

\$~15(2021)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decision delivered on: 16.11.2021

+ **LPA 134/2020 & CM No. 9696/2020**

RAJ KUMAR

..... Appellant

Through: Mr Bankey Bihari, Advocate.

versus

THE STATE OF BIHAR & ORS

..... Respondents

Through: Mr Manish Kumar, Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL):

[Court hearing convened via video-conferencing on account of COVID-19]

CM No. 9696/2020

1. For the reasons stated in the application, the prayer made in the application is allowed.

1.1. Therefore, the delay is condoned.

2. The application is, accordingly, disposed of.

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3. This appeal is directed against the judgement of the learned single judge, dated 17.09.2019, passed in W.P.(C.) No. 9956/2019 and order dated 02.12.2019, passed in Review Petition No. 501/2019, preferred in the said writ petition.

4. The record shows that the petitioner had approached the learned single judge of this Court by way of the aforesaid writ petition in 2019 to assail the order dated 23.09.2010 passed by the respondents, whereby he was dismissed from service.

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4.1. The impugned judgement dismissing the writ petition is founded on two principal planks—

- (i) First, that there is a delay of nine years in approaching the Court for grant of relief.
- (ii) Second, that the appellant had not taken recourse to an alternate remedy by way of an appeal.

5. Mr Bankey Bihari, who appears on behalf of the appellant, concedes that, the time frame provided under the regime prevalent at the relevant time for preferring an appeal, was 45 days.

5.1. Mr Bihari, therefore, does concede that there has been, now, an enormous delay in approaching the designated appellate authority.

5.2. However, upon being told that the appellant took recourse to the writ court after a delay of nine years, Mr Bihari says that, he would like to approach the appellate authority for grant of suitable relief, having regard to the career profile of the appellant.

5.3. Mr Manish Kumar, who appears on behalf of the respondents', says that, he would have no objection if the appellant were to approach the appellate authority. It is Mr. Kumar's submission, though, that in case the appellant approaches the appellate authority, the appeal can be, perhaps, decided, albeit, as per law.

5.4. Given this position, Mr Bihari seeks leave to withdraw the appeal, with liberty to approach the appellate authority.

5.5. Accordingly, the appeal is dismissed, as withdrawn. In case the appellant were to approach the appellate authority with an appeal, the same will be decided, as per law. It is made clear that nothing stated herein above will impact the decision in the appeal.

6. The case papers shall stand consigned to record.

RAJIV SHAKDHER, J

TALWANT SINGH, J

NOVEMBER 16, 2021/mr

Click here to check corrigendum, if any

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