

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 10787 of 2014

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Narendra Kumar Mishra S/o Late Mohan Mishra resident of High School Road,
Forbesganj, P.S- Forbesganj, District- Araria, at present Ganga Sadan Mohalla
Vidyapati Nagar, Saharsa.

.... Petitioner/s

Versus

1. The Oriental Insurance Company Ltd through General Manager, Oriental House
P.B. No. 7037, A, 25/27 Asaf Ali Road, New Delhi- 110002
2. The General Manager- Cum- Appellate Authority, Oriental House, P.B. No.
7037, A- 25/27 Asaf Ali Road, New Delhi- 110002.
3. The Deputy General Manager- Cum- the Disciplinary Authority, the Oriental
Insurance Company Limited Oriental House, P.B. NO. 7037, A-25/27 Asaf Ali
Road, New Delhi- 110002.
4. The Regional Manager, the Oriental Insurance Company Limited, Regional
Office, Pirmohani, Patna.
5. The Divisional Manager, The Oriental Insurance Company Limited, Divisional
Office, New Market Bhatta Bazar, Purnea
6. The Inquiry Officer- Cum- Divisional Manager, the Oriental Insurance Company
Limited Divisional Office, Jamshedpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr Amarnath Jha, Advocate

For the Respondent/s : M/s Satyabir Bharti, Alok Chandra, Advocates

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 01-12-2017

Heard the counsel for the petitioner and the counsel for
the Insurance Company.

2 The petitioner has challenged the appellate order
passed on March 2, 2007 dismissing the petitioner's appeal against the
order passed by the disciplinary authority dated 28.11.2006 whereby
punishment of "*Removal from the services of the Company which
shall not be disqualification for future employment*" has been passed.



3 Counsel for the petitioner has relied upon judgment dated 26.02.2014 passed in *CWJC No 4985 of 2007* as also one judgment dated 24.03.2014 passed in *CWJC No 5732 of 2007* and another judgment dated 02.04.2014 passed in *CWJC No 15826 of 2007* to contend that the petitioner's case is covered by the said judgments, as in a similar way, the petitioners of those cases have been dismissed from service without assigning any reason and without considering the issue raised by the petitioners of those cases in the appeal.

4 Neither his written statement in response to the charge memo nor the Memo of Appeal filed by the petitioner has been placed on record. Pleadings have been made in the writ petition trying to absolve the petitioner of his guilt by suggesting that the responsibility of allowing inadmissible claims lay on other officials and not on the petitioner. In absence of the written statement or the Memo of Appeal, it is not possible for this Court to say whether such issues were raised before the disciplinary authority or the appellant authority. It is also not possible for this Court to examine whether such issues, if any raised, the same have not been considered by the disciplinary authority or the appellate authority. The claim of the petitioner that his case is similarly situated as that of the petitioners in the aforesaid three writ petitions cannot be considered on such insufficient



pleadings as it is not possible for this Court to examine whether this matter is similar to that of the writ petitioners.

5 The petitioner has not mentioned any reason whatsoever for approaching the Court after delay of more than seven years when the appellate order has attained finality which has not been challenged by the petitioner even by way of memorial provided under the Rules.

6 Counsel for the respondents has relied upon the case of *Tridip Kumar Dingal & Others –Versus- State of West Bengal & Others*, (2009) 1 Supreme Court Cases 768. He relies upon paragraphs 56, 57, 60, 61 which are reproduced herein below.

“56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles, 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such consideration is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonable possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already



been disposed of or settled or where the rights of third parties have accrued in the meantime (vide State of MP v Bhailal Bhai, Moon Mills Ltd v Industrial Court and Bhoop Singh v Union of India). This principle applies even in case of an infringement of fundamental right (vide Tilokchand Motichand v H B Munshi, Durga Prasad v Chief Controller of Imports & Exports and Rabindranath Bose v Union of India).

60. *From the facts, it is clear that written examination for the selection of Medical Technologists was taken as early as in August 1995 and list of more than 1000 candidates was published in June 1996. By now more than a decade has passed. The applicants who had never challenged the selection before the Tribunal, before the High Court and before us and have applied for the first time in the present proceedings which were instituted in 2005 by filing impleadment application have thus accepted the position as prevailed in 1996. Qua them, therefore, the matter can be said to have been “settled”. Initiation of proceedings at the instance of those candidates now will “unsettle the settled position.”*

61. *In our opinion, the learned counsel for the State is right in contending that even if this Court holds that the appellants who have approached this Court are entitled to some relief, such relief could be granted to those candidates who had grievance against the selection and who had challenged the action of the respondent authorities but it could not be extended to the applicants who have approached this Court in the present proceedings.”*

His contention is that the writ application has been filed after delay and laches and the claim of the petitioner is now stale since the matter has already attained finality and the position has been



accepted by the petitioner way back in the year 2007, he cannot be permitted to turn around and challenge the same after such a long delay.

7 Counsel for the petitioner, on the other hand, has relied on the judgment rendered in the case of *K B Ramchandra Raje –Versus- State of Karnataka & Others*, (2016) 3 Supreme Court Cases 422, more specifically paragraph 28 thereof, which is being reproduced herein below:

“28. It has been vehemently argued on behalf of the respondents that the writ petition ought not to have been entertained and any order thereon could not have been passed as it is inordinately delayed and the appellant has made certain false statements in the pleadings before the High Court details of which have been mentioned hereinabove. This issue need not detain the Court. Time and again it has been said that while exercising the jurisdiction under Article 226 of the Constitution of India the High Court is not bound by any strict rule of limitation. If substantial issues of public importance touching upon the fairness of governmental action do arise, the delayed approach to reach the Court will not stand in the way of the exercise of jurisdiction by the Court. Insofar as the knowledge of the appellant-writ petitioner with regard to the allotment of the land to Respondent 28 Society is concerned, what was claimed in the writ petition is that it is only in the year 1994 when Respondent 28 Society had attempted to raise construction on the land that the fact of allotment of such land came to be known to the appellant-writ petitioner.”

8 This Court is conscious that while exercising



jurisdiction under Article 226 of the Constitution, the strict rule of limitation does not come into operation where substantial issues are raised. In the instant case, it is not only a case of limitation per se in terms of passage of time but it is a case of laches on the part of the petitioner in approaching the Court casually after making insufficient pleading so as to limit the consideration of the Court regarding the case of the petitioner.

9 The aforesaid judgment relied upon by the counsel for the petitioner does not appear to be applicable in the facts of the case. In the said cases, at least explanation has been offered. The same is not the position here.

10 Considering the aforesaid circumstances, the writ petition is dismissed as being barred by delay and laches and for the reasons mentioned hereinabove.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
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