

IN THE HIGH COURT OF JHARKHAND AT RANCHI
LPA No.377 of 2022

1. Mosomat Shyam Sunder Devi, aged about 68 years, wife of Late Bhola Singh.
2. Ram Krishna Singh, aged about 42 years.
3. Balram Singh, aged about 40 years.
4. Ram Lagan Singh, aged about 38 years.
 Sl. Nos. 2 to 4, sons of Late Bhola Singh.
 All residents of Village Walipur, P.O. Walipur, P.S. Pipariya, District Lakhisarai (Bihar).
 ... Appellants.

Versus

1. The Union of India through the Divisional Railway Manager, South Eastern Railway, P.O. Hatia, P.S. Hatia, District Ranchi.
2. The Senior Divisional Engineer, Chakradharpur, P.O. Chakradharpur, P.S. Chakradharpur, District West Singhbhum at Chaibasa.
3. The Railway Divisional Engineer, P.O. Chakradharpur, P.S. Chakradharpur, District West Singhbhum at Chaibasa.
4. The Assistant Engineer (I), South Eastern Railway, Bonda Munda, Chakradharpur, P.O. Chakradharpur, P.S. Chakradharpur, District West Singhbhum at Chaibasa.

.... Respondents

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Appellants : Mr. Sunil Kr. Mahto, Advocate
 For the Respondents State : Mr. Anil Kumar, Addl. SGI

Order No.7: Dated 22th August, 2023

Per Sujit Narayan Prasad, J.

I.A. No.7383 of 2023

This interlocutory application has been filed for condoning the delay of 66 days in filing the appeal.

Heard learned counsel for the parties.

Considering the sufficient cause as has been assigned in the interlocutory application and having no objection on the part of the Respondent State, the delay of 66 days in preferring the appeal is hereby condoned.

Accordingly, I.A. No.7383 of 2023 stands disposed of.

LPA No.377 of 2022

This appeal is filed under Clause 10 of the letters patent, directed against the order dated 02.05.2022 passed by the learned Single Judge of this court in WP(S) No. 4276 of 2009, whereby and where under, the writ petition has been dismissed without interfering with the order of punishment dated 13.10.1980 and the order dated 01.09.1981 on the ground that the writ petition has been filed after a delay of 28 years from the date of cause of action, i.e. the order of dismissal.

2. Brief facts of the case as per the pleadings made in the writ proceeding, which are required to be enumerated herein, read as under :-

2(i) The appellant was initially appointed to the post of Gangman on 31.07.1965 and the services of the appellant was confirmed as Gangman with effect from 01.01.1970. The appellant was promoted by the competent authority from Gangman to Keyman with effect from 29.09.1970 in the pay and grade of Rs. 238/- and the P.F. Account number of the appellant was allotted as C 47592 as governed by Pension Rules. The appellant was working to the post of Keyman with his fully sincerity without any complaint and to the best satisfaction of his Controlling Officer. On 10.01.1980, a telegraphic message was received by the appellant, whereby he came to know that the wife of the appellant is seriously ill at village, therefore, the appellant submitted his application to concerned officer for leave for 14 days and went to his home and, since, the condition of his wife was critical, therefore, he extended his leave for another 30 days and sent his application to this effect.

2(ii) In the month of March, the appellant came to Bano to join his duty, but, he was not allowed to join his duty and for joining of duty and sanction of the leave, the appellant gave Rs.500/- to Sri M.P. Gupta, P.W.-1 Grade III NXN, but, Mr. Gupta was not inclined to sanction his leave nor he returned Rs.500/- to the appellant and on

18.03.1980, Mr. Gupta implicated the appellant in a false case of assault to save his skin.

2(iii) The appellant was put under suspension with immediate effect from 01.05.1980 and a letter was issued on 30.07.1980 under the signature of Assistant Engineer, Banda Munda, wherein it was advised to appellant to keep himself present on 19.08.1980. Further, he was advised to participate in departmental enquiry. On the fixed date i.e. on 19.08.1980, the appellant participated in departmental enquiry, but, without considering the statement of the appellant and facts, the enquiry officer submitted his enquiry report on 26.09.1980 and the appointee was found guilty. However, regarding the incident, no First Information Report was lodged against the appellant nor any medical report was produced before the Enquiry Officer nor copy of that report was supplied to the appellant. Thereafter the appellant was served with dismissal notice dated 13.10.1980.

