

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14224 of 2015

=====

1. Kailash Sahu Son of Dhanika Sah Resident of Gokhalenagar, Police Station - Balia, District - Begusarai
2. Nagmani Kumar Son of Uttam Paswan
3. Vijay Paswan, son of Uttam Paswan
Both 2 and 3 are Resident of Mohalla - Mohanpur, Police Station - Begusarai (Mufassil), District - Begusarai

.... Petitioners

Versus

1. The State of Bihar through the District Magistrate, Begusarai
2. The District Magistrate, Begusarai
3. The Secretary, Department of Homes, Government of Bihar, Patna
4. Director General, Bihar Home Guard, Patna
5. Commandant Bihar Home Guard, District - Begusarai
6. Superintendent of Police, Begusarai

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Choudhary Shyam Nandan
For the Respondent/s : Mr. Prashant Pratap

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 11-09-2015 Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:

“That this writ petition is being filed for the issuance of writ/ writs, direction/ directions, order/orders, command/ commands and filed for the issuance of writ in the nature of certiorari to quash the order of respondent no.2, District Magistrate, Begusarai contend in District order 38/90 dated 31.8.1990, (the entire order is not available to these petitioners) rather the individual order passed against petitioner no.1 which is abstract of D.O.no. 38/90 (Annexure 1) by which the petitioners alongwith others 6 Home guards were discharged from their services, petitioner prays for the issuance of writ in the nature of mandamus directing the respondent no.2, 5 and 6 to



follow the direction issued from the Department of Homes (Special), Govt. of Bihar, contend in Memo no.266, Patna dated 17.2.1999 (Annexure 2) in consonance of the government decision the petitioners' reenrollment be made and exonerate them from the Discharge as no any Departmental proceeding initiated or show cause asked from them before the order of discharge i.e. D.O.no, 38/90 of dated 31.8.1990, petitioners further pray for after exoneration assigned the date and issue command to these petitioners and petitioner further prays for grant of any other relief/reliefs for which the petitioner found entitled in the facts and circumstances of this case be also given."

Learned counsel for the petitioners has submitted that the petitioners' order of discharge from Home Guard passed on 31.8.1990 by the District Order No. 38 of 1990 is fit to be interfered with especially in view of the subsequent decision of the Government dated 20th December, 1999 and 10th May, 2012.

This Court on a careful perusal of the materials on record would find firstly the writ petition assailing an order of discharge of the petitioners dated 31.8.1990 being assailed in this writ application filed on 7.9.2015 to be suffering from delay of more than 25 years. Thus, this writ application is fit to be dismissed only on the ground of delay and laches.

The explanation of the learned counsel for the petitioners

that the subsequent Government decision of the year 1999 and 2012 would give the petitioners a cause of action to assail the order of 1990 has to be only noted for its being rejected. The 1999 order was very clear that only such of the Home Guards discharged from the service could be considered for their being taken back in service against whom there was no allegation of violence and/or whose discharge order has not been passed after following the prescribed procedure. Similarly, the 2012 order also is a qualified order. In this case the petitioners' discharge was made on a specific allegation of not only indulging into violence but also allegedly extracting money from the truck owners/drivers. The issue as to whether such an order is a bad order has to be raised at the appropriate point of time but that cannot be now indirectly questioned on the ground of subsequent order of the Government of 1990 and 2012.

This application is wholly misconceived and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

surendra/-

U			
---	--	--	--