

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 21/DB/2013**

1. Nalini Kant Juyal, S/o Late Shri R.D.Juyal, R/o 79 Vasant Vihar , District Dehradun.
2. Ranbeer Singh Rawat, S/o Shri Ram Pal Singh Rawat, R/o 4/71-B, Hathibarkala, Dehradun.

.....Petitioners

**WITH**

**CLAIM PETITION NO. 29/DB/2013**

1. Satya Prasad Pant, S/o Late Sri B.R.Pant, R/o 5 B, Araghar, Dehradun.
2. Dinesh Baluri, S/o Sri N.S.Baluri, R/o House No.1, Block C, Lane I, Aman Vihar, Sahastra Dhara Road, Dehradun.
3. Yatendra Kumar Bhasin, S/o Late Sri Behari Lal Bhasin, R/o 46, Naya Gaon, Mohini Road, Dehradun.
4. Suresh Pal Singh Rawat, S/o Sri M.S.Rawat, 94/36 Prakash Vihar, Dharampur, Dehradun.
5. Ramesh Raturi, S/o Sri Ghanshyam Raturi, R/o 36 Subhash Road, Dehradun.
6. Ramesh Singh Panwar, S/o Late Sri Vijendra Singh Panwar, R/o Village Post Chhidarwala, District Dehradun.
7. Pramod Dora, S/o Late Sri Uttam Chand Dora, R/o 49 Kashmiri Colony, Lane No. 3, I.G. Marg, Niranjanpur, Dehradun.
8. Ram Gopal Verma, S/o Late Sri Darshan Lal Verma, R/o 443 B, Khurbura Mohalla, Dehradun.

.....Petitioners

**vs.**

1. State of Uttarakhand through Secretary Tourism, Secretariat, Dehradun.
2. Garhwal Mandal Vikas Nigam Ltd. through its Managing Director, 74/1, Rajpur Road, Dehradun.

3. Managing Director, Garhwal Mandal Vikas Nigam Ltd., 74/1, Rajpur Road, Dehradun.

.....Respondents.

**Present:** Sri Aman Rab & Smt. Chitra Rab, Counsel for the petitioners.  
 Sarvsri U.C.Dhaundiya & V.P.Devrani, A.P.Os. for respondent No.1.  
 Sri V.D.Joshi, Counsel for respondents No.2 & 3.  
 None for respondents No. 4 & 5.  
 Sri L.K.Maithani, Counsel for respondents No. 6 to 11.  
 Sri Vibhore Maheshwari, Counsel for respondents No. 12 & 13.

### **JUDGMENT**

**DATED: AUGUST 31, 2018**

#### **Justice U.C.Dhyani (Oral)**

Since the factual matrix of the above noted claim petitions and law governing the field is the same, therefore, both the claim petitions are being decided together, by a common judgment, for the sake of brevity and convenience. Claim Petition No. 21/DB/2013 Nalini Kannt Juyal vs. State and others will be the leading case

2. By means of present claim petition No. 21/DB/2013, the petitioners seek following reliefs:

“ (i) Set aside/ quash the impugned order dated 24<sup>th</sup> January, 2013 bearing No. 987/ Do-56(2010-13) passed by the respondent number three, Managing Director, Garhwal Mansal Vikas Nigam Ltd.

(ii) Set aside/ quash the impugned order dated 14.03.2013 bearing No. 1229/Do-56 (2010-13) passed by the respondent number three, Managing Director, Garhwal Mansal Vikas Nigam Ltd .

(iii) Declare that the petitioners were entitled to the post of Assistant Accountant in the pay scale of Rs.490-760 and all consequent revisions since date of appointment i.e. June 1988 and award arrears there from.

(iv) Declare that the petitioners were entitled to the upgraded pay scale of 1640-2900 since 20.08.1996 and all consequent revisions and award arrears there from.

(v) Direct the respondents to place the petitioners at the appropriate place in the seniority list on the basis of percentile marks.

(vi) Graciously be pleased to pass any such other relief or reliefs as this Hon'ble Tribunal may deem just and proper in the circumstances of this case.

(vii) Award the cost of the petition to the petitioners against the respondents.”

