

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 355 OF 2022

(Subject – House Rent Allowances)

DISTRICT : NANDED

Basveshwar s/o Jagannath Warad,)
Age : 59 years, Occu. : Retired from service)
(Junior Engineer), R/o : Sapanch Nagar,)
Nanded, Tq. and District Nanded.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai-32.)
2. **The Superintending Engineer,**)
Nanded Irrigation, Circle Nanded,)
Sinchan Bhavan, Nanded.)
3. **The District Treasury Officer,**)
Near Collector Office, Vajirabad, Nanded.)
4. **The Executive Engineer (Irrigation)**)
Water Resources, Jangamwadi, Nanded,))
Tq. and Dist. Nanded.)
5. **The Sub-Divisional Officer,**)
Vishnupuri Irrigation, Sub-Division Nanded.)

... **RESPONDENTS**

APPEARANCE : Smt. V.R. Kalyankar, Counsel for Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate,
Presenting Officer for respondent authorities.

: Shri S.B. Patil, counsel for respondent Nos. 2
and 4 (**Absent**).

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 06.12.2023.

O R A L - O R D E R

1. Heard Smt. V.R. Kalyankar, learned counsel appearing for the applicant and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer appearing for respondent authorities. Shri S.B. Patil, learned counsel for respondent Nos. 2 & 4, is **absent**.

2. By this Original Application, the applicant is seeking quashment of order dated 02.03.2022 (Annexure A-5) passed by the respondent No. 2 and also seeking 20% pending house rent allowances along with interest @ 10% from 16.12.2016 till the date of superannuation.

3. Brief facts giving rise to the Original Application are as follows :-

(i) The applicant has joined his service with the respondent No. 4 on the post of Civil Engineering Assistant and also promoted on the post of Junior Engineer. During the period of service, the applicant was getting house rent

allowances, etc. In the year 2015, the applicant was working in the office of Executive Engineer, Upper Painganga Project (Land Development) Division, Nanded under the Upper Painganga Project Sub-Division No. 3, Nanded on the post of Civil Engineering Assistant. However, while working on the said post, the applicant has made request application for his transfer to the office of Executive Engineer, Nanded Irrigation Division, Nanded under Vishnupuri Irrigation Sub-Division, Nanded.

(ii) By the order dated 21.04.2015 (Annexure A-1 collectively), the applicant came to be transferred as per his request and the applicant has joined his transferred post on 01.09.2015 (Annexure A-1 collectively). After joining the said post, on 05.10.2015 the applicant has submitted application for house rent allowances and after making several representations in this regard, the respondent No. 4 passed an order on 07.07.2020 (Annexure A-2), whereby directed that the applicant is entitled for 20% house rent allowances from 16.12.2016. However, in terms of the said order dated 07.07.2020, when the bill of arrears of house rent allowances of the applicant was submitted to the District Treasury Office, Nanded, the said office returned

the said bill with an objection that sanction order of the competent authority under Rule 39 (B) of the Bombay Finance Rules is not annexed with the bill. In view of the said objection raised by the Treasury Office, the proposal for grant of *ex-post facto* sanction of 20% house rent allowances was submitted to the Superintending Engineer, Nanded Irrigation Circle, Nanded by the office letter dated 22.10.2020. In response to the same, the office of Superintending Engineer, Nanded Irrigation Circle, Nanded sought information whether the applicant was sent on deputation or his services were made available to the office of Vishnupuri Irrigation, Sub-Division Nanded. In answer to this query, it was informed that the applicant was not sent on deputation and his monthly pay and allowances was paid to him by the office of Irrigation Sub-Division Office, Umri. It was also informed that at Vishnupuri Irrigation Sub-Division, Nanded, there was only one sanctioned post of Civil Engineering Assistant and that post was already occupied by another employee. There was no other post of Civil Engineering Assistant at Vishnupuri Irrigation Sub-Division, Nanded and the applicant was fully aware about the said fact. It was also informed to the Superintending Engineer, Nanded Irrigation Circle, Nanded that

house rent allowances @ 10% was paid to the applicant and the applicant had given consent for house rent allowances @ 10%.

