

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 8375 of 2022

Raju Malik Son of Prabhu Malik Resident of Village- Mathia, P.S.-
Kalyanpur, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary Urban Development Department, Govt. of Bihar,
Patna.
3. The District Magistrate East Champaran, at Motihari.
4. The Motihari Municipality (Nagar Parishad) Through its Chairman.
5. The Executive Officer Motihari Municipality, Main Road, Motihari, P.S.-
Chhatauni, District- East Champaran.

... .. Respondent/s

Appearance:

For the Petitioner/s	:	Mr. Umesh Chandra Verma, Advocate Mr. Hemant Ray, Advocate Mr. Rashmi Jha, Advocate
For the Respondent/s	:	Mr. Kinkar Kumar (SC-9)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 06-02-2024

1. The present writ petition has been filed for quashing the order dated 26.11.2008, passed by the Executive Officer, Nagar Parishad, Motihari, as far as the petitioner is concerned, whereby and whereunder the services of the petitioner as a Safai Karamchari has been terminated.

2. The brief facts of the case, according to the petitioner, are that while he was working on the post of Safai Karmchari, he became ill and was bedridden from 16.04.2008 to 16.05.2008, on



account of which he could not attend his duties, whereafter he was put under suspension and a show cause was issued to him. It is the contention of the petitioner that thereafter, a memo of charge dated 04.08.2008, was served upon him and then on 04.09.2008 a second memo of charge was served upon him, whereafter the Board had taken a decision in its meeting held on 21.11.2008 to terminate the services of the petitioner. It is submitted that without following the due process of law, the petitioner has been dismissed from service by the impugned order dated 26.11.2008, passed by the Executive Officer, Nagar Parishad, Motihari.

3. Per contra, the learned counsel appearing for the respondents has at the outset, raised a preliminary objection regarding maintainability of the present writ petition on the ground of delay and laches inasmuch as the order of dismissal from service dated 26.11.2008, has been belatedly challenged before this Court by way of the present writ petition only in the year 2022, i.e. after a huge delay of more than 13 years, hence, the present writ petition is required to be dismissed on this ground alone.

4. I have heard the learned counsel for the parties and perused the materials on record. The law is well settled, inasmuch as the Hon'ble Apex Court in a catena of judgment 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 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, reference be had 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***.”

5. 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 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 eight years.

6. In *Chennai Metropolitan Water Supply & Sewerage Board & Others* (Supra), the Hon'ble Supreme Court has held that belated challenge to the Order of dismissal from service by approaching the court after a delay of four years' does not deserve any indulgence and on the ground of delay alone, the writ court should have thrown the petition overboard at the very threshold. It



would be gainful to reproduce paragraphs No. 1, 16, 17 and 34 of the said judgment herein below:-

“1. The present appeal, by special leave, is directed against the judgment and order dated 22-11-2012 passed by the High Court of Judicature of Madras in Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu whereby the Division Bench has affirmed the judgment and order dated 21-7-2011 in WP No. 25673 of 2007 whereunder the learned Single Judge had allowed the writ petition, and after setting aside the punishment of dismissal, directed reinstatement of the respondent with continuity of service but without back wages.

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.

34. Judged on the anvil of the aforesaid premises, the irresistible conclusion is that the interference by the High Court with the punishment is totally unwarranted and unsustainable, and further the High Court was wholly unjustified in entertaining the writ petition after a lapse of four years. The result of aforesaid analysis would entail overturning the judgments and orders passed by the learned Single Judge and the Division Bench of the High Court and, accordingly, we so do.”

7. Considering the facts and circumstances of the case and for the reasons mentioned hereinabove in the preceding paragraphs, this Court finds that the present writ petition is fit to be dismissed on the ground of delay and laches alone inasmuch as



the petitioner has approached this Court belatedly after a lapse of 13 years. Thus considering the principles laid down by the Hon’ble Apex Court in a catena of judgments, as referred to herein above in the preceding paragraphs, as also considering the maxim- “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 present 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.

(Mohit Kumar Shah, J)

Saurav/-

AFR/NAFR	AFR
CAV DATE	NA
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