3. Key facts, for adjudication of present claim petition, are as follows:

Garhwal Mandal Vikas Nigam Ltd. published an advertisement in “Himanchal Times” on 11.10.1986 inviting applications for filling vacancies on different posts which *inter alia* included the post of Assistant Grade-1 in the pay scale of Rs.515-865/- at Serial No. 4. The requisite qualification for the post of Assistant Grade-1 was B.Com second division with three years’ experience or M.Com. Experience in reputed business institutions was mandatory and all applications against the advertisement were to be submitted within fifteen days. The advertisement was silent with regard to the number of vacancies for each post and reservation.

The post advertised in the said news paper at Sl. No. 4 was of Assistant Grade-1 in the pay scale of Rs.515-865/- but it was amended by the Nigam *vide* order dated 03.03.1988 & 19.02.1988 to the post of Assistant Accountant in the pay scale of Rs.490-760 and appointment was also made to the said post.

The qualification of the petitioner No.1 was B.Com (3<sup>rd</sup> Division) passed in the year 1980 and M.Com (3<sup>rd</sup> Division) passed in the year 1982. Further, the petitioner also possessed work experience of three years. Similarly, the qualification of petitioner no.2 was B.Com (2<sup>nd</sup> Division) passed in the year 1982 and M.Com (3<sup>rd</sup> Division) passed in

the year 1985 and possessed work experience of four and half years before appearing for the interview.

Since the petitioners had the requisite qualification, therefore, the petitioner applied in accordance with the advertisement against the said post and each of the petitioners subsequently received a call letter from the respondent No.3 dated 06.06.1987 inviting them to appear before the selection committee on 19.06.1987. A total of 350 applications were received against the said advertisement.

Petitioners reported for the interview at the office of the respondent No.2 on 19.06.1987. However, they were informed by the Joint Managing Director of the respondent No.2 *vide* letter dated 16.06.1987 that the selection process has been stayed due to unavoidable circumstances and the petitioners will be duly informed about the next date of interview.

It was later revealed that the actual purpose of delay in conducting the interview was *mala fide* on the part of respondents to illegally appoint daily wagers through backdoor entry. It was also, much later, revealed that a representation was made by the working Assistant Accountants of the Nigam having the qualification of B.Com/ M.Com that they are working in pay scale of Rs.490-760/- whereas the fresh appointments are being made to the post of Assistant Accountants in the pay scale of Rs.515-865/-. The respondents unilaterally amended the post advertised in the newspaper only after receiving the said representation dated 12.06.1987.

After issuance of advertisement dated 11.10.1986, as many as seven persons were appointed through backdoor in the accounts and audit department, details of which have been given in Para VII of the claim petition.

Further, eleven persons were inducted through backdoor entry in the audit department. Details of such persons have been given in Para VIII of the claim petition.

On the basis of the proposal of the Administrative Officer, dated 26.11.1987, who ultimately also became the member of the selection

committee, Shri Rajendra Singh Payal, Virendra Kukreti and Shri Pramod Kumar, who were working as 'guide' on temporary basis, were exempted from the interview process and were directly recruited in January 1988 on the post of Assistant Accountant in the pay scale of Rs. 490-760/-, on the ground that they were Commerce Graduates, in spite of the fact that the Company Secretary of Respondent No.2 had made it clear in its note that all the 18 daily wagers should participate in the interview process. The rest of the 15 candidates who were working in the department and had not filed applications against the advertisement, were also allowed to participate in the interview process.

Consequently *vide* order dated 19.02.1988 (Annexure: 2) issued by the respondent No.3, a selection committee comprising five members was appointed to conduct the selection on 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> February, 1988. It was categorically stated that the selection committee shall prepare three separate lists of selected candidates, namely,:

- i. Of candidates having M.Com degree who have been working with G.M.V.N.
- ii. Of candidates having M.Com degree who have applied.
- iii. Other candidates which do not fall in aforesaid category I or ii

Marking scheme for interview process was also approved by the Chairman of Selection Committee. However, in order to give the backdoor entrants undue advantage in the selection, in an illegal manner, one day prior to the interview, i.e., on 23.02.1988, the marking scheme approved by the Chairman of Selection Committee was altered by the then Administrative Officer who also became a member of Selection Committee, without the approval of the Chairman of Selection Committee or the Managing Director, the ultimate employer. The marks were allotted to candidates according to the illegal and un approved marking scheme.