2.(iv) The disciplinary authority as well as appellate authority have not considered the contradiction of the prosecution witnesses and no P.Ws had supported in their deposition that they had seen the appellant to beat / hurt Mr. R.P. Gupta, Gr. III, NXN on 18.03.1980 nor any question was raised by the Enquiry Officer and none of the witnesses have supported the allegation as to assault / fracture. Moreover, in this case, no second show cause was given to the appellant nor final order for termination was ever passed. The notice for dismissal from service as well as order of appellate authority are not speaking order nor any defence counsel was provided to the appellant to conduct the case properly. Since the economical condition of the family of the appellant is indigent, therefore, the appellant submitted his representation for payment of his dues salary, but, no payment was made to the appellant. The appellant was served with a dismissal notice dated 13.10.1980 and in appeal, the Appellate Authority confirmed the dismissal notice vide letter dated 01.09.1981, but, no termination / dismissal order was passed by the

concerned respondents. Thereafter, the appellant sent several representations to the concerned respondents requesting for the payment of his legal dues, but, to no effect. Facing the family problem and the negligent treatment by the department, the appellant became mentally derailed and thereafter the conditions of the family members became very miserable. The wife of the appellant sent several representations for payment of legal dues of the appellant and requesting several times to provide her any post to maintain her family, but, to no effect. The appellant was treated by psychiatrist and eventually he became normal, but, treatment was going on which was apparent from the prescriptions dated 20.01.1982, 25.05.1983, 20.05.1988, 22.07.1995, 22.07.2003 and 18.12.2007 issued by the concerned doctors. Thereafter, the appellant moved before Hon'ble Central Administrative Tribunal, Patna Bench, Circuit Bench at Ranchi in O.A. No. 63 of 2009 along with M.A. No. 24 of 2009 for condonation of delay, but, on 17.03.2009, the O.A. was permitted to withdraw by the counsel of the applicant with liberty to file the case in appropriate forum.

2(v) It is reiterated that the appellant was suffering from mental diseases and due to negligent and improper action by the respondents, the appellant became mentally derailed and the appellant along with whole family are suffering and are on the verge of starvation and illness of the appellant, the delay occurred in filing the writ petition due to the situation was beyond control of the appellant.

3. It appears from the factual aspects and based upon the pleadings as referred hereinabove, that the writ petitioner while working as key man in the respondent Railway, was departmentally proceeded by issuance of the memorandum of charge on the allegation that he had assaulted his superior.

4. The writ petitioner has participated in the enquiry. The charge has been found to be proved. The disciplinary authority has accepted the charge. Thereafter the order of punishment was passed on

13.10.1980. The writ petitioner has challenged the said order by filing the appeal, but the appeal was also dismissed on 01.09.1981. The writ petitioner thereafter has attained superannuation in the year 2008. It is only thereafter the jurisdiction of the central administrative tribunal was invoked by filing original application, being O.A. No. 63 of 2009 which was later on withdrawn. Thereafter the writ petition being WP(S) No. 4276 of 2009 has been filed.

5. The learned single judge on consideration of issue of delay and laches has dismissed the writ petition so far as it relates to the order of dismissal, however liberty was reserved with the writ petitioner to file representation before the respondent No.2, so far as the amount of Provident Fund, deduction or any other admissible dues is concerned, for taking decision on verification of the claim in accordance with a law, which is subject matter of the instant appeal. The learned single judge has dismissed the writ petition solely on the ground of delay and laches.

6. Learned counsel appearing for the appellant has tried to impress upon the court that the appellant was mentally derailed and that is the reason, the appellant could not approach within the reasonable time.

7. The law is well settled that the litigant while invoking the jurisdiction conferred under Article 226 of the constitution of India is to be invoked within the reasonable time. However the limitation is not prescribed and also not applicable so far as the jurisdiction conferred to this court under article 226 of the Constitution of India is concerned, but the delay and laches is to be seen based upon the principle of that the summary proceeding like writ is not available for the loath litigants so as to allow such litigants to come to the court, whenever such litigant chooses to approach the jurisdiction.

8. This Court, after having heard the submissions, is of the view that merely filing representations cannot be a ground for condoning the delay and laches as has been held by Hon'ble Apex Court in the case of **C.Jacob Vs. Director of Geology & Mining & Another**

reported in **(2008) 2 SCC (L&S) 961**. Reliance is also being made in the judgment rendered by Hon'ble Apex court in the case of **P.S. Sadasivaswamy Vs. State of Tamil Nadu** reported in **(1975) 1 SCC 152** wherein at para 2 their Lordships have held that –

