

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.118 of 2021

In
Civil Writ Jurisdiction Case No.1372 of 2020

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Zeauddin Ahmad, Son of Late Serajuddin Ahmad, resident of 603, Shurf Apartment, near ICICI Bank, Frazer Road, Police Station Gandhi Maidan, District Patna.

... .. Appellant.

Versus

1. The State of Bihar through the Chief Secretary, Home (Police), Government of Bihar, Patna.
2. The Principal Secretary, Home (Police), Government of Bihar, Patna.
3. The Special Secretary, Department of Home (Police), Government of Bihar, Patna.
4. The Director General of Police, Bihar, Patna.
5. The Inspector General of Police (Headquarter), Patna.
6. The Accountant General (Accounts and Entitlement), Bihar, Patna, Birchand Patel Path, Patna.

... .. Respondents.

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Appearance :

For the Appellant	: Mr. Rupak Kumar, Advocate. Mr. Vikrant Kumar, Advocate.
For the State	: Mr. Prabhat Kumar Verma, AAG-3. Mr. Saroj Kumar Sharma, AC to AAG-3.
For the Accountant General	: Mr. Arun Kumar Arun, Advocate.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 16-01-2025

Appellant has assailed the order of the learned Single Judge dated 18.02.2020 passed in C.W.J.C. No.1372 of 2020.

2. Brief facts of the case are that appellant while working as a Deputy Superintendent of Police, he was handling Passport Section and he is alleged to have committed misdeeds insofar as recommendation for issuance of passport, resultantly,



he was subjected to disciplinary proceedings in framing Charge-Memo on 24.03.2009. All necessary formalities have been completed insofar as concluding departmental inquiry to the extent of issuing second show cause notice on 19.08.2010 and imposition of penalty of deduction of 10% pension on 25.11.2011, in view of the fact that appellant has attained the age of superannuation and retired from service on 31.10.2010. He had approached this Court in filing C.W.J.C. No.7004 of 2012 without exhausting revision, resultantly, C.W.J.C. No.7004 of 2012 was disposed of. Appellant had preferred Revision on 09.07.2012 and it was rejected on 02.11.2012. Thereafter, he was silent from 02.11.2012 to 20.01.2020, the date on which C.W.J.C. No.1372 of 2020 was filed. The learned Single Judge has taken note of the fact that there is a delay in filing C.W.J.C. No.1372 of 2020 to the extent of more than 7 years with reference to cause of action that the appellant's revision petition was dismissed on 02.11.2012.

3. The appellant feeling aggrieved by the order of the learned Single Judge dated 18.02.2020 passed in C.W.J.C. No.1372 of 2020, presented this L.P.A.

4. In support of challenge to the penalty order and order of the learned Single Judge dated 18.02.2020 passed in C.W.J.C.



No.1372 of 2020, he submitted that delay would not be a hurdle insofar as entertaining writ petition even after about 8 years with reference to the dismissal of revision petition read with the filing of C.W.J.C. No.1372 of 2020. In support of the same, he relied on the decision of the Hon'ble Supreme Court in the case of **Ramchandra Shankar Deodhar and Others Versus The State of Maharashtra and Others** reported in **AIR 1974 Supreme Court 259 (paragraph-9)** and in the case of **State of Nagaland Versus Lipok AO & Ors.**, reported in **2005 (2) PLJR (SC) 209 (paragraphs-13 to 18)**.

5. It is further submitted on merits that the alleged charge does not amount to misconduct. In support of the same, he relied on a decision of the Hon'ble Supreme Court in the case of **Union of India and Others Versus J. Ahmed** reported in **AIR 1979 Supreme Court 1022**. It is also submitted that on suspicion, the finding has been given against the appellant. The same cannot be taken into consideration insofar as invoking Rule 43(b) of the Bihar Pension Rules. It is submitted that for the purpose of invoking Rule 43(b) of the Bihar Pension Rules, grave misconduct or loss to the State exchequer is required to be taken note of. It is also submitted that withholding of 10% pension is not for a specific period. Therefore, there is non-



application of mind.

6. Heard learned counsel for the appellant.

7. The cited decisions to entertain the writ petition belatedly for about 8 years is not appreciable in view of the later decision of the Hon'ble Supreme Court in the case of **State of Jammu and Kashmir Versus R.K. Zalpuri**, reported in **AIR 2016 Supreme Court 3006 (paragraph-20)**. In paragraph-20, it is held as under:

“20. Having stated thus, it is useful to refer to a passage from *City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla and Others*, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

“The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;



(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.”

Underline Supplied

Respondent in the aforementioned case was dismissed from service and he had filed petition after 5 years of delay.

8. In the present case, there is no explanation from 2012 to 2020. Therefore, one has to draw inference that there is laches on the part of the appellant insofar as filing of C.W.J.C. No.1372 of 2020, resultantly, the cited decisions on behalf of the appellant (supra) are not appreciable to the case in hand. Laches is a legal principle that states that waiting too long before claiming your rights may bar you from seeking reliefs or remedies.

9. Recently, Hon’ble Supreme Court elaborately considered delay and laches in the following decisions:

- (a). **Mrinmoy Maity Versus Chhanda Koley and Others**, reported in 2024 SCC OnLine SC 551.
- (b). **Basawaraj and another Versus Special Land Acquisition Officer**, reported in (2013) 14 Supreme Court Cases 81.
- (c). **Chairman, State Bank of India and Another Versus M.J. James**, reported in (2022)2 Supreme Court Cases 301 (Para-36).
- (d). **Bichitrananda Behera Versus State of Orissa**



and others, reported in 2023 LiveLaw (SC) 883 (Para-21).

Coordinate Bench of this Court elaborately considered delay and laches in the case of **Anil Prasad Singh Versus The State of Bihar and others on 27.08.2024 in Civil Review No.14 of 2022 in C.W.J.C. No.3719 of 2021**, while taking note of number of decisions of the Hon'ble Supreme Court.

10. Learned counsel for the appellant argued on merits.

11. The alleged charge does not amount to misconduct.

If it is so, he should have challenged the very initiation of departmental inquiry and he has not resorted to. If the inquiring officer or a disciplinary authority gives a finding on certain issues and if it is suspicious, the same cannot be adjudicated under Article 226 of the Constitution in the light of the Hon'ble Supreme Court decision in the case of **State of Karnataka and another Versus Umesh**, reported in **(2022) 6 Supreme Court Cases 563**. The Hon'ble Supreme Court analyzed under what circumstances, Writ Court can and cannot entertain insofar as judicial review of a departmental inquiry.

12. To find out whether grave misconduct or financial loss has caused to the State exchequer, no doubt, it is the bounden duty of the punishing authority to take note of grave misconduct or any financial loss has caused to the State



exchequer, the same cannot be adjudicated in the present L.P.A. in view of the fact that we are satisfied that there is a delay and laches insofar as invoking writ jurisdiction after about 8 years from the date of cause of action accrued to the appellant. Similarly, in not specifying the period of punishment of withholding of 10% of pension. Merely not mentioning of the word ‘permanently’ does not vitiate the order itself. That apart, we have already taken a decision that the writ petition itself is not maintainable in view of the delay and laches.

13. In view of these facts and circumstances, the appellant has not made out a case so as to interfere with the order of the learned Single Judge dated 18.02.2020 passed in C.W.J.C. No.1372 of 2020 read with the order of the penalty dated 05.04.2011 and revision order dated 02.11.2012.

14. Accordingly, the present L.P.A. stands dismissed.

(P. B. Bajanthri, J)

(Sunil Dutta Mishra, J)

P.S./-

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