Para XII of the claim petition indicates comparison between the approved marking scheme (which ought to have been followed) and the un-approved and illegal marking scheme adopted by the Selection Committee.

In the scheme approved by the Chairman, no marks were to be allotted in row 5 (i.e. under the head of experience of accounts at Nigam) whereas in the scheme which was not approved by the Chairman and was illegally adopted by the Selection Committee, a maximum of 20 marks were to be given in row 5 by each member. Thus, benefit of a total of 100 marks (20x5, since there were five members in the committee) was given to the backdoor entrants/ daily wagers against the candidates who applied against the advertisement. The said method of allotting marks was illegal and against equity and also against the approval of respondent No.3 dated 03.02.1988 and 19.02.1988 (Annexure: 2).

The Selection Committee comprised of five members and each member was directed to allot marks to the back door entrants/ candidates out of 100 whereas the applicants who had applied against the advertisement (the petitioners) were allotted marks out of 80 only. Since there were five members in the Selection Committee, therefore, the backdoor entrants were marked out of a total of 500 and the candidates who had applied against the advertisement, were marked out of a total of 400. Thus, the merit list should have been prepared on percentile basis instead of total marks obtained by the Selection Committee.

Essential requirements of the advertisement for appointment were grossly violated including the requirement for educational qualification and experience.

As per the recommendation of the second pay commission, relaxation was to be given in terms of qualification to the candidates with respect to scheduled caste, although the advertisement was silent w.r.t. the said relaxation and reservation.

Contrary to the marking scheme approved by the Chairman of Selection Committee and the recommendation of the second pay commission, the Selection Committee gave relaxation in terms of qualification to the candidates belonging to general category and recruited the said candidates in the pay scale of Rs.490-760/- revised 1350-2200 revised 4500-7000 revised 5200-22500, whereas the

petitioners were recruited in the lower scale called minimum wages. For instance one Laxmi Narayan Navani, whose qualification was only B.Com (3<sup>rd</sup> Divisin), was given appointment, similarly one Upendra Jhildiyal, whose qualification was only B.A. (2<sup>nd</sup> Divisin), instead of B.Com with accountancy , was also given appointment and one Bharat Singh Chauhan, who had passed B.Com in the year 1986, showed a work experience of four years from 1983 to 1987, yet he was allotted marks under the head of experience for previous period and was given appointment. All the aforementioned three candidates belonged to general category yet they were given the relaxation in qualification/ experience and were given appointment on the post of Assistant Accountant in the pay scale of Rs.490-760/-. Similarly, there are many other candidates who have been given appointment contrary to the advertisement and the scheme laid down.

There were clear orders of the appointing authority/ respondent No.3 dated 03.02.1988 (Annexure: 2), wherein it was categorically stated that two separate lists, one of accountants to be appointed against advertisement; and other of those, who were already working on daily wages, having M.Com qualification, should be prepared. However, no separate lists were prepared and all the candidates were given appointment as per the whims and fancies of the Selection Committee in an arbitrary and illegal manner, with the intent to give undue advantage to the candidates of their choice.

The pay scale wise qualification for Accounting cum Auditing staff, as per report of Second Pay Commission has been highlighted in Para XVIII of the claim petition.

Educational qualification, experience for the post of Accounts Clerk, Assistant Accountant, Accountant has been highlighted in Para 19 of the claim petition.

Even the Second Pay Commission 1982 recommended the post wise educational qualification and the pay scale of the Account Employees. However, contrary to the said recommendation, on 11.10.1986, the Corporation published an advertisement and

subsequently in the interview, the candidates were given seniority and appointed on the post of Assistant Accountant on the pay scale of Rs.490-760/- Accounts Clerk on 410-640/- and 360-550/- on the basis of marking out of 400/500.

