

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18774 of 2011

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SANJAY SINGH S/O Late Dulam Singh R/O Village- Hetimpur, Purab Tola,
Jamo Bazar, Police Station- Jamo Bazar, District- Siwan, At Present
Working As Peon, Collectorate, Bhabua

... .. Petitioner/s

Versus

THE STATE OF BIHAR and ORS Home, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kamal Nayan Choubey, Sr. Adv. Mr. Ambuj Nayan Chaubey, Adv. Mr. Dineshwar Pandey, Adv. Mr. Ashok Kumar Garg, Adv. Ms. Ritu Priyadarshni, Adv. Mr. Shdwal Harsh, Adv.
For the Respondent/s	:	Mr. Kinkar Kumar, SC-9

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 03-11-2023 Heard Mr. Kamal Nayan Choubey, learned senior
counsel for the petitioner and Mr. Kinkar Kumar, learned
counsel appearing for the respondent-State.

1. The present writ application has been filed for
quashing the order dated 23.08.2002 contained in Memo No.
573 (Annexure-6) passed by the District Magistrate, Kaimur
(Bhabua) by which the services of the petitioner has been
suspended and further quashing the order contained in
Memo No. 34 dated 27.06.2001 by which charges have been
framed against the petitioner.

2. The brief facts of the case is that initially the



petitioner was appointed on the post of Peon (Anushewak) in the District Nazarat, Kaimur vide order dated 22.11.1995 passed by the District Magistrate, Kaimur (Annexure-1). On 17.06.2001 while the State Transport Commissioner, Bihar stayed at the Circuit House and during his stay, the petitioner was directed to cook food for the guests but the petitioner has refused for the same on the ground that he has no knowledge of cooking as his appointment was made on the post of peon not for the cook. On being so, the District Magistrate, Kaimur initiated departmental proceeding against the petitioner vide Memo No. 30 dated 16.06.2001 directing the Deputy Collector, District Nazarat, Kaimur (Bhabua) to serve memo of charge upon the petitioner through the conducting officer, the Deputy Collector, Land Reforms, Mohania, (Annexure-3). Accordingly, the Deputy Collector, District Nazarat vide Memo No. 34 dated 27.06.2001 framed the charges against the petitioner, which is under challenge in this writ application. On the basis of the aforesaid charge, the petitioner was asked to submit his explanation within 15 days and the petitioner has filed his reply on 10.07.2001 to the Enquiry Officer stating therein that his appointment was made on the post of Peon and he



has not knowledge of cooking and thereafter the Enquiry officer found the charges proved against the petitioner. On the basis of the inquiry report, the District Magistrate vide his order dated 23.08.2002 contained in Memo No. 573 awarded a major punishment to the petitioner of withholding four annual increment with the cumulative effect, which is under challenge in the present writ application.

3. Learned counsel for the State, on the other hand, has taken preliminary objection that this writ application has been filed at the belated stage. He further submits that the impugned orders have been passed in the year 2001 and 2002 and the petitioner has approached this Court in the year 2011 almost after a decade from the date of passing of the impugned orders which shows the inordinate delay and laches on the part of the petitioner and even such delay is not satisfactorily explained, therefore, this Court should not exercise its discretionary powers under Article 226 of the Constitution of India.

4. Learned senior counsel appearing for the petitioner submits that admittedly there has been delay in filing the writ application but the delay



cannot be the sole ground to refrain the petitioner from his fundamental rights. The petitioner being a Peon has not committed any error by not discharging the duty of Cook upon the direction of his superior authority. There should have uniformity of roles and responsibility for each and every post and the petitioner in this case had only refused to act as Cook and shown his inability to perform the duty of Cook in absence of his knowledge of cooking and such act should not be tantamount to such punishment as imposed upon him by the impugned orders, therefore, the same are required to be quashed and set aside.

5. Having heard the contentions of the parties, this Court is of the view that admittedly, the petitioner has approached this Court at the belated stage as there appears to be inordinate and unexplained delay on the part of the petitioner. It is also apparent from the record that the petitioner was sleeping over his right and woke up after a long period of 10 years to approach this Court. The delay or laches is one of the major factors which is to be borne in mind by the Court while exercising its discretionary powers



under Article 226 of the Constitution as it has to be exercised judicially and reasonably.

6. This Court would reiterate the ratio rendered by the Hon'ble Apex Court in the case of ***S.S. Balu and another Vs. State of Kerala*** and others, reported in ***2009 2 SCC 479*** wherein it is held that the delay defeats equity. The Apex Court has also held that relief can be denied on the ground of delay alone irrespective of the genuineness of the claim.

7. In view of the above, this Court refrains from exercising extraordinary jurisdiction under Article 226 of the Constitution of India as the writ petition suffers from unexplained delay and laches on the part of the petitioner.

8. Accordingly, this writ petition is hereby dismissed on the ground of delay and laches.

(Rajesh Kumar Verma, J)

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