

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.526 of 2016
In
Civil Writ Jurisdiction Case No. 8526 of 2008

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Surendra Prasad Mahto, Son of Late Sita Ram Saran, resident of village -
Jamuara, P.S. Tekari, District – Gaya. At Present resident of Salora Tanr,
P.S. & District - Deoghar (Jharkhand).

.... Appellant

Versus

1. The State of Bihar, through the Secretary, Welfare Resources
Department, Government of Bihar, Patna.
2. The Commissioner Cum Secretary, Water Resources Department,
Government of Bihar, Patna.
3. The Joint Secretary, Water Resources Department, Government of
Bihar, Patna.
4. The Deputy Secretary, Water Resources Department, Government of
Bihar, Patna.

.... Respondents

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Appearance :

For the Appellant : Mr. Gopi Jha, Advocate.

For the Respondents : Mr. Madhuresh Prasad, G.P. 12.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

- 3 28-03-2017 The petitioner was working as an Executive Engineer

in the Water Resources Department, Government of Bihar, Patna.

He retired from the service and after his retirement, vide
Annexure-7 filed in the original writ petition, in the year 1998 by
way of punishment, 10% of pension was directed to be deducted
from his pension as a measure of departmental action for the acts
of omission and commission conducted by him while in service.
Challenging this order of punishment issued in the year 1998, the
writ petition was filed after 10 years in the year 2008 and the
learned Writ Court had dismissed the writ petition on the ground



of inordinate delay. This present appeal has been filed under Clause 10 of the Letters Patent Appeal and the learned counsel appearing for the appellant invites our attention to law laid down in the case of **Union of India & Ors. Vs. Tarsem Singh**, reported in 2008(8) SCC 648 and referred to the principle enumerated in paragraph no. 7 of the said judgment to say that the recovery from pension is recurring cause which results in deductions from the persons every month when the petitioner receives less pension and therefore in case like this on account of delay and laches, the petition cannot be dismissed. We have considered the aforesaid submission of the learned counsel for the appellant and we find that the principles laid down in the case of Tarsem Singh(Supra) will not apply. In the case of Tarsem Singh, the principle laid down was that when an action is taken and the same has a effect of recurring loss every month due to wrong fixation of pay or wrong fixation of pension, challenge to such recovery cannot be rejected on the ground to delay or laches. The said principle will not be applied in the present case where for the omission and commission i.e., a misconduct committed by the petitioner while in service, a punishment order was issued in the year 1998 of a Department enquiry was conducted and the deduction from pension was on account of the punishment impugned and therefore the cause of action for filing the writ petition is the issuance of the punishment



order itself that was issued in the year 1998. The reduction of pension is a consequential of the punishment inflicted upon the petitioner and therefore the petitioner's grievance with regard to the punishment imposed in the year 1998 having been not challenged within the reasonable period of time. The principle of delay and laches will apply when challenge is to the punishment order. The consequence of the punishment order i.e., recovery from pension would not be cause of action for filing the petition. Recovery from pension is a consequence of the punishment inflicted, it is not a cause for filing the petition. The cause for filing the petition will be the punishment order itself and not the consequential effect of the order. That being so, the petitioner had slept over the matter and challenged the order of punishment after a period of 10 years in the year 2008. Accordingly, we find that the learned Writ Court has not committed any error in rejecting the claim of the petitioner.

We see no reason to interfere in the matter. The appeal stands dismissed.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

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