However, in violation of the orders of the Managing Director, daily wagers/ backdoor entrants (appointed after issuance of advertisement) were allotted marks out of a total of 500, whereas the applicants who had applied against the advertisement were allotted marks out of a total of 400 and appointed in June 1988, *vide* order dated 21<sup>st</sup> June, 1988 bearing No. 2993/Do-III(85-88) (Annexure: 11) on minimum pay scale on the post of Accounts Clerk. Consequently, the candidates who had applied against advertisement, were placed lower in seniority owing to the fact that they were marked out of 400 as against the daily wagers who were marked out of 500. Therefore, the said candidates, including the petitioners, were wrongfully deprived of their seniority as well. The candidates, who were appointed by order No. 2994 dated 21.06.1988, were appointed on different posts in different pay scales which are as under:

- |                                   |         |
|-----------------------------------|---------|
| 1. Assistant Accountant Pay scale | 490-760 |
| 2. Accounts Clerk Pay Scale       | 410-640 |
| 3. Accounts Clerk Pay Scale       | 360-550 |

The advertisement was made for only one post of Accountant at Sl. No. 4, i.e., of Assistant Grade-I in pay scale of Rs.515-865 which was later amended, as stated above, to Assistant Accountant in pay scale of Rs. 490-760/- whereas the appointment was made to the said post under four different pay scales i.e. in the pay scale of Rs.490-760, 410-640, 360-550 and on minimum wages by order No. 2994 dated on 21/6/1988 and order No. 2993 dated on 21/6/1988.

The petitioners were appointed under the head of minimum wages on 21<sup>st</sup> June, 1988 and were later regularized on the post of accounts clerk in the pay scale of Rs. 360-550/- revised to Rs.950-1500/- *vide* order dated 2<sup>nd</sup> April, 1991 bearing No. 4013/Do-III (85-88).



Petitioner No.2 Shri Ranbeer Singh Rawat ought to have been allotted four more marks since he was M.Com degree holder. However, he was wrongfully deprived of the said marks, which is also grossly illegal. Further, the petitioner No.1 Sri Nalini Kant Juyal was not allotted adequate marks for his work experience for the period 19.10.1987 to the date of interview dated 24.02.1988. Whereas the petitioner No.1 ought to have been allotted marks for the period from 23.03.1985 to 27.06.1988, surprisingly, the other candidates were allotted marks for the said period. However, the petitioner was illegally deprived of the same for reasons best known to the respondents. Copy of the chart obtained under RTI showing the marks obtained by the candidates and the chart prepared by the petitioners showing percentile marks were being collectively marked and filed as Annexure: 13 to the petition.

The petitioners respectively scored 49.5% and 50.25% marks (on the basis of total marks obtained out of 400) in the interview. However, they were appointed on minimum wages on the post of Accounts Clerk. On the other hand, the candidates having 46.40 % to 48.80% marks were appointed on the post of Assistant Accountant in the pay scale of Rs. 490-760/-.

Since the petitioners were being deprived of their rightful claim at every stage, therefore, they made representations from time to time against being given the minimum wages. Subsequently the petitioners were granted back wages *vide* order No.7354/Do-111(85-88) dated 19.12.92 but later on the effect of the order was stayed since respondent No.3 adopted the policy of not giving back wages to the petitioner from the date of appointment and while finally disposing of the representation of the petitioners, instead of giving them back wages from the date of appointment, they were given two additional pay increments. In this connection copy of the representation dated 11.2.1991 and 25.10.93 were collectively being marked and filed as Annexure : 14 and copy of order dated 19.12.92 and 9.7.93 were filed as Annexure: 15 to the petition.

Company Secretary of the respondent no.2 accepted that the petitioners were appointed against regular vacancies and consequently

they ought to have been given regular pay scale since the date of appointment as they were suffering from financial and mental losses, therefore, they are being compensated by means of two financial increments. The financial and mental losses suffered by the petitioners were continuous but the petitioners were paid only two increments and no further increments were granted to the petitioners.

In the meeting of the departmental promotional committee held on 20.08.1996 (Annexure: 16), all the accounts employees who had been appointed on the post of Accounts Clerk in the pay scale of Rs.360-550, 410-640 and minimum wages were given equal status on the basis of their educational qualification in accordance with the sanction accorded by the second pay commission. Consequently, employees having qualification of B.Com and M.Com were accorded the post of Assistant Accountant in the pay scale of Rs.490-760/- revised to Rs.1350-2200/- and further revised to Rs.4500-7000/-.

In the meeting of the departmental promotional committee held in August 1996, the Assistant Accountants (Backdoor entrants of 1988) having B.Com and M.Com qualification, who had been appointed without application against the advertisement were again given undue advantage and were given the higher pay scale of Rs.1640-2900/- on the same post of Assistant Accountant. Thus, once again, the petitioners who had been appointed against the advertisement in 1988, suffered financial loss and loss in seniority against the candidates who had been appointed through backdoor entry up-graded to pay scale of Rs. 1640-2900 from 20.08.1996.

