

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20766 of 2021

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Kumari Rekha D/o- Nashivan Paswan, R/o- 711C/10, Pharmaceutical Colony,
Ward No. - 46, Bahadurpur Housing Colony, P.S. - Bahadurpur, District -
Patna (800026)

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Social Welfare, Bihar Patna.
2. The Joint Secretary, Department of Social Welfare, Bihar Patna.
3. The Deputy Secretary, Department of Social Welfare, Bihar, Patna.
4. The Director, Directorate I.C.D.S., Department of Social Welfare, Bihar, Patna.
5. The District Magistrate, Gaya, Bihar.
6. The District Program Officer, I.C.D.S., Gaya, Bihar.
7. The Secretary, Bihar Public Service Commission, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Fakhruddin Ali Ahmad, Adv. Mr.Riyaj, Adv. Mr.Neeraj Kumar, Adv.
For the State	:	Mrs.Kumari Amrita (GP-3) Mr.Mirtunjay Kumar, AC to GP-3
For the Respondent/s	:	Mr.Agreya Pratap, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 03-04-2024

1. The present writ petition has been filed for quashing the order of punishment dated 02.12.2011, passed by the Joint Secretary, Department of Social Welfare, Government of Bihar, Patna, whereby and whereunder the petitioner has been inflicted with the punishment of fixing of wages at the lowest stage of the original pay scale and he has been debarred for five years from grant of any wage increment, apart from it being stipulated that



the petitioner would not be entitled to any sum other than the subsistence allowance which has already been paid for the period of suspension. The petitioner has also challenged the appellate order dated 20.05.2016, passed by the Joint Secretary, Department of Social Welfare, Government of Bihar, Patna, whereby and whereunder the punishment inflicted upon the petitioner vide order dated 02.12.2011, has been reviewed and amended and now the petitioner has been inflicted with the punishment of stoppage of two wage increments with non-cumulative effect.

2. The learned counsel for the petitioner has submitted that an inspection of the Child Development Project Office, Belaganj, Gaya, was held, whereafter an FIR, bearing Belaganj P.S. Case No.186 of 2010 dated 01.10.2010 was lodged under Section 409/34 of the Indian Penal Code against the petitioner, however, the police upon investigation has submitted a Final Form dated 16.01.2011, however, the petitioner was suspended vide notification dated 03.12.2010 and then a departmental proceeding was initiated against her vide memo dt. 02.5.2011. The petitioner had participated in the departmental inquiry, whereafter the Inquiry Officer had submitted the Inquiry Report and then the order of punishment dated 02.12.2011 was passed,



which was challenged by the petitioner by filing an appeal, however, the same has stood disposed of by an order dt. 20.05.2016, whereby the punishment inflicted upon the petitioner has been reduced, nonetheless it is submitted that since the criminal case has been closed, the petitioner should have been absolved of the charges levelled in the aforesaid departmental proceeding in question.

3. Per contra, the learned counsel for the Respondent-State has raised a preliminary objection with regard to the maintainability of the present writ petition, inasmuch as the present writ petition has been filed belatedly, after a great delay of about more than 5½ years. The learned counsel for the Respondent-State has submitted that 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 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 Respondents 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.

4. The learned counsel for the respondent-State has submitted that even on merits, the petitioner has got no case inasmuch as after grant of ample opportunity to the petitioner to put forth her defense and after following the due process of law, the departmental proceeding in question has been taken to its logical conclusion, apart from the fact that the outcome of criminal proceeding is not binding upon the Disciplinary Authority, conducting the disciplinary proceedings.

5. Having heard the Ld. counsel for the parties and having gone through the materials on record, 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 about more than 5 ½ years. 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 8 years.



6. At this juncture, it would be gainful to reproduce paragraphs No. 1, 16, 17 and 34 of the Judgment rendered by the Hon'ble Apex Court in the case of **Chennai Metropolitan Water Supply & Sewerage Board** (supra), 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 & 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 merits as also on the ground of delay and laches inasmuch as the petitioner has approached this Court belatedly after an unexplained delay of about more than 5 ½ 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 stands dismissed on the ground of delay & latches.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.05.2024
Transmission Date	NA

