

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12586 of 2007

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Chandra Bilash Sharma aged about 58 years, son of Late Ram Bal Sharma,
resident of Village Supta, Police Station Tekari, District Gaya.

.... Petitioner

Versus

1. The State of Bihar through the Agriculture Production Commissioner –cum- Secretary, Department of Agriculture, Government of Bihar, having his office in Vikas Bhawan, Police Station Sachivalaya, District Patna.
2. The Secretary-cum-Commissioner, Personnel and Administrative Department, Government of Bihar, Patna, having his office in old Secretariat, Police Station Sachivalaya, District Patna.
3. The Commissioner, Magadh Division, Gaya.
4. The Collector, Gaya, District Gaya.
5. The Deputy Collector Establishment, Gaya Collectorate, Gaya.
6. The Block Development Officer, Paraia Block, District Gaya.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Yugal Kishore, Sr.Adv.
Mr. Virendra Prasad, Adv.

For the Respondent/s : AC to Principal Addl. Advocate General

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

5. 10-02-2015 Heard Sri Yugal Kishore, learned senior counsel, who was assisted by Sri Virendra Prasad, learned counsel for the petitioner and learned A.C. to Principal Addl. Advocate General.

The petitioner, invoking its writ jurisdiction under Article 226 of the Constitution of India, has prayed for quashing of an order dated 14-06-2007 passed by the Divisional Commissioner in Service Appeal Case No. 27 of 2007, whereby, the statutory appeal preferred by the petitioner was rejected by the appellate authority, only on the ground of limitation treating it as barred by 51 days, whereas, learned counsel for the petitioner

submits that according to petitioner, delay was for about 36 days.

In the writ petition, the prayer has also been made to quash an order contained in Memo No. 1134 dated 1.8.2006 issued by the disciplinary authority i.e. Collector, Gaya, whereby the petitioner was inflicted with the punishment of withholding of four increments with cumulative effect and also for withholding of salary of the suspension period beyond the subsistence allowance.

At the time of hearing, learned counsel for the petitioner confined his prayer to quash the order of the appellate authority. Learned senior counsel submits that before the appellate authority, a specific stand was taken that due to bona-fide mistake, delay had occurred, which was not intentional, even then, the learned appellate authority, without examining the appeal on its merit, has dismissed the appeal on limitation and as such, he makes a prayer for quashing of the order of the appellate authority and remit back the matter to the appellate authority for deciding the appeal on merit.

Keeping in view the reasonable prayer made by learned senior counsel for the petitioner, the Court is of the opinion that matter can be remitted back after setting aside the order of the appellate authority i.e. order dated 14-06-2007 passed by the Divisional Commissioner, Gaya in Service Appeal Case

No. 27 of 2007, which was dismissed only on the ground of limitation.

Accordingly, the order of the appellate authority is, hereby, set aside and the matter is remitted back to the Divisional Commissioner, Magadh Division, Gaya. The appellate authority is required to hear the appeal and decide the same in accordance with law, preferably; within a period of two months from the date of receipt/production of a copy of this order.

The writ petition stands disposed of.

(Rakesh Kumar, J.)

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