Petitioners brought the aforementioned illegalities and irregularities to the knowledge of the respondents by way of representations but the said representations were never disposed of, therefore, having no other option the petitioners filed a writ petition before the Hon'ble High Court of Allahabad in the year 1994 bearing No. 30923/1994, Nalini Kant Juyal and others vs. Managing Director GMVN which was later transferred to Nainital and was renumbered as W.P. M/S. No. 130/2002. However, the said writ petition was dismissed in default of the petitioners *vide* order dated 27.2.2007.

Against the said order of dismissal, the petitioner filed a restoration application along with a delay condonation application. However the restoration application was not entertained since the delay in filing the application was not condoned by the Hon'ble High Court. (Annexure: 18).

Apart from the petitioners, the other employees of the respondent No.2, who were also aggrieved by the arbitrary and illegal procedures and appointments, brought the said discrepancies and irregularities to the knowledge of the Managing Director, Respondent No.3, who *vide* order dated 15.10.2010 directed the employees to file their representation laying down their grievances therein.

In order to dispose of the said representation the respondent No. 2 *vide* order dated 04.07.2011(Annexure: 21), constituted a committee and directed the committee to submit their report with respect to all the issues/ discrepancies raised by the petitioners and other employees.

The said committee filed its report on 8.8.2012 and affirmed almost all the discrepancies/ illegalities raised by the petitioners and other employees. However, respondent No.3, instead of relying upon the report of the committee and granting relief to the petitioners and other employees, rejected the joint representation of the petitioners and other employees *vide* impugned order dated 24.01.2013 (Annexure: A).

Against the said impugned order the petitioners, along with other employees, once again filed their representation/ review dated 18.01.2013 and 09.03.2013(Annexure: 23) which was also rejected *vide* impugned order dated 14.03.2013. The said order was communicated to the petitioners *vide* letter dated 25.03.2013 (Annexure: 24).

Illegalities in appointment and the continuous arbitrary procedure adopted by the respondents is being challenged by the petitioners sine the year 1991, but instead of deciding the said issue on merits, every time the grievance of the petitioners is rejected on lame and technical grounds and has not been adjudicated upon on merits till date.

4. Written Statements/ Counter Affidavits have been filed on behalf of respondents largely contradicting the facts contained in the claim petition. Specific reference of such averments shall be made by us in the body of the judgment, if and when so required. Rejoinder Affidavits have also been filed on behalf of petitioners reiterating the facts contained in the claim petition.
5. Annexure: A and Annexure: B, among other things, are in the teeth of present claim petition.
6. Let us see what is the substance and fallout of Annexure: A dated 24.01.2014, issued by Managing Director, Garhwal Mandal Vikas Nigam (for short, GMVN).
7. Assistant Accountants of GMVN moved a joint representation on 19.05.2011 for fixing the seniority of the members of the cadre. Direct recruitment to the post of Assistant Accountant was done in the cadre of Assistant Accountants in the year 1988. The objection was that the Selection Committee, instead of looking into the merit list, gave weightage to the educational qualification and experience. No petition of Nalini Kant Juyal and Ranveer Singh Rawat is pending in any court. They made a representation that they should be promoted on the post of Accountant *w.e.f.* 20.08.1996.
8. The committee was constituted by GMVN to ascertain the facts of the representation, on 04.07.2011. The committee submitted its report on 08.08.2012.
9. The committee, in its report, referred to above, opined that the dispute is 25 years' old, which should be barred by time. Reopening of a case and ascertaining the seniority of Assistant Accountants since 1988, will entail serious consequences.
10. Nalini Kant Juyal and Ranveer Singh Rawat instituted a writ petition against Managing Director, GMVN in the year 1994 before Hon'ble High Court of Judicature at Allahabad. The same was subsequently transferred to the High Court of Uttarakhand at Nainital. Writ petition No. 130/2002 (SS) was dismissed for want of prosecution on 27.02.2007 (Annexure: R 1). A restoration application was filed by

the writ petitioners in the year 2009. Hon'ble Court, *vide* order dated 03.09.2009 dismissed delay condonation application and as a consequence thereof, restoration application was also dismissed.