(iii) Thereafter, the applicant was transferred to Upper Painganga Project (Land Development) Division, Nanded and he was relieved on 08.02.2021. The applicant stood retired on superannuation on 30.11.2021 AOH. After retirement, the applicant was paid all pensionary benefits. By the order/ communication dated 02.03.2022 the Assistant Superintending Engineer, Nanded Irrigation Circle, Nanded has informed to the Executive Engineer, Nanded Irrigation Division (North), Nanded that the applicant is not entitled for 20% house rent allowances. Hence, the present Original Application.

4. Learned counsel for the applicant submits that the respondent No. 4 has allowed the applicant to join the services at transferred place in terms of the transfer order dated 21.04.2015 (Annexure A-1 collectively). Learned counsel submits that though the post at transferred place is already filled up and house rent allowances were being paid to an employee who was working on the said post, the respondent No. 4 has allowed the applicant to join his services at transferred post without vacancy and for that

purpose; the applicant shall not suffer any financial loss. Learned counsel submits that the impugned order passed by the respondent No. 2 is mala-fide and against the provisions of law. Learned counsel submitted that through by the order dated 07.07.2020 the respondent No. 4 has directed that the applicant is entitled for 20% house rent allowances from 16.12.2016, due to the aforesaid intervention by the respondent No. 2, no effect was given to the said order. Learned counsel submits that the applicant is not at fault and he has suffered unnecessarily. The Original Application is thus deserves to be allowed and the house rent allowances from 16.12.2016 may be granted to the applicant along with interest from the said date till the date of his superannuation.

5. Learned Presenting Officer submits that under Vishnupuri Irrigation Sub-Division, Nanded (transfer place of the applicant) there was only one post of Civil Engineering Assistant and on that post, one employee was already working. There was no vacancy at that place. However, considering the genuineness of request of the applicant, he was transferred to Vishnupuri Irrigation Sub-Division, Nanded by showing his substantive posting at Sub Division Umri, Dist. Nanded, as there was one post vacant of Civil Engineering Assistant at that place. Learned

P.O. submits that though the applicant working at Vishnupuri Irrigation Sub-Division, Nanded, his monthly pay and allowances were drawn by the office of Irrigation Sub-Division, Umri and the applicant was accordingly paid his monthly salary including admissible house rent allowances. The applicant had regularly received house rent allowances @ 10% as admissible at Irrigation Sub-Division, Umri, Dist. Nanded and the applicant had never raised any grievance about non-receipt of house rent allowances @ 20%. Learned P.O. submits that for the first time on 07.10.2019 the applicant had made application for giving him 20% house rent allowances and on 07.07.2020 an office order was issued, thereby granting 20% house rent allowances to the applicant. However, when the bill of arrears was submitted to the District Treasury Officer, it was returned for want of sanction order of the competent authority under Rule 39(b) of the Bombay Financial Rules. Thus the proposal was sent for *ex-post facto* sanction of 20% house rent allowances to the Superintending Engineer, Nanded Irrigation Circle, Nanded by an office letter dated 22.10.2021 and thereafter, it has been revealed that the applicant was neither sent on deputation nor his services were made available to Vishnupuri Irrigation Sub-Division, Nanded and his monthly pay and allowances were paid to him by the

office of Irrigation Sub-Division, Umri. Learned P.O. submits that the employee working as Civil Engineering Assistant at Vishnupuri Irrigation Sub-Division, Nanded was getting his pay and house rent allowances @ 20% as admissible and as such, no house rent allowances at the same rate are admissible to the applicant. Learned P.O. submits that there is no substance in the O.A. and the same deserves to be dismissed.

6. It appears from the pleadings and the oral submissions that though the applicant was transferred at Vishnupuri Irrigation Sub-Division, Nanded, the post of Civil Engineering Assistant was not vacant at the place of transfer and as such, though the applicant was working at Vishnupuri Irrigation Sub-Division, Nanded as per his request arises out of genuine need, his salary and allowances including house rent allowances were paid to him from the office of Irrigation Sub-Division, Umri. It is also not disputed by the learned counsel for the applicant that the applicant was getting salary from Irrigation Sub-Division Umri, so also the house rent allowances @ 10% as admissible at the said Irrigation Sub-Division. It further appears that the applicant till the year 2019 has never complained about the same, but on 07.01.2019 has demanded house rent allowances @ 20% and without looking into the consequences,

the Executive Engineer, Nanded Irrigation Division, Nanded has granted him house rent allowances @ 20% w.e.f. 16.12.2016 as per the office order dated 07.07.2020. However, when the Treasury Office raised an objection about sanction of the competent authority in terms of Rule 39 (B) of the Bombay Finance Rules, the proposal was forwarded to the Executive Engineer, Nanded Irrigation Circle, Nanded for *ex-post facto* sanction and thereafter all these facts were brought to the notice of the competent authority. Consequently, by the impugned order dated 02.03.2021, the request of the applicant for grant of house rent allowances @ 20% came to be turned down.

