

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7444 of 2000

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Shukdeo Subodh Gandhi, S/o Late Ram Briksha Ram, resident of Village-Bhatnahia, P.O.-Narkatia Bazar, P.S.-Darpa, District-East Champaran, and at present posted as an Executive Engineer, Public Health Engineering Division P.H.E.D., Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner-Cum-Secretary, Public Health Engineering Department (in short P.H.E.D.), Bihar, Patna.
3. The Joint Secretary, Public Health Engineering Department, Government of Bihar, Patna.
4. the Engineer-in-Chief-cum-Special Secretary, P.H.E.D., Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Tewary, Adv.
 Mr. Subhash Kumar, Adv.

For the Respondent/s : Mr. (GP-5), Adv.
 Mr. A.K.Singh-3, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 26-06-2015

Heard learned counsel appearing on behalf of the parties.

2. The petitioner has challenged the Government Resolution dated 06.07.1991, issued under the signature

of the Joint Secretary, Public Health Engineering Department, Government of Bihar, communicated to him through Memo No. 641, whereby, following punishments have been imposed upon him:-

“(i) Censure and stoppage of two increments with cumulative effect due to wrong and misleading statement made by the petitioner for misleading the high officials,

(ii) recovery from the salary of the petitioner for making irregular appointments as a result the Govt. had been put in financial loss,

(iii) recovery from the petitioner for financial loss sustained to the respondent state due to the shortage of the materials in the store.”

3. It is the petitioner's case that he had preferred an appeal against the said order in the year 1991 before the Government of Bihar and despite the reminder sent in the year 1993, there is no communication as regards, decision on the said appeal.

4. In my opinion, this writ application suffers from the vice of delay and laches, inasmuch as, questioning an order passed in July, 1991, this writ application came to be filed more than 9 years thereafter on 11.08.2000. It is

settled legal position that the High Court under Article 226 of the Constitution of India, should not entertain belated claims, unless tangible explanation is tendered. This principle has been reiterated by Supreme Court in its various decisions, few of them are as follows:-

- (i) “*Naresh Kumar vs. Department of Atomic Energy and Ors.*”, [(2010) 7 Supreme Court Cases 525];
- (ii) “*C. Jacob vs. Director of Geology and Mining and Anr.*”, [(2008) 10 Supreme Court Cases 115];
- (iii) “*S. S. Balu and Anr. vs. State of Kerala and Ors.*”, [(2009) 2 Supreme Court Cases 479].

5. In a recent decision, a Division Bench of this Court in case of “*Surajdeo Lal vs. The State of Bihar & Ors.*” reported in “2015 (2) PLJR 793”, Paragraph – 5 of has held thus:-

“5. Dealing with the question as to whether a time barred debt can be recovered by taking resort to Article 226 of the Constitution of India, the Constitution Bench, in *State of Madhya Pradesh and Another v. Bhailal Bhai*, reported in (1964) 6 SCR 261, observed that the remedy, which Article 226 of the Constitution of India provides, is not aimed at superseding completely the modes of obtaining relief by an action in a civil court



*or to deny the defence legitimately open in such actions. Pointed out the Constitution Bench in **Bhailal Bhai** (supra) that the power to give relief under Article 226 of the Constitution of India is a discretionary power and this is, particularly, true in the case of issue of a writ of mandamus and while deciding as to whether the court shall exercise its discretion to issue the writ, one of the factors, which the court must take into account, is the delay made by the aggrieved party in seeking the remedy under Article 226 of the Constitution of India and what explanation, if any, has been offered for such a delay. Further points out, the Constitution Bench, in **Bhailal Bhai** (supra), that the maximum period fixed by the legislature as the period of limitation for obtaining relief from the civil court is a matter of State's policy and may be, ordinarily, taken to be reasonable standard by which the delay in seeking the remedy under Article 226 of the Constitution of India can be measured. In fact, the court may consider, in the light of **Bhailal Bhai** (supra), the delay as unreasonable even if the delay is for a period less than the period of limitation prescribed for a civil action; but where the delay is of a period, which is more than the prescribed period of limitation, it would almost always be proper for the court to hold that such delay is unreasonable. The Constitution Bench, in **Bhailal Bhai** (supra), concluded thus:*



“It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known. If the mistake was known in these cases on or shortly after January 17, 1956 the delay in making these applications should be considered unreasonable. If, on the other hand, as Mr. Andley seems to argue, the mistake was discovered much later, this would be a controversial fact which cannot conveniently be decided in writ proceedings. In either view of the matter we are of the opinion the orders for refund made by the High Court in these seven cases cannot be sustained.”

6. In view of the above, the writ application deserves to be dismissed on the ground of delay and laches and is, accordingly, dismissed.

7. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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