11. Since the matter was not heard and finally decided, therefore, subsequent petition would not operate as *resjudicata*. There is no doubt about such proposition of law.
12. The petitioners thereafter moved a representation to GMVN, who constituted a committee to look into their grievances. Legal advice was sought from legal adviser. Legal opinion was given that the appointments/ seniority made in 1988, cannot be reviewed after about 25 years, more so, after the judgment of Hon'ble High Court.
13. Thus, instead of looking into the grievances of the petitioners, their representation was disposed of on the ground of delay/ laches. Such an order dated 24.01.2013 (Annexure: A) is under challenge in present claim petition. This was in respect of the representation of Nalini Kant Juyal and Ranveer Singh Rawat, Assistant Accountants.
14. Similar order (Annexure: B), was passed by GMVN in respect of the representation of Sh. S.P.S.Rawat, Sh. Ramesh Singh Panwar, Sh. S.P.Pant, Sh. Y.K.Bhasin and others on 13.03.2013
15. It is thus clear that instead of deciding representations of the petitioners and others on merits, the same was dismissed on the ground of delay / laches.
16. It may be made clear, at the very outset, that the petitioners and others, were not barred from making representation to GMVN, even if their writ petition was dismissed for want of prosecution and restoration application to restore the writ petition was dismissed on the ground of delay. No law provides that if a writ petition is dismissed in default, petitioners are barred from agitating their grievances by filing representations before the appropriate authority.
17. Normally, an objection would have been raised on behalf of respondents that since the matter pertains to the year 1988, therefore, claim petition before this Tribunal is barred in view of the decision

rendered in *State of Uttarakhand and another vs. Umakant Joshi, 2012(1) UD 583*, and subsequent judgment delivered by Hon'ble High Court of Uttarakhand in *Dr. Kamaljeet Singh and another vs. State of Uttarakhand and others, 2018(1) UD, 337*. Even if respondents would have raised such a plea, such submission would not have been acceptable to the Court in view of the fact that the departmental committee constituted to look into the grievances of the petitioners and others, in its report dated 08.08.2012 (Annexure: 22), has found serious irregularity in the selection process. Three members' committee, in its report dated 08.08.2012, has found that serious irregularities have been committed in selection process. As a consequence of which, the seniority and financial benefits of the representationists have been jeopardized. The committee's report dated 08.08.2012 has given impetus to the pleas of the petitioners. Limitation only suspends one's rights. Limitation does not extinguish his or her rights. Once high level committee has, *prima facie*, accepted petitioners' grievances, which were being agitated continuously by them and others since 1990, petitioners' rights have been regenerated. Nothing has been brought on record to show that others' rights have been perfected. Even if there is an oral plea in this respect, the same is not substantiated on the basis of documents on record. Nothing has been brought on record to buttress the plea taken by the respondents that rights of private respondents have been perfected and if a matter, which is more than quarter century old, is reopened, it will create 'tsunami'.

18. On in-depth evaluation of the marks obtained by the petitioners and others, the committee, in its report dated 08.08.2012, has appended a note that Ranveer Singh Rawat, Nalini Kant Juyal, S.P. Pant, in spite of obtaining 40% , 39.6%, 39.4% marks, have been placed below the candidates who secured 32.6% marks. The petitioners' claim for deciding their representations on merits should not, therefore, be swept under the carpet only on the pretext that the matter is too old to be reopened.
19. No one can dispute that Annexure: A and Annexure: B, which are under challenge in present claim petitions, have not been decided on

merits. They have only been summarily dismissed on the ground of 'delay'.

