant materials have been considered, and on the second, "ACC" has not been put on notice on the adverse report. The adverse report itself has been prepared by persons junior to the respondent, and therefore, the same ought to be eschewed. There is no power or authority in passing the impugned termination order. Since the very case of the respondent is that he should be continued till the date of his superannuation, the impugned order passed by the appellants is not a mere relieving order but a termination. The Division Bench has not considered the other relief sought by the respondent, and therefore in light of the findings rendered, the writ petitions are liable to be allowed in toto. There are no statutory rules for a tenure appointment, and hence the respondent should have been treated as a regular employee. The annual performance reports of the respondent found him to be "outstanding". The President, CPRI-GC, does not have the power to terminate, as the "ACC" being the appointing authority, alone has the right.

36. There is no inordinate delay in approaching the Court as the respondent was under the *bona fide* impression and the legitimate expectation that since the rules do not permit a tenure-based appointment, he is to continue till the date of superannuation. In fact, the respondent made multiple representations to the appellants seeking rectification in the terms of his appointment letter. A mere

delay in approaching the employer by way of representations and the High Court would not constitute estoppel, especially when the terms are not in consonance with the rules, as held in the judgment of this Court in Somesh Thapliyal Vs. HNB Garhwal University, 2021 SCC Online SC 659.

DISCUSSION:

37. We have already dealt with the principles of law that may have a bearing on this case. There is no element of an unequal bargaining power involved. Nobody has forced the respondent to enter into a contract. He indeed was an employee of the society for 23 years. We do not wish to go into the question as to whether it is a case of re-employment or not, as the fact remains that the respondent wanted the job, which is why there was an unexplained and studied reluctance to raise the issue of him being a permanent/regular employee, but only at the fag end of his tenure.

38. The first of the representations were made on 30.12.2014, followed by others. The conduct speaks for itself. Hence, on the principle governing delay, laches, and acquiescence, followed by approbation and reprobation, respondent no. 1 ought not to have been granted any relief by invoking Article 226 of the Constitution of India. On the interpretation of the rules, we have already discussed that there is no prohibition in law for a tenure appointment. We are

dealing with a post that stands at the top realm of the administration. There is an intended object and rationale attached to the post. It is the incumbent of the post who has to carry forward the object and vision in the field of research. As noted earlier, there is certainly an overwhelming public interest involved. The employer, has a load of discretion available. In the absence of any arbitrariness, one cannot question its wisdom. After all, a decision has been taken at the highest level. We cannot infer that materials have not been placed before taking the decision. The Division Bench was not right in holding that the highest constitutional authority on the executive side was misled by the lower officials. We find no place for such an inference. A conscious decision has been made to go for a tenure appointment in the interest of society. Similarly, a conscious decision was also made to go for a fresh recruitment.

39. There is a marked difference between the assessments made during the respondent's tenure and the one made for continuation after the completion of the tenure. No question of being a junior or senior arises as materials have been placed for assessment by a different department. The assessment was done by the highest authorities, as approved by the Secretary to the Government of India and by the Hon'ble Minister concerned apart from the Cabinet Secretary. What was challenged is only a relieving order, which cannot be given the character of a termination. The Division Bench has misconstrued direct recruitment to mean an appointment to a permanent post.

We are dealing with direct recruitment to a post of primary importance, i.e. Director-General, which is to be filled on a tenure basis. The rules as perused and understood by us do not prohibit a tenure appointment. In the absence of any prohibition and mandatory mode of appointment, the appellant's decision in going for a tenure appointment is perfectly in order.

40. We find, much water has already flown under the bridge. The private respondent has already been appointed in 2016 after following the due procedure and continues to date. The respondent is an ex-employee of the first appellant-Society and, having put in 23 years of service, knows its functioning very well. Thus, in our considered view, the order passed by the Division Bench cannot be sustained in the eye of the law.

41. Mr. Prashant Bhushan, made reliance upon the decision rendered by this Court in *Somesh Thapliyal V. HNB Garhwal University, 2021 SCC OnLine SC 659*. We are of the view that it is not a case in point. In the said decision, rules were in place for a regular employment, and the post filled was a bottom-line post. The concept of bargaining power was thus rightly applied by this Court. The grievance was also in tune with the rules, and there was no justification for a contractual appointment, whereas in the case at hand, we are dealing with a tenure-based appointment. Thus, the facts being different, the ratio has no application.

42. On reading the appointment order, we could not identify the existence of automatic extension. The order is very explicit in saying that it is subject to suitability, and such suitability for re-appointment having been considered, this Court is not expected to substitute its view. The non-consideration of the report by the "ACC" also would not be fatal, as the Cabinet Secretary himself has approved it, and so also the other higher authorities. The respondent has not shown any substantial prejudice. Even if one assumes that these materials have not been placed before "ACC", we believe that there may not be any need for such approval for two reasons. Firstly, the first appellant found that the respondent is not suitable for re-appointment, which was approved by the other authorities. Therefore, the employer has taken a conscious decision in the interest of the society. Secondly, it is not a case of extension in which case maybe the confirmation by "ACC" would have been warranted. We may also note that all the appellants, including the Hon'ble Minister, have approved the subsequent decision to go for a fresh recruitment by taking note of the larger public interest.

43. In light of the discussion made, the appeals filed by the respondent deserve to be dismissed. Once we hold that the respondent is not entitled to any extension, the consequential benefits cannot be granted. Thus, both on the assessment of

facts and the concept of law, we are constrained to hold that the respondent is not entitled to any relief.

44. Accordingly, the appeals filed by the appellants stand allowed by setting aside the impugned order under challenge, and as a consequence, the appeals filed by the respondent are dismissed. No costs.

…….……J.
(SANJAY KISHAN KAUL)

……J.
(M.M. SUNDRESH)

New Delhi
October 07, 2021