

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No. 9798 of 2016**

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Abdur Razzaque Son of Sheikh Hasibur Rahman Resident of Village-  
Bardenga, PO- Kursel Hatt, PS- Jokihat, District- Purnia, Presently Posted as  
Keyman Choukidar in P.H.E.D. District- Division Araria.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Chief Engineer, Public Health Engineering Depart., Govt. of Bihar, Patna.
3. The Executive Engineer, Public Health Division, Araria,
4. The Superintending Engineer, Public Health Engineering Department,  
District- Araria.

... .. Respondent/s

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**Appearance:**

For the Petitioner/s : Mr. Jitendra Kumar Giri, Advocate  
For the Respondent/s : Mr. Ashok Priyadarshi, GA-4

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**ORAL JUDGMENT**

**Date: 18-10-2023**

The present writ petition has been filed for directing the respondents to place the petitioner in the rank of Class-III employee on the post of Works Inspector with effect from the year 2006 and grant him all the consequential benefits.

2. The brief facts of the case, according to the petitioner, are that he was initially appointed on daily wages in the year 1981 in the Department of Public Health Engineering and vide office order



dated 13.11.1982, issued by the Superintending Engineer, Public Health Engineer Department, Muzaffarpur Circle, Muzaffarpur, the petitioner was appointed on temporary basis on the post of Works Inspector in the Work Charge Establishment, whereupon he was posted at the Public Health Division, Bettiah, however, he was never paid the regular pay-scale of the post of Works Inspector rather he was paid daily wages. It is also the case of the petitioner that pursuant to an order passed in a writ petition bearing C.W.J.C. No. 7359 of 2002, the Department of Public Health Engineering, Government of Bihar, created new posts for absorption of daily wage workers/work charge employees, working in the Public Health Engineering Department, whereupon the name of the petitioner was recommended for absorption against the post of fourth grade employee. Thereafter, the Executive Engineer, Public Health Division, Araria had issued an office order dated 01.12.2006, regarding absorption of the services of the petitioner and others on the post of Keyman



cum Chaukidar cum Khalasi.

3. The Ld. counsel for the petitioner has submitted that though the petitioner was required to be absorbed as a Class-III employee, nonetheless, he was absorbed on a class-IV post i.e. on the post of Keyman cum Chaukidar cum Khalasi, hence he had raised his grievance before the Engineer-in-Chief cum Special Secretary, Public Health Engineering Department, Government of Bihar, Patna, by filing a representation dated 17.08.2006, however, till date his grievance has not stood redressed.

4. *Per contra*, the learned counsel for the respondent-State has submitted, by referring to the counter affidavit filed in the present case, that the petitioner was initially engaged as a daily wage employee in the year 1981 and later on, in the year 1982, he was brought in the Work Charge Establishment as a Works Inspector, under the Public Health Division, Muzaffarpur, however, again he was reverted back as a daily wage employee in the year 2002, upon his appointment in the Work



Charge Establishment having been found to be null and void and against the Government decisions. The petitioner was then absorbed in the regular establishment by an order dated 28.11.2006, in light of the policy decision of the Govt. of Bihar, as contained in Memo dated 16.03.2006, issued by the General Administration Department, upon recommendation made by the Three Men Committee. It is further submitted that the petitioner was absorbed against the newly created and sanctioned posts, as per the policy decision of the State Government as also in light of the observations of the Hon'ble High Court, whereafter the petitioner had accepted the offer of appointment and submitted his joining on the post of Keyman/ Chaukidar vide letter dated 01.12.2006 without any demur or protest and had not raised any objection regarding him being not appointed on the post of Works Inspector. It is also submitted that at that moment of time, there was no sanctioned post of Works Inspector available for absorption of the petitioner, hence he was



absorbed against the newly created posts of Keyman cum Chaukidar cum Khalasi in the regular establishment in the year 2006 itself.

5. The learned counsel for the respondent-State has also submitted that the petitioner is raising a grievance regarding him not being absorbed on the post of Works Inspector and instead having been absorbed on the post of Keyman cum Chaukidar, after 10 years of submitting his joining on the post of Keyman cum Chaukidar without any demur or protest, hence the present writ petition is also barred by the principles of delay and laches.

