

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 18 of 2014

IN

Civil Writ Jurisdiction Case No. 15427 of 2013

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Bal Krishna Prasad, Son of late Mathura Prasad, resident of 302 B-Block, Raksha Apartment, Shahi Lane, S.P. Verma Road, P.S.-Gandhi Maidan, District-Patna.

.... Appellant

Versus

1. The State of Bihar through Principal Secretary, Department of Health, Government of Bihar, Patna.
2. Principal Secretary, Department of Health, Government of Bihar, Patna.
3. Director, Health Services, Government of Bihar, Patna.
4. Deputy Director, Health Services (Pra), Government of Bihar, Patna.

.... Respondents

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Appearance :

For the Appellant : Mr. Diwakar Sinha, Advocate

For the Respondents : Mr. Prabhat Kumar Singh, S.C.-12

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

Date: 10-08-2015

Aggrieved by the order, dated 13/08/2013, passed by the learned Single Judge in C.W.J.C. No. 15427 of 2013, whereby the writ application, under Article 226 of the Constitution of India,

has been dismissed on the ground of delay and laches on the part of the petitioner/appellant in approaching this Court, the present appeal under letters patent of this High Court has been preferred by the appellant.

2. Necessary facts for disposal of the present appeal are not in dispute. The appellant was in Bihar Health Service and he retired upon attaining the age of superannuation, while acting as Superintendent T.B. Sanatorium Hospital, Itaki, Ranchi (Bihar), with effect from 31/12/1996. After he retired from service in the year 1998, a seniority list of his cadre was said to have been published, wherein name of the appellant was placed at Serial No. 727(T). It is the appellant's case that through notification, dated 25/03/1998, he was given promotion in senior selection grade (12½%) with effect from 01/04/1987 and he had been receiving full pension on that basis.

3. Through subsequent notification, dated 18/07/1998, persons belonging to the cadre, to which the appellant belonged, were given super time scale (2½%) with effect from different dates from 01/02/1989 till 01/03/1997. The appellant's case was, however, not considered on 14/08/1998. The appellant is said to have made a representation to the Commissioner-Cum-Principal Secretary, Health Department, Government of Bihar. In the year



1999, certain explanation was sought from the petitioner relating to irregular purchase of medicines from M.S.D., Kolkata, during the period 11/05/1993 and 29/02/1996. The appellant is said to have submitted his explanation on 20/07/1999. Nearly eight years thereafter, he filed an application, under Right to Information Act, 2005, seeking reason as to why he was not given super time scale. Through letter, dated 27/07/2009, the Public Information Officer informed the appellant that his case was not considered for super time scale in the year 1998 as per the records, but no information was available as to why he was not granted the said scale. It also contained information that in the year 2001, his case for grant of super time scale was considered, but the scale was not given to him, because of the charge pending against him relating to M.S.D. It is the appellant's case that in the year 2011, the Government of Jharkhand informed the Government of Bihar that no matter relating to or, against, the appellant was pending. Thereafter, the appellant claims, he made several representations from 26/12/2011 to 30/07/2012 and, finally, filed the writ application, on 07/08/2013, giving rise to C.W.J.C. No. 15427 of 2013. The said writ application came to be dismissed by the order under appeal, dated 13/08/2013, passed by the learned Single Judge.

4. Mr. Diwakar Sinha, learned counsel, appearing on



behalf of the appellant, has submitted that the learned Single Judge fell in error, while refusing to entertain the appellant's case on the ground of delay and laches, as the appellant was waiting for a decision to come after he was asked to reply to a show-cause notice, dated 08/07/1999. He has submitted that the appellant did not receive any communication thereafter and, in such circumstance, his writ application ought not to have been rejected on the ground of delay and laches, there being apparent laches on the part of the respondents.

5. We have perused the order under appeal, dated 13/08/2013, passed by the learned Single Judge in C.W.J.C. No. 15427 of 2013. We do not find any infirmity with the reasons assigned by the learned Single Judge, while refusing to entertain the petitioner's writ application on the ground of delay and laches. It appears from the order under appeal that there was nothing on the record before the writ Court to show that the appellant ever submitted his explanation in response to the notice, dated 08/07/1999. He knew that in the year 1998, persons of the cadre, to which the appellant belonged, were given super time scale. He, however, did not take recourse to any appropriate remedy within a reasonable time. There is absolutely no explanation as to what the appellant had been doing right from the year 1999 up-to 2007,

when he is said to have filed an application under Right to Information Act. The writ application was filed on 07/08/2013. The delay in approaching this Court, immediately, after cause of action arose has not at all been explained in the writ application nor before this Court.

6. It is well settled that delay and laches are important factors to be borne in mind by the High Courts, while exercising discretionary power under Article 226 of the Constitution of India and it may refuse to invoke extra ordinary jurisdiction if there is negligence and omission on the part of the petitioner to assert his right. Though no period of limitation is prescribed for moving before the High Court, invoking its extra-ordinary remedy under Article 226 of the Constitution of India, it is settled law that if there is no satisfactory explanation for inordinate delay, the High Court may reject the petition. The Supreme Court in case of ***“NAIB SUBEDAR LACHHMAN DASS VERSUS UNION OF INDIA AND OTHERS”*** [A.I.R. 1977 SUPREME COURT 1979], while dealing with the question as to what can be regarded as reasonable time within which an aggrieved person should approach the High Court, held that so far as the service matters are concerned, as for example, for promotion, the person aggrieved should approach the Court within six months or, at least, one year of the promotion.

7. The reference may also be made to other decisions of the Supreme Court in cases of ***“CHENNAI METROPOLITAN WATER SUPPLY AND SEWERAGE BOARD AND OTHERS VERSUS T.T. MURALI BABU” [(2014) 4 SUPRME COURT CASES 108]*** and ***“S.S. BALU AND ANOTHER VERSUS STATE OF KERALA AND OTHERS” [(2009) 2 SUPREME COURT CASES 479]***, where belated claims have been held to be not maintainable in a proceeding under Article 226 of the Constitution of India.

8. We do not find any infirmity in the order under appeal dated 13/08/2013, warranting interference. This appeal is, accordingly, dismissed.

9. There shall be no order as to costs.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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