“2. The main grievance of the appellant is that the 2nd respondent who was junior to him as Assistant Engineer was promoted as Divisional Engineer in 1957 by relaxing the relevant rules regarding the length of service necessary for promotion as Divisional Engineer and that his claim for a similar relaxation was not considered at that time. The learned Judge of the Madras High Court who heard the writ petition was of the view that the relaxation of the rules in favour of the 2nd respondent without considering the appellant's case was arbitrary. In view of the statement on behalf of the Government that such relaxation was given only in the case of overseas scholars, which statement was not controverted, it is not possible to agree with the view of the learned Judge. Be that as it may, if the appellant was aggrieved by it he should have approached the Court even in the year 1957, after the two representations made by him had failed to produce any result. One cannot sleep over the matter and come to the Court questioning that relaxation in the year 1971. There is the further fact that even after respondents Nos. 3 and 4 were promoted as Divisional Engineers over the head of the appellant he did not come to the Court questioning it. There was a third opportunity for him to have come to the Court when respondents Nos. 2 to 4 were again promoted as Superintending Engineers over the head of the appellant. After fourteen long years because of the tempting prospect of the Chief Engineership he has come to the Court. In effect he wants to unscramble a scrambled egg. It is very difficult for the Government to consider whether any relaxation of the rules should have been made in favour of the appellant in the year 1957. The conditions that were prevalent in 1957, cannot be reproduced now. In any case as the Government had decided as a matter of policy, as they were entitled to do, not to relax the rules in favour of any except overseas scholars it will be wholly pointless to direct them to consider the appellants' case as if nothing had happened after 1957. Not only respondent No. 2 but also respondents Nos. 3

and 4 who were the appellant's juniors became Divisional Engineers in 1957, apparently on the ground that their merits deserved their promotion over the head of the appellant. He did not question it. Nor did he question the promotion of his juniors as Superintending Engineers over his head. He could have come to the Court on every one of these three occasions. A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the court. It clogs the work of the Court and impedes the work of the court in considering legitimate grievances as also its normal work. We consider that the High court was right in dismissing the appellant's petition as well as the appeal."

In the case of **Shiv Dass Vs. Union of India and Others** reported in **(2007) 9 SCC 274** the Hon'ble Apex Court has held that:-

"9. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in *K.V. Rajalakshmiah Setty v. State of Mysore* (AIR 1967 SC 993). There is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In *State of Orissa v. Sri Pyarimohan Samantaray*, (AIR 1976 SC 2617) making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. (See also *State of Orissa v. Arun Kumar Patnaik* (AIR 1976 SC 1639).

The Hon'ble Apex Court in the case of **New Delhi Municipal Council Vs. Pan Singh and Others** reported in (2007) 9 SCC 278 by referring to the judgment rendered in the case of **Lipton India Ltd. and Others Vs. Union of India and Others** reported in (1994) 6 SCC 524 has observed that –

“17. Although, there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily, writ petition should be filed within a reasonable time. (See Lipton India Ltd. And Others v. Union of India And Others [(1994) 6 SCC 524] and M.R. Gupta v. Union of India And Others [(1995) 5 SCC 628])”

But equally, it is settled that the principle of delay and laches will not be applicable, if such delay is well explained by the cogent reason.

9. However herein the reason of mental derailment has been taken by the writ petitioner on the ground that after passing the order of the dismissal, the writ petitioner had become mentally sick.

10. We have heard learned counsels for the parties, perused the materials available on record as also the order passed by the learned single judge.

11. The learned counsel appearing for the appellant in order to substantiate his argument has carried this court to the medical prescriptions of the psychiatrist as available under Annexure-10 series, which starts from 20th January 1982. It is admitted as would appear from said certificates that the writ petitioner had been treated as an outdoor patient. He was not ever been taken as indoor patient in the mental hospital, either in the RINPAS or the Central Institute of Psychiatry (CIP).

12. Further, it is also not the case that other than the writ petitioner, none was in the family, rather, his wife was there, but even the wife had not approached the court immediately after the order of dismissal, while the case of the writ petitioner, as per the material available on record, is that he had all along participated in the enquiry proceeding.

13. Further the writ petitioner claimed to suffer from mental disease as per the prescription dated 20th January 1982, but order of dismissal is of 13.10.1980 and the appellate order is dated 01.09.1981, but the appellant, during the intervening period, even it is accepted that he had become mentally ill, as per the medical prescription dated 20th January 1982, then also it cannot be accepted that before passing the order of dismissal, he became ill, rather, the ground of illness has been taken subsequent to the order of dismissal and the appellate order.

14. Therefore according to our considered view, the reason which has been tried to be applied for condoning the delay and laches cannot be said to be sufficient explanation for condoning the inordinate delay and laches.

15. The learned single judge had considered the aforesaid aspect of the matter on the premise of the aforesaid settled position of law and has refused to interfere with the impugned order of dismissal, since, the writ petitioner, for the first time had approached the court of law in the year 2009 by filing the original O.A. No. 63 of 2009, which is after about 28 to 29 years.

16. This Court, based upon the aforesaid observation is of the view that there is no reason to take contrary view as has been taken by the learned single judge.

17. Accordingly, this appeal is dismissed.

18. Pending interlocutory application(s), if any also stands disposed of.

(Sujit Narayan Prasad, J.)

(Navneet Kumar, J.)