IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16930 of 2013

CNR No. BRHC010349572013

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Dr. Rajan Sinha Son Of Late Dr. Ganesh Prasad Sinha Resident Of Mohalla Road No. 10-H, Rajendra Nagar, Police Station Kadam Kuan, District Patna

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Department Of Finance, Government Of Bihar, Old Secretariat, Patna.
3. The Secretary-Cum-Secretary, Department Of General Administration, Govt. Of Bihar, Old Secretariat, Patna.
4. The Director General, Bihar Institute of Public Administration and Rural Development (BIPARD), Patna, Walmi Campus Phulwarisharif, Patna
5. Bihar State Sugar Corporation Ltd., Patna through its Managing Director.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Kundan Kumar Sinha, Adv
For the B.S.S.C.L : Mr. Gyan Shankar, Adv
For the State : Mr. Venkatesh, AC to GA-2

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CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
CAV JUDGMENT
Date : 27-10-2026

Heard the learned counsel for the petitioner, the learned counsel appearing on behalf of the State and the learned counsel for the Bihar State Sugar Corporation Limited.

2. The present writ petition has been filed for the following reliefs(s):

> *"1. That the petitioner by present writ application seeking a writ in the nature of certiorari for quashing of the office order bearing memo no.89/05-1059 dated 11.8.2011 issued under the signature of Director General of Bihar Institute of Public Administration and Rural Development (BIPARD) by which the deputation/ services of the petitioner have been terminated on the*

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grounds indicated in the order dated 11.8.2011 w.e.f. 10.7.2011.

Further be pleased to quash the subsequent order bearing memo no.9972 dated 16.7.2012 issued under the signature of the then Chief Secretary, govt. of Bihar-cum-Chairman, BIPARD whereby and where under the Chief Secretary has affirmed the order of termination of deputation of the petitioner from the services of BIPARD as well as quashing of the order dated 5.3.2013 denying the reconsideration of both the impugned order dated 11.8.2011 and 16.7.2012 mentioned above, since the impugned orders have been issued on extraneous consideration of the matter and the petitioner's deputation cannot be cancelled on the basis of a non-existence order i.e. requirement of approval by the Department of General Administration, Govt. of Bihar for such deputation."

3. An Interlocutory Application bearing I.A. No. 4072 of 2018 was filed wherein one additional prayer was made. Vide order dated 17.01.2023 passed by an Hon'ble Single Judge of this Court, the prayer made in I.A. No. 4072 of 2018 was allowed and the same was treated to be part and parcel of the present writ petition. The prayer made in paragraph no.1 of the Interlