

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.15 of 2017  
IN  
Civil Writ Jurisdiction Case No. 1548 of 2011**

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1. Brahamdeo Prasad Yadav Son of Late Anandi Prasad Yadav resident of Village Nista Post Office and Police Station - Surajgarha, District - Lakhisarai.

.... .... Appellant/s

Versus

1. The State of Bihar through its Secretary, Water Resources Department Irrigation Bhawan, Patna - 1.  
2. Engineer-in-Chief, Water Resources Department, Government of Bihar, Patna.  
3. Deputy Secretary, Government of Bihar, Patna.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Amit Shrivastava, Advocate  
Mr. Puneet Siddhartha, Advocate  
Mr. Girish Pandey, Advocate  
For the Respondent/s : Mr. Anjani Kumar- AAG-4

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE SUDHIR SINGH**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date: 08-05-2017**

Seeking exception to an order dated 6.12.2016 passed by the learned Writ Court in C.W.J.C. No.1548 of 2012, this appeal has been filed under Clause 10 of the Letters Patent.

Having heard learned counsel for the parties, we find that the writ petition filed by the petitioner bearing C.W.J.C. No.1548 of 2012 has been dismissed on 6.12.2016 only on account of the fact that with regard to quashing a memorandum dated 6.6.2001, issued by the Government of Bihar dismissing the appellant from service, the appellant had approached the Court after



a period of ten years. However, in doing so, we find, the learned Writ Court lost sight of the fact that along with the petitioner one Bikrama Singh was also proceeded with, similar charges were levelled against him and in his case also similar action was taken. Both the petitioner and Bikrama Singh were prosecuted in Trial Case No.138 of 2013 and thereafter they were granted certain benefit in the criminal case. However, in the case of Bikrama Singh, he challenged the action taken against him in C.W.J.C. No.10363 of 2002 and by a detailed order dated 26.2.2009, Annexure-8, in the record of C.W.J.C. No.1548 of 2011, action taken against him was found to be unsustainable. Certain procedural irregularities were found in the departmental proceedings held and, therefore, quashing the order the matters were remanded back with liberty to the Department to proceed afresh in accordance with law, if they so desired. This order of the writ Court was upheld in the case of Bikrama Singh by a Division Bench and it was after the orders rendered in the case of Bikrama Singh and contending that the Governor, to whom an appeal was filed, has not taken a decision in the matter, the petitioner approached this Court by filing a writ petition.

Even though learned Counsel for the State objected to the act of the petitioner in sleeping over the matter and not approaching this Court within a reasonable time, the learned counsel



for the appellant relying upon certain judgments, tried to indicate that if the matter was being prosecuted in a wrong forum, that itself cannot be a ground and delay cannot be a ground for dismissing the appeals filed in a court of law.

We are of the considered view that in this case, the petitioner was waiting for a decision in his appeal by the Hon'ble Governor. The fact remains that petitioner and Bikrama Singh were proceeded against together on identical allegations and Bikrama Singh had been granted relief. Apart from the fact that the litigation policy of the State mandates the State to grant similar benefit to all if found to be identically situated, the Hon'ble Supreme Court also, in the case of State of U.P. vs. Arvind Kumar Srivastava, (2015) 1 SCC 347, mandates that when a particular set of employees is given relief by Court, all other identically situated persons should be treated alike by extending the same benefit, since not doing so would amount to discrimination and be violative of Article 14 of the Constitution of India.

Accordingly, in the facts and circumstances of the case, we are of the considered view that by dismissing the writ petition of the petitioner only on the ground of delay all these aspects of the matter, particularly parity with the case of Bikrama Singh and the litigation policy of the State with regard to pending



appeals have been lost sight of and, therefore, this is a fit case where the appeal should be allowed, the order quashed and the matter remanded back to the learned Writ Court to consider all aspects of the matter as are indicated hereinabove and thereafter take a fresh decision in accordance with law. It is accordingly ordered.

**(Rajendra Menon, CJ)**

**(Sudhir Singh, J)**

K.C.jha/-

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