

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3984 of 2020

Manoj Kumar Singh S/o- Kundan Singh, Resident of Village- Athar, P.S.-
Nawanagar, District- Buxar, Bihar.

... .. Petitioner/s

Versus

1. The Union of India through Secretary of Home Department, Government of India, New Delhi.
2. The Director General of Border Security Force, At C.G.O. complex, New Delhi- 3.
3. The Commandant of 7 Battalion, Border Security Force at Talliguri, District- Coochbehar (W.B.).
4. The Assistant Commandant, 7 Battalion, Border Security Force at Talliguri, District- Coochbehar (W.B.).
5. The Deputy Commandant, 7 Battalion, Border Security Force at Talliguri, District- Coochbehar (W.B.)

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ramakant Yadav, Adv
For the Respondent/s	:	Mr. Naresh Akshit, Adv
		Mr. Utsav Anand, Adv

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 02-11-2022

The petitioner was appointed as Constable on 22.12.2008 in the Border Security Force. He proceeded on 15 days casual leave with effect from 22.08.2012. The leave was valid up to 09.09.2012.

2. The admitted position is that he has never returned after availing the leave up to 09.09.2012. In the meantime, he was served with a show-cause notice dated 14.01.2013, which fact is also admitted as per averment made in the writ petition. The petitioner has not responded to the show-cause notice by



which he was specifically informed that the show-cause was being issued contemplating action under Sub Sec (2) of Sec 11 of the Border Security Force Act, 1968 read with Rule 177 of the Border Security Force Rules, 1969. The petitioner has not responded to the said show-cause notice also. Thereafter, an order has been issued under Sub Rule (2) of Rule 22 of the BSF Rules, 1969 and his name has been struck from the strength of the respondent-force by order dated 04.03.2013 (Annexure-A to the counter-affidavit).

3. It is in these aforesaid facts that the petitioner has awoken from slumber to file the instant writ petition in the year 2020 relying upon a representation said to have been filed before the Director General of the respondent-force on 09.05.2017.

4. In the aforesaid circumstance the petitioner has approached this Court by the instant proceedings seeking a direction upon the respondent authorities to accept his joining. In view of the admitted fact that petitioner after availing 15 days casual leave with effect from 22.08.2012, has never returned to join his duties in the force. This Court would find that the inordinate delay in filing the instant writ petition after 8 years cannot be brushed aside lightly in view of decision of the apex



court in the case of ***Chennai Metropolitan Water Supply and Sewerage Board & Ors. v. T.T. Murali Babu*** reported in (2014) 4 SCC 108, paragraph 16 & 17 of which reads as follows:-

16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is 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 scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and



second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinise whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons — who compete with “Kumbhakarna” or for that matter “Rip Van



Winkle”. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

5. The above noted facts constitute glaring delay and laches. This Court is inclined not to exercise the discretionary writ jurisdiction in respect of the stale matter.

6. Writ application is dismissed.

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.12.2022
Transmission Date	NA

