

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 1372 of 2020

=====

Zeauddin Ahmad Son of Late Serajuddin Ahmad, resident of 603, Shurf Apartment, near ICICI Bank, Frazer Road, Police Station Gandhi Maidan, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Home (Police), Government of Bihar, Patna.
2. The Principal Secretary, Home (Police), Government of Bihar, Patna.
3. The Special Secretary, Department of Home (Police), Government of Bihar, Patna.
4. The Director General of Police, Bihar, Patna.
5. The Inspector General of Police, (Headquarter), Patna.
6. The Accountant General (Accounts and Entitlement), Bihar, Patna, Birchand Patel Path, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr Rupak Kumar, Advocate
For the Respondent/s : Mr Ravi Verma, AC to GP IV

=====

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 18-02-2020

Heard learned counsel for the petitioner and the learned counsel appearing for the respondent-State.

2 The petitioner seeks quashing of the order dated 02.11.2012 issued by the Special Secretary to the Government of Bihar in the Home Department rejecting the petitioner's Resolution against the order dated 25.11.2011 issued by the Special Secretary under Rule 43 (b) of the Bihar Pension Rules whereby the petitioner has been awarded the penalty of



withholding of 10% pension. The petitioner's counsel submits that the procedure, adopted by the Authorities while ordering the punishment, was marked by flaws and that the order of the Disciplinary Authority is otherwise also not sustainable as it does not specify whether the withholding of 10% pension is for a limited period or permanently.

3 Learned State Counsel raises a preliminary objection regarding maintainability of the writ petition itself. Submission is that the order of punishment is dated 25.11.2011. The order of the Revisional Authority is dated 02.11.2012. More than seven years thereafter, the instant writ petition has been filed on 20.01.2020. In the entire pleadings, there is not even a whisper as to why the petitioner has approached this Court after delay. The submission is that the petitioner has allowed the punishment to attain finality. The rights between the petitioner and the State, in so far as the petitioner's entitlement to pensionary benefits, have attained finality long back and, therefore, it would not be proper to upset the same at this belated stage or examining the issue regarding the correctness of the same at such a belated stage, more so where there is no explanation as to why the petitioner awoke from slumber after more than seven years and approached this Court casually by way of the instant writ proceedings.



4 The Court has considered the rival submissions. The petitioner's counsel has also relied upon judgments to suggest that the withholding of the pensionary benefits was a continuing wrong. Having regard to the nature of the wrong, the issue of delay and laches ought not to be raised against the petitioner. Reliance is placed on paragraph 7 of the judgment of the Hon'ble Apex Court in the case of *Union of India & Others -Versus- Tarsem Singh* reported in (2008) 8 Supreme Court Cases 648. Reliance is also placed on another judgment of Apex Court in the case of *Prahlad Raut -Versus- All India Institute of Medical Sciences* reported in 2019 (4) PLJR 265 (SC). The petitioner's counsel submits that the later judgment in the case of Prahlad Raut (supra) has been taken note of in the earlier judgment in the case of Tarsem Singh (supra). The law that the issue of delay and laches cannot be raised to scuttle the claim of the petitioner in the case of continuing wrong has been reiterated by the Apex Court in this recent subsequent judgment in the case of Prahlad Raut (supra).

5 The Court has gone through the judgments relied upon by the petitioner's counsel. In view of the submissions advanced in respect of delay and laches by the petitioner's counsel, this Court would consider it appropriate to reproduce paragraph 44



of the subsequent judgment in the case of Prahlad Raut (supra)

which reads as follows:

“The High Court rightly held that the law of limitation is founded on public policy. The object of limitation is to put a quietus on stale and dead disputes. A person ought not to be allowed to agitate his claim after a long delay. There can be no doubt that when retiral benefits are withheld without cause, there would be a continuing cause of action. However, when retirement benefits are withheld by way of disciplinary action, the order would necessarily have to be challenged within the period of limitation or alternatively there would have to be sufficient cause for the delay. Once there is cessation of employer-employee relationship by an order of termination, the cause of action would necessarily arise when the order of termination is passed. The forfeiture of pensionary benefits by reason of a punitive order of termination is not a continuing cause of action.”

6 The admitted position is that withholding of pensionary benefits in the instant case to the extent of 10% is on the basis of punishment inflicted against the petitioner. In view of the law laid down by the Apex Court in the judgment in the case of Prahlad Raut (supra), taken note of hereinabove, the cause of action, in the instant case, arose in the year, 2012 when the punitive order was affirmed by the Revisional Authority. There is not even a whisper in the entire pleadings as to why the petitioner has approached this Court after such a long time. The petitioner, by conduct, has allowed the punishment to attain finality. The



doctrine of promissory and equitable estoppel, acquiescence and waiver are staring the claim of the petitioner in its face.

7 Writ petition is clearly barred by the delay and laches, more so in view of the judgment in the case of Prahlad Raut (supra).

8 The writ petition, therefore, is barred by delay and laches and the same is, accordingly, dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05.03.2020
Transmission Date	NA

