

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1136 of 2018

In

Civil Writ Jurisdiction Case No.14537 of 2010

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Jailal Paswan, son of Achelal Paswan, resident of Purani Dharmsala,
Kathaipur Road, P.S.- Town, District- Muzaffarpur. Appellant/s

Versus

1. The State Of Bihar through Principal Secretary, Department of Co-operative,
Govt. of Bihar, Patna.
 2. The Registrar, Co-operative Society, Govt. of Bihar, Patna.
 3. The Assistant Registrar, Co-operative Societies, East Circle, Muzaffarpur.
... .. Respondent/s
- =====

Appearance :

For the Appellant/s : Mr. Sunil Kumar, Advocate

For the Respondent/s : Mr. Raj Ballabh Prasad Yadav- AAG 11

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-10-2019

Re: Interlocutory Application No.6108 of 2018.

Heard learned counsel for the parties.

The cause shown is sufficient. The delay is condoned.

The appeal shall be treated to be within time. Interlocutory
Application stands allowed.

Re: Letters Patent Appeal No. 1136 of 2018

The appellant had sought promotion from Class IV to
Class III through the writ petition that has given rise to the present
intra-court appeal.



The petition had been filed in the year 2010 and the appellant retired. However, the claim of promotion was such that it had been set up after almost 13 years.

Learned counsel for the appellant submits that the appellant had been continuously approaching the authorities claiming promotion from 1997 to the year 2009 as is evident from paragraph 6 of the appeal. Thus, it is evident that for more than 12 years, the appellant had kept on moving representations.

Learned counsel for the appellant has invited the attention of the Court to two judgements of the Apex Court to urge that the delay and laches deserve to be condoned and the petition deserves to be entertained.

We have considered the submissions raised and continuous tendering of representations is no valid explanation for not approaching the Court for more than 12 years. The judgements relied on by the learned counsel for the appellant in the case of **N. Balakrishnan versus M. Krishnamurthy**, reported in (1998) 7 SCC 123 and in the case of **State of Uttar Pradesh and others versus Arvind Kumar Srivastava and others**, reported in (2015) 1 SCC 347 are judgements that have turned on their own facts which are are not similar to the facts presently in dispute.



In our considered opinion, an assertion of filing representations for 12 ½ years does not in any way amount to reflection of any sufficient cause for us to enable the Court to give an indulgence on this count. The Apex Court in the case of **C. Jacob Versus Director of Geology and Mining and another**, reported in **(2008) 10 SCC 115** while discussing stale claims commented on filing of repeated representations in paras 8 to 14 as follows:-

“8. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation.



9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to



such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action.

12. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for purpose of pension. That will be a travesty of justice.

13. Where an employee unauthorizedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/ removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back-wages for 20 years, ignoring the cessation of service



or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back-wages.

14. We are constrained to refer to the several facets of the issue only to emphasize the need for circumspection and care in issuing directions for 'consideration'. If the representation is on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing 'consideration' of such claims.”

This issue was again dealt with and the approach of consideration of stale claims was deprecated in paras 15 and 16 of a decision of the Apex Court in the case of **Union of India & others versus M. K. Sarkar**, reported in (2010) 2 SCC 59 extracted hereinunder:-

“15. When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction.



Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect.”

The learned Single Judge was, therefore, justified in dismissing the writ petition on the ground of laches.

The appeal is, accordingly, consigned to records.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

Sunil/-

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