7. It is well settled that the acquiescence, being a principle of equity must be made applicable where a party knowing all the facts of bias etc. surrenders to the authority without raising any objection. The acquiescence resulted in an estoppel. In the instant case, the applicant has never disputed about the payment of his salary and allowances from the office of Irrigation Sub-Division, Umri, though he was working at Vishnupuri Irrigation Sub-Division, Nanded as per his convenience and so called genuine difficulty. It appears that there was only one post of Civil Engineering Assistant at Vishnupuri Irrigation Sub-Division, Nanded and the same is

already filled up. The applicant knowing it well has started working at Vishnupuri Irrigation Sub-Division, Nanded with the understanding that he will get substantive pay and allowances from Irrigation Sub-Division, Umri. In my considered opinion, the applicant now cannot complaint about non-payment of house rent allowances @ 20%, which is admissible at Vishnupuri Irrigation Sub-Division, Nanded, when all the while the applicant got house rent allowances @ 10% from Irrigation Sub-Division, Umri as admissible in the said Sub-Division. It was the choice of the applicant to work at Vishnupuri Irrigation Sub-Division, Nanded and he had agreed with the adjustment about his substantive pay and allowances to be paid to him from the office of Irrigation Sub-Division, Umri. The applicant is now estopped by acquiescence.

8. In a case of **Bichitrananda Behera Vs. State of Orissa & Others, Special Leave Petition (Civil) No. 16238 of 2017**, decided on 11.10.2023, the Hon'ble Sureme Court had an occasion to dealt with delay, laches and acquiescence. In this case, the Hon'ble Supreme Court of India has made reference of the case of **Union of India Vs. N. Murugesan, (2022) 2 SCC 25** and reproduced paragraph Nos. 20 to 25, which are as follows :-

“Delay, laches and acquiescence

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

Laches

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

22. *Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.*

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

raised by the plaintiff, while an issue concerned alone would be amenable to acquiescence.

Acquiescence

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

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

(emphasis supplied)”

Further Supreme Court of India has made reference of the case of **Chairman, State Bank of India Vs. M.J. James, (2022) 2 SCC 301** and reproduced para Nos. 38 & 40, which are relevant for the present discussion and thus reproduced below :-

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

of action, which in some cases as elucidated in *Union of India v. Tarsem Singh* [*Union of India v. Tarsem Singh*, (2008) 8 SCC 648 : (2008) 2 SCC (L&S) 765] may be continuing cause of action. The State being a virtuous litigant should meet the genuine claims and not deny them for want of action on their part. However, this general principle would not apply when, on consideration of the facts, the court concludes that the respondent had abandoned his rights, which may be either express or implied from his conduct. Abandonment implies intentional act to acknowledge, as has been held in para 6 of *Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.* [*Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.*, (1979) 2 SCC 409 : 1979 SCC (Tax) 144] Applying this principle of acquiescence to the precept of delay and laches, this Court in *U.P. Jal Nigam v. Jaswant Singh* [*U.P. Jal Nigam v. Jaswant Singh*, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] after referring to several judgments, has accepted the following elucidation in *Halsbury's Laws of England* : (*Jaswant Singh case* [*U.P. Jal Nigam v. Jaswant Singh*, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] , SCC pp. 470-71, paras 12- 13)

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

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

(i) acquiescence on the claimant's part;

and

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

13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ

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

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

(emphasis supplied)"

9. In view of above observations and considering the factual aspect in the present case, in my considered opinion, estoppel by acquiescence squarely applied in the present case

and as such, the applicant is not entitled for relief as prayed in the present O.A. Hence, the following order :-

ORDER

The Original Application is hereby dismissed. In the circumstances, however, no order as to costs.

PLACE : Aurangabad.
DATE : 06.12.2023

(Justice V.K. Jadhav)
Member (J)

KPB S.B. O.A. No. 355 of 2022 VKJ House Rent Allowances