

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.14797 of 2019**

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1. Arun Kumar Singh Son of Late Jai Narayan Singh, Resident of Village- Jamasi, P.S.- Lodipur, District- Bhagalpur.
2. Aditya Anant, Son of Late Binod Kumar, Resident of Mohalla- New Bigharapur, P.O.- GPO, P.S.- Jakkanpur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Law Department, Government of Bihar, Patna.
2. The Secretary, Law Department, Government of Bihar, Patna.
3. The Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna.
4. The Administrator General and Official Trustee, Bihar, Patna.

... .. Respondent/s

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**Appearance :**

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|----------------------|---|-------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Amish Kumar, Advocate<br>Mr. Prabhakar Thakur, Advocate |
| For the Respondent/s | : | Mr. Manish Kumar (GP 4)                                     |

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**ORAL JUDGMENT**

**Date : 08-08-2019**

Heard learned counsel for the parties.

2. Heard Mr. Amish Kumar, learned advocate for the petitioner and Mr. Manish Kumar, learned G.P.-4 for the State.

3. The petitioners have approached this Court for a direction to the respondents to pay them the wages for the period that they had worked before their services were terminated.

4. The petitioners had earlier approached this Court vide C.W.J.C. No. 4424 of 2006 which was unconditionally withdrawn vide order dated 28.03.2012.



5. On the ground of such unconditional withdrawal of the earlier writ petition for the same relief, the present writ petition with the same prayer was argued to be not maintainable by the learned counsel appearing for the State. With reference to a decision of full Bench of this Court delivered in ***Mahanth Ramkinkar Das v. the State of Bihar & Ors. (2017) 1 PLJR 909***, it was urged that an unconditional withdrawal of the earlier writ petition would bar the second petition on the same cause of action, not in terms of Order XXIII Rule 1 of the Code of Civil Procedure but in terms of public policy of not permitting the litigants to come to the court time and again on the basis of same cause of action.

6. The matter was heard on 25.07.2019 and was posted for 08.08.2019 for further discussion over the legal position with respect to bar of a second proceeding under Article 226 of the Constitution of India, in the event of the petitioner having unconditionally withdrawn an earlier writ petition which was filed for the same relief.

7. Mr. Amish Kumar, learned advocate for the petitioners has referred to ***Ahmedabad Manufacturing and Calico Printing Company Ltd. v. Workmen and Another (1981) 2 SCC 663*** wherein the appellant, a manufacturing company had challenged the award of the Tribunal in a Special Leave to Appeal under Article 136 of



the Constitution, which appeal after notice to the respondent to enter appearance, was withdrawn. Four days thereafter, a petition was filed under Article 226 of the Constitution before the High Court of Bombay virtually on the same set of facts and the grounds which had been taken in the special leave to appeal. The aforesaid writ petition was dismissed *in limine* on the ground of such issues having been agitated after the SLP was withdrawn unconditionally. The Supreme Court after referring to ***Workmen v. Board of Trustees of the Cochin Port Trust 1978 SCC (3) 119, Punjab Beverages Private Ltd. v. Suresh Chand (1978) 2 SCC 144, Hoshnak Singh v. Union of India (1979) 3 SCC 135, Daryao v. State of U.P. (1962) 1 SCR 574: AIR 1961 SC 1457, Shankar Ramchandra Abhyankar v. Krishnaji Dattatraya Bapat AIR (1970) SC 1 and A. M. Allison v. B.L. Sen, AIR (1957) SC 227*** held that the permission to withdraw leave petition cannot be equated with an order for its dismissal.

8. It was further held that the High Court of Bombay did not exercise a proper and sound discretion in dismissing the writ petition *in limine* on the sole ground that the application for special leave on the same set of facts and grounds had been withdrawn unconditionally.



9. In ***V.D. Barot v. State of Gujarat and Others (2002) 10 SCC 668***, the appellant had challenged his discharge from service because of a criminal case by way of a writ petition before the High Court of Gujarat, which was withdrawn by him to enable him to make a representation regarding his discharge. After the representation was rejected, the appellant had filed another writ petition challenging the rejection of his representation, which was dismissed on the sole basis that the earlier withdrawal of the case was unconditional and therefore the appellant could not have re-agitated the same matter. The Division Bench of the High Court also was of the view that the appellant had abandoned the writ proceedings in the first instance and therefore the Single Judge was not correct in not entertaining his second writ petition.

10. The aforesaid orders of the High Court did not find favour with the Supreme Court, which held that the High Court ought to have examined whether the rejection of representation was justified in the circumstances set forth in the order impugned in the High Court. It was also found by the Supreme Court that the matter had not been abandoned and therefore, it was not correct of the High Court to have rejected the case of the appellant. The



matter was thus remitted to the High Court for a fresh disposal on merits.