20. Initially, an objection was raised on behalf of respondents that necessary parties have not been arrayed as party-respondents in the claim petition. Having found substance in such submission of respondents, the petitioners were directed to implead them as respondents. They did the same.
21. When petitioners' writ petition was dismissed by Hon'ble High Court of Uttarakhand at Nainital, in default, it can safely be concluded that the dispute was not 'heard and finally decided'. Petitioners approached the Court by filing restoration application, but could not succeed, again, on the ground of delay. In the counter affidavits and also in documents on record, respondents have not been able to show as to what is likely to usher in a state of 'anarchy', if petitioners' representations are decided on merits.
22. Even otherwise, the petitioners have a legal right to challenge Annexures: A and B, which is in the shape of fresh decision, on the representations of the petitioners, by GMVN. The departmental committee has also touched upon the merits of the case and found anomaly in the selection process. How could the same be brushed aside so easily?
23. Written Statements/ Counter Affidavits filed on behalf of respondents are largely focused on the fact that the matter, which is 25 years old, should not be reopened, as it will create further complications.
24. The respondents have heavily relied upon the decision rendered by Hon'ble Apex Court in *Vijay Kumar Kaul and Others vs. Union of India and Others*, (2012)7 SCC 610. It may be stated here, at the cost of repetition, that the representation of the petitioners was dismissed purely on the factum of delay and laches on the part of the representationists. GMVN, initially constituted a committee, which committee submitted a report that there was some serious anomaly in the selection process, but soon backtracked, principally on the ground that a matter which is quarter century old, cannot be reopened. GMVN, it appears, has fallen

into serious error by expressing the view that belated approach is impermissible, as in the meantime interest of third parties got ripened and further interference, after enormous delay, is likely to usher in a state of 'anarchy'. It will not be out of place to mention here, again, that nothing has been brought on record to show as to how Third-parties' interest has ripened and how enormous delay is likely to usher in a state of 'anarchy'.

25. Such plea taken by the respondents is not impregnable. We, however, refrain from commenting upon the merits of the case. We simply wish to point out the anomaly in the selection process, which has been found by the committee constituted by GMVN in this behalf. Delay or laches is one of the factor which is to be born in mind. It is the settled law that one should approach the Court expeditiously for relief. A person is guilty of unexplained delay and laches, if he comes to the Court late. It is obligatory on one's part to come to the Court at the earliest or at least within a reasonable span of time and the acts done during the interregnum are to be kept in mind and should not be lightly brushed aside. It is a matter of great significance that equity, which existed in favour of respondents at one point of time, has melted into total insignificance when GMVN constituted a committee to look into the grievances of the petitioners and the committee has given a *prima facie* opinion that there was serious anomaly in the selection process of the Assistant Accountants. The march of ascendancy of the respondents has, therefore, faded into oblivion.

26. The concept of justice is that one should get what is due to him/her, in law. Justice demands that a person should not be allowed to derive any undue advantage over other employees. Throwing the representations of the petitioners on the ground of laches, does not buttress the cause of the respondents. It is not a case in which, putting a clock back and disturbing the seniority position, would be extremely inequitable. Justice, equity and fairness require that the representations of the petitioners should be decided on merits. Throwing their representations on the ground of laches, would not serve the ends of justice, especially when the internal committee of department has,



*prima facie*, given an opinion in favour of petitioners and has highlighted serious anomaly in the selection process.

27. Affected parties have already been impleaded and , therefore, one cannot raise a plea that the doctrine of *Audi Alteram Partum* has been put into hazards.

28. In the decision of *Ramchandra Shankar Deodhar and others vs. The State of Maharashtra and others*, AIR 1974 SC 259, Hon'ble Apex Court has observed as follows:

“The rule which says that a Court may not inquire into belated or stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. The question is one of discretion, to be followed on the facts of each case”.

“It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there was reasonable explanation for the delay. It may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Article 16 is itself a fundamental right guaranteed under Article 32 and this Court which has been assigned the role of a sentinel on the qui viva for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like.”

29. The decision of *Union of India and Others vs. Chaman Rana*, (2018) 5 SCC 798, has been referred to on behalf of Respondents No. 12 & 13. In the said decision, there is a reference of another decision, viz, *The Gandhinagar Motor Transport Society vs. Kasbekar*, AIR 1954 Bom 202, in which following was observed:

“2....Now, we have had occasion to point out that the only delay which this Court will excuse in presenting a petition is the delay which is caused by the petitioner pursuing a legal remedy which is given to him. In this particular case the petitioner did not pursue a legal remedy. The remedy he pursued was extra-legal or extra-judicial. Once the final decision of the Government is given, a representation is mercy an appeal for mercy or indulgence, but it is not pursuing a remedy which the law gave to the petitioner...”

