

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.150 of 2022

Ram Bhagwan Singh, Son of Late Baikunth Singh, Resident of Village - Deokuli, P.S. - Pipra (Punpun), District - Patna at present Residing at 55th Shahid Ram Govind Singh Road No. 2, Prathamik Vidyalaya, Uttari Bhag, Dashratha, Phulwari, District - Patna (Bihar).

... .. Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Chief Engineer - 4, Rural Works Department, Patna, Government of Bihar, Patna.
3. The Officer on Special Duty, Rural Works Department, Government of Bihar, Patna.
4. The Executive Engineer, Rural Works Department, Aurangabad.
5. The Executive Engineer, Rural Works Department, Purnea.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Subhen Sarkar, Advocate
For the Respondent/s	:	Mr. Ajay, GA 5

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 07-10-2024

Heard learned counsel for the appellant and
learned counsel for the respondents.

2. The instant appeal has been preferred against the judgment dated 14.2.2022 whereby the learned Single Judge was pleased to dispose of CWJC no. 8020 of 2021 filed by the appellant praying for direction to the respondents to pay his salary as well as arrears of his salary from April, 2006 as he was working as Junior Engineer under the Rural Works Department of Government of Bihar.

3. The case of the appellant in brief was that he



joined as Junior Engineer under the Rural Works Department of Government of Bihar on 11.1.1988 and started discharging his duties. Since the month of April, 2006, he has not been paid his salary for no valid reason. It is stated that the appellant continued to make request to the concerned Officers for payment of his salary, however except for the Executive Engineer, Rural Works Department, Works Division, Aurangabad having written a letter dated 18.6.2012 to the Executive Engineer, Sherghati to provide the Last Pay Certificate of the appellant, no steps were taken. The appellant also filed a representation on 13.12.2019 (Annexure-3 to the writ application) addressed to the Chief Engineer, Rural Works Department, Bihar, however nothing having been paid to him, he filed CWJC no. 8020 of 2021. The said writ application having been disposed of holding the appellant not entitled for salary for the period 2006 to 2019, the instant appeal has been preferred.

4. Learned counsel appearing for the appellant submitted that the learned Single Judge has erred in not allowing the prayer of the appellant made in the writ application and holding him not entitled for salary from 2006 to 2019. It is submitted that non-payment of salary being a recurring cause of



action, the prayer made in the writ application should have been allowed. In support of his contention, reliance is placed on the judgment of this Court in the case of **Umar Shankar Prasad vs. State of Bihar [2009 (4) PLJR 632]**.

5. The appeal is opposed by learned counsel appearing for the respondents-State of Bihar. It is submitted that the writ application from which the instant appeal arises having been filed by the appellant in the year 2021 for payment of his arrears of salary from April, 2006, the same suffering from inordinate delay and laches on part of the appellant, the learned Single Judge rightly did not grant relief so far as the earlier period is concerned and has directed the respondents to examine the petitioner's representation for the purpose of his entitlement of salary from January, 2019. There is no merit in the appeal and the same be dismissed.

6. Having heard learning counsel for the parties and having perused the material available on record, this Court finds that the case of the appellant is to the effect that having been appointed as Junior Engineer in the Rural Works Department of Government of Bihar on 11.1.1988, not having received his salary from April, 2006, as per the appellant's case he filed a representation on 13.12.2019 followed by CWJC no. 8020 of



2021 on 19.3.2021.

7. This Court finds that not only the appellant has no explanation what-so-ever for not having moved this Court earlier, even the solitary representation said to have been filed on 13.12.2019 (Annexure-3 to the writ application) does not contain any receipt nor any evidence of the same having been sent to the respondent authorities and appears to have been drafted/typed only for the purpose of filing the writ application. Besides the Hon'ble Supreme Court in the case of **Surjeet Singh Sahni vs. State of Uttar Pradesh [(2022) 15 SCC 536]** has held that representation does not extend period of limitation and the litigant has to approach the Court within the reasonable time. Further the Courts have held that equity favours only the vigilant and not an indolent litigant.

8. So far as the judgment in the case of **Uma Shankar Prasad** (*supra*) relied on by learned counsel for the appellant is concerned, the facts therein were that the petitioner therein failed in 1995 and after undergoing treatment submitted his joining on 2.4.1996. Explanation was sought for from him on 24.4.1996 and show-cause notice was issued on 27.7.1996 to which he replied on 31.9.1996. It was under these circumstances that he filed a writ application for a direction to the respondents



to accept his joining, to pass orders on the reply to show cause notice filed by him and for payment of salary. The facts of the instant case being absolutely different and distinct, the said judgment is of no assistance to the appellant herein.

9. With respect to the contention of learned counsel for the petitioner that non-payment salary for the period from 2006 to 2019 was recurring cause of action, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of **Union of India and Ors. vs. Tarsem Singh [(2005) 8 SCC 648]** wherein in paragraph nos. 7 and 8, the Hon'ble Supreme Court held as follows:-

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also,



and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to sixteen years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances”

10. Having heard learned counsel for the parties and having perused the material on record, though the Court finds no error in the order of the learned Single Judge, however,



in view of the law laid down in the case of **Tarsem Singh** (*supra*), the writ application having been filed by the petitioner on 19.3.2021, the order of the learned Single Judge is modified to the extent that the respondents shall examine the appellant’s representation and if found entitled, he shall be paid his arrears of salary from 19.3.2018 as also his current salary.

11. The appeal stands allowed to the above extent.

(Partha Sarthy, J)

K. Vinod Chandran, CJ: I agree.

(K. Vinod Chandran, CJ)

Harsh/-

AFR/NAFR	NAFR
CAV DATE	26.09.2024
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