11. Mr. Amish Kumar, learned advocate for the petitioners, in response to the case law cited by the Government advocate viz. ***Sarguja Transport Service v. STAT (1987) 1 SCC 5*** in which it was held that if a writ petition filed in High Court is withdrawn without permission to file a fresh petition, a second writ petition for the same relief is barred, has cited another decision viz. ***Sarva Shramik Sanghatana (KV) v. State of Maharashtra (2008) 1 SCC 494***, wherein it has been held that in *Sarguja Transport* (supra) the observations barring a second writ petition was in view of a public policy of discouraging litigants from indulging in bench hunting tactics. Such observation, it was held, had to be understood in the context of the case and not as a precedent commanding that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to the expositions of the whole law but are governed and qualified by the particular facts of the case in which such expressions are to be found [***Lord Halsbury, L.C. in Quinn v. Leathem (1901) AC 495***]. The Bench, distinguishing the facts of the cases *Sarguja* (supra) also drew reference from



***Ambika Quarry Works v. State of Gujarat (1987) 1 SCC 213, Bhavnagar University v. Palitana Sugar Mill Private Ltd. and others (2003) 2 SCC 111, Bharat Petroleum Corporation Ltd. v. N.R. Vairamani (2004) 8 SCC 579*** and held that ratio of any decision must be understood in the background of the facts of each case and that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. Observations of the courts are neither to be read as Euclid's theorems nor as provisions of statute and that too, taken out of context. Such observations are not to be treated *ipsissima verba*. Precedents should be followed only so far as it marks the path of justice.

12. It was thereafter held that the facts of *Sarguja* (supra) were different and the bench allowed the second writ petition.

13. Now to the Full Bench decision of this court rendered in ***Mahanth Ramkinkar Das v. the State of Bihar & Ors. (2017) 1 PLJR 909.***

14. Since a Full Bench judgment in ***Rita Mishra v. Director Primary Education, Bihar (1987) P.L.J.R. 1090*** which relied upon a Division Bench judgment in ***Kishori Singh v. State of Bihar and Ors. AIR (1985) PATNA 298*** was doubted, a Full Bench was constituted to answer the reference viz. whether in cases of withdrawal



of an earlier writ petition, second writ petition would be maintainable.

15. In *Kishori Singh* (supra) the petitioner had earlier filed a writ petition against the impugned order, which after hearing was permitted to be withdrawn. A second application by him was dismissed. That order was challenged before a Division Bench. The Division Bench, after noting the position that a writ jurisdiction is discretionary and there is no vested right in a writ petitioner to secure the relief which he claims and which claim can be denied for a variety of reasons other than the pristine merits of the controversy, held that a second writ petition on the same cause of action will not be maintainable as the dismissal will operate as a bar to such petition being entertained again and if it is an unconditional withdrawal, the bar to filing of the second writ petition is to be enforced strictly. This was relied upon in *Rita Mishra* (supra).

16. In *Mahanth Ram Kinkar Das* (supra), the issue was different. A title suit, claiming declaration about the properties, detailed in the schedule, being personal and private, was filed. It was argued that since the properties detailed in the schedule were private properties, therefore, it could not be subjected to the provisions of Bihar Hindu Religious Trust Act, 1950. After the death of the Mahantha, another person succeeded to the position of the Mahantha. However, a trustee was appointed by the



Bihar Hindu Religious Trust Board. A writ petition came to be filed against the filling of the vacancy of the position of the Mahanta under Section 33 of the Bihar Hindu Religious Trust Act, 1950. That application was withdrawn. Thereafter Mahanth Ram Kinkar Das (the petitioner) filed an application in the Title Suit for an ad interim injunction which was dismissed and such order of dismissal was challenged in Miscellaneous Appeal which too stood dismissed. It was thereafter that a petition was filed for quashing of the order whereby the position of Mahantha was filled up.

17. It was in these circumstances that the correctness of the decision in Rita Mishra (supra) was doubted. The Full Bench of this Court in Mahanth Ram Kinkar Das (supra) has taken note of various judgements including the Constitution Bench Judgement in Daryao and Others Versus State of U.P. and Others [AIR 1961 Supreme Court 1457]; B. Prabhakar Rao and Others Versus State of Andhra Pradesh and Others [AIR 1986 Supreme Court 210]; Puran Singh and Others Versus State of Punjab and Others [(1996) 2 SCC 205] as well as Ramesh Chandra Sankla and Others Versus Vikram Cement and Others [(2008) 14 SCC 58] and came to the conclusion that in Daryao (supra), the Constitution Bench of the Supreme Court was dealing with a petition under Article 32 after a petition under Article 226 of the Constitution of India for the same cause of action had been withdrawn. Similarly in B. Prabhakar Rao's case, the writ petition was dismissed in limine by the Supreme Court and another petition was filed before the Supreme Court. In Ramesh Chandra Sankla (supra) the fact situation was that an earlier petition under Article 226 was withdrawn and in that context it was held that as a matter of public



policy, no person should be permitted to start a fresh round of litigation and the Courts ought not to allow any re-agitation of the claim which had been abandoned voluntarily.