30. In *Gandhinagar Motor Transport Society* case, the final decision was taken by the Government and thereafter a representation was moved. The facts in the instant case are different, inasmuch as no final decision was taken by the Government. Contrary to that, when a representation was moved on behalf of petitioners, a committee found substance in the grievance of the petitioners and others and thereafter representations were dismissed solely on the ground of delay. Therefore, *Gandhinagar Motor Transport Society's* decision is not applicable to present petitioners.

31. There is a reference of another decision, *viz.*, *Union of India vs. M.K.Sarkar* (2010)2 SCC 591, in which the following was observed:

“16. A court or tribunal, before directing “consideration” of a claim of representation should examine whether the claim or representation is with reference to a “live” issue or whether it is with reference to a “dead” or “stale” issue. If it is with reference to a “dead” or “stale” issue or dispute, the court/ tribunal should put an end to the matter and should not direct consideration or reconsideration.....”

32. This decision is, again distinguishable from the facts of the instant case inasmuch as the issue in present case is still alive, which has not been put to an end and requires consideration on merits. The issue has been buried only on the ground of delay and laches.

33. In Chaman Rana's decision (*supra*), no relief was granted on the ground that a direction to consider retrospective promotion of the respondents would virtually bring a tsunami in the service resulting in administrative chaos quite apart from the financial implications for the Government. The respondents, in the instant case, have not been able to show as to how consideration of the representations of the petitioners on merits would bring tsunami in the service resulting in administrative chaos.
34. This Court, however, is of the opinion that the representations of the petitioners should be decided on merits and if there is substance in their grievances, the same may be ventilated by granting them due pay scales by creating supernumerary/ ex-cadre posts and at the same time, the pay scales/ seniority, given to the respondents be not disturbed to avoid 'administrative difficulties', in the peculiar facts and circumstances of the case, purely in the interest of justice.
35. Order accordingly.
36. The impugned order dated 24.01.2013 (Annexure: A) and order dated 14.03.2013 (Annexure: B) are hereby set aside. A direction is, therefore, given to respondent No.3 to decide the representation of the petitioners on merits, in accordance with law, within a period of three months of presentation of certified copy of this order before the said respondent and if some substance is found in their grievances, the same may be redressed by granting them due pay scales by creating supernumerary/ ex-cadre posts and at the same time, pay scales/ seniority given to respondents be not disturbed to avoid administrative difficulties.

**(D.K.KOTIA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: AUGUST 31, 2018*  
*DEHRADUN*

VM

First Question

***Res judicata- Essentials of*** – Before a plea of res judicata can be given effect, the following conditions must be proved-

- (i) That the litigating parties must be the same;
- (ii) That the subject-matter of the suit also must be identical;
- (iii) That the matter must be finally decided between the parties; and
- (iv) That the suit must be decided by a Court of competent jurisdiction.

Syed Mohd. Salie Labbai v. MOhd. Hanifa, AIR 1976 SC 1969

A plain reading of Section 11 shows that no constitute a matter res judicata, the following conditions must be satisfied, namely:

- (i) The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue in the former suit;
- (ii) The former suit must have been a suit between the same parties or between parties under whom they or any of them claim;
- (iii) The parties must have litigated under the same title in the former suit;
- (iv) The Court which decided the former suit must be a Court competent to try the subsequent suit or the suit in which such issue is subsequently raised; and
- (v) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the first suit.

3. Res judicata- Underlying principle- The doctrine of res judicata is not confined to a decision in suit but it applies to decisions in other proceedings as well. But how far a decision which is rendered in other proceedings will bind the parties depends upon other considerations, one of which is whether that decision determines substantial rights of parties and the other a whether the parties are given adequate opportunities to establish the rights pleaded by them. The underlying principle of that doctrine is that there should be finality in litigation and that a person should not be vexed twice in respect of the same matter. *Shri Bhavanarayanawamivari Temple vs. Vadapalli Venkata*, (1970)1 SCC 673.

A dismissal of a suit for default of the plaintiff would not operate as res judicate against a plaintiff in a subsequent suit on the same cause of action. If it was otherwise, there was no need for the Legislature to enact Rule 9, Order IX, C.P.C., which in specific terms says that where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. The contention that the dismissal of a previous suit for default of the plaintiffs operates as res judicata in subsequent suit in respect of the same claim is unsustainable. –*Shiva Shankar Prasad Sah vs. Baikunth Nath Singh*, 1970 BLJR 1(SC): (1970 )1 SCJ 101