6. I have heard the learned counsel for the parties and gone through the materials on record. This Court finds that the present writ petition has been filed after an inordinate and unexplained delay of about 10 years, hence this Court is of the considered view that the present writ petition is fit to be dismissed on the ground of delay and laches alone. The Hon'ble Apex Court, in a catena of judgments, has held that while exercising extraordinary and equitable jurisdiction under



Article 226 of the Constitution of India, the Constitutional Court, while protecting the rights of citizens, should simultaneously keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the Court belatedly, at his own leisure or pleasure, the writ Court is not required to grant any indulgence to such indolent person and on the ground of delay and laches alone, the writ Court ought to throw the petition overboard at the very threshold. In this regard, the Ld. Counsel for the Respondent has referred to the following judgments:-

- (i). *Chennai Metropolitan Water Supply & Sewerage Board & Others vs. T.T.Murali Babu*, reported in (2014) 4 SCC 108.
- (ii). *State of Uttranchal & Anr. vs. Shiv Charan Singh Bhandari & Ors.*, reported in 2013 AIR SCW 6627.
- (iii). *C. Jacob vs. Director of Geology & Mining & Anr.*, reported in AIR 2009 SC 264.
- (iv). *State of Jammu & Kashmir vs. R.K. Zalpuri & Others*, reported in AIR 2016 SC 3006.
- (v). *State of Tamil Nadu vs. Seshachalam*, reported in (2007) 10 SCC 137.

7. In fact, in a judgment, rendered by the Hon'ble Apex Court in the case of **P. S.**



***Sadasivaswamy vs. State of Tamil Nadu***, reported in **(1975) 1 SCC 152**, the Hon'ble Apex Court has held that in a service matter /promotion matter, an aggrieved person should approach the Court at least within six months or at the most a year of the arising of a cause of action and it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 of the Constitution of India, in the case of persons who do not approach it expeditiously for relief and such petitions should be dismissed in limine, inasmuch as entertaining such petitions is a waste of time of the Court, the same clogs the work of the Court and impedes the work of the Court in considering legitimate grievances. In fact, in yet another judgment, rendered by the Hon'ble Apex Court in the case of ***Naresh Kumar vs. Department of Atomic Energy & Others***, reported in **(2010) 7 SCC 525**, the Hon'ble Apex Court has held that the High Court was not in error while dismissing the writ petition on the ground of unexplained delay and



laches of about seven and a half years.

8. Thus considering the principles laid down by the Hon'ble Apex Court in a catena of judgments, as aforesaid, as also considering the maximum *"equity aids the vigilant and not those who slumber on their rights"*, this Court is of the view that since the petitioner has not filed the writ petition within a reasonable period of time, this Court is not under any legal obligation to entertain the writ petition, especially considering the fact that the petitioner has not offered any reason, whatsoever for the enormous delay which has taken place in approaching this Court, hence the present writ petition is dismissed on the ground of delay and laches. At this juncture, it would also be relevant to mention here that the petitioner has also acted in an unfair manner and has engaged in deceit inasmuch as though he has annexed the order of his absorption in the regular government service on the post of Keyman cum Chaukidar which is dated 01.12.2006, but surprisingly the representation filed by him in so-called protest of



his absorption on a Class-IV post instead of Class-III post, is dated 17.08.2006, which is not possible. In any view of the matter, admittedly, not only the petitioner has failed to bring on record any representation filed after issuance of the order of absorption dated 01.12.2006, but it is also a fact that he had submitted his joining on the post of Keyman cum Chaukidar on 01.12.2006, without any demur or protest, thus relinquishing his right to assert his claim resulting in acquiescence on his part leading to him being estopped from claiming any relief, as prayed for.

9. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above in the preceding paragraphs, I do not find any merit in the present writ petition, hence the same stands dismissed.

**(Mohit Kumar Shah, J)**

S.Sb/-

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