18. It was in this context that it was held by the Full Bench that an unconditional withdrawal of an earlier writ petition would bar the second petition on the same cause of action.

19. Mr. Amish Kumar, learned counsel for the petitioners submits that in the earlier writ petition, the termination of the petitioners was challenged and there was an additional prayer for payment of the daily-wages to the petitioners for the period that they had worked.

20. The petition was permitted to be withdrawn by a Bench of this Court on 28.03.2012.

21. The order referred to above reads as hereunder:

"After some arguments, learned counsel for the petitioners has chosen to withdraw the writ petition which is accordingly disposed off".

22. Mr. Amish Kumar, learned counsel for the petitioners submits that there could have been several reasons for withdrawal of the writ petition. Since the order does not speak out the reasons, only a guess could be made with respect to the possible reasons for withdrawal of the writ petition. The petition may not have contained necessary details for staking a claim and when the petitioners would have been confronted with such a position, the counsel for the petitioners may have chosen to withdraw the petition for filing a fresh petition. The other reason could be that the petitioners may have thought it expedient to pursue the matter with the executive authorities. A third reason could have been that



some assurance may have been given by the authorities that they shall be paid their dues and, therefore, no necessity would have been felt by the petitioners in pursuing their petition for seeking a mandamus against the authorities. There could be another reason for withdrawing the petition, namely, the unfavourable observation of the Court in passing any order over such petition.

23. In any view of the matter, the petition was unilaterally withdrawn.

24. Had the matter rested there, there would have been some substance in the argument advanced by the learned counsel for the State about the second petition being barred.

25. After the order permitting the withdrawal of the writ petition, necessary documents were called for by the department along with opinion regarding payment of the daily-wages of such petitioners while they were being taken work from.

26. This fresh deliberation by the respondent Board has been done in the year 2014 after the withdrawal of the writ petition and continued without any order being passed. Ultimately, a representation was filed by one of the petitioners before the concerned authorities on 21.06.2019 for redressal of their grievances.

27. Mr. Amish Kumar has further submitted that the Full Bench in Mahanth Ram Kinkar Das (supra) cannot be taken to be a shelter by the respondents in denying the petitioners their rightful claim which stands admitted in the deliberations of the respondents.

28. There is another aspect of the matter as well. Whether withdrawal of the petition can be taken as a waiver of a right which in the present case is a right of



livelihood. No person can be made to work without remuneration and an employer, howsoever strong he may be and whatever may be the impelling motive, cannot be permitted to appropriate the remuneration earned by an employee even for a short period.

29. Learned counsel for the State referred to various decisions on the issue of delay viz. ***C. Jacob v. Directorate of Geology and Mining and Anr. AIR (2009) SC 264, Chennai Metropolitan Water Supply and Sewerage Board and Others v. T.T. Murali Babu (2014) SC 1141*** and ***State of Jammu and Kashmir v. R. K. Zalpuri and others AIR (2016) SC 3006*** and submitted that delay in approaching the court cannot be lightly brushed aside and before any positive order is passed by a writ court, the explanations offered explaining the delay and the acceptability of the same is required to be meticulously weighed. This is necessary because while issuing a mandamus, the court exercises an extraordinary and equitable jurisdiction. The court therefore has a duty to protect the rights of citizens but has another duty which has to be discharged simultaneously i.e. to keep itself alive to the primary principle that when an aggrieved person, without adequate reason approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the */is* at a belated stage should be entertained or not. It was further argued that



delay/laches may not be fatal in some circumstances, but inordinate delay might destroy the case of a litigant. The law does not permit a party to sleep over his rights and in case he does so, he does it as his own peril.

30. The facts of the present case are absolutely different and require a consideration notwithstanding the vindication of the principle that as a matter of public policy, a second writ petition on same set of facts ought not to be entertained.

31. There is an important aspect of the matter which need to be weighed in the present case.

32. The petitioners are poor persons whose claim was being processed till the year 2014. A representation also has been filed by the petitioners as late as on 21.06.2019.

33. In the present context, when the petitioners are only seeking the remuneration for the period that they have worked, I would not be able to justify non-suiting them on the ground of an earlier petition filed by them having been unconditionally withdrawn. The facts of the cases which prohibit the courts from entertaining applications because of delay or for the second time, which have been cited do not apply to the facts of this case.

34. "Law is good but justice is better".



35. Keeping this objective in mind, this Court directs that in case the petitioners make a representation before the concerned respondent within a period of four weeks, the claim of the petitioners shall be looked into, facts be verified, and necessary orders be passed and communicated to the petitioners within a further period of eight weeks thereafter.

36. Needless to state that this Court has expressed no opinion on the merits of the claim of the petitioners, but has only directed the concerned respondent to consider the case of the petitioners and pass necessary order, if the claim is found to be tenable.

37. With the aforesaid direction/observation, the writ petition is disposed of.

**(Ashutosh Kumar, J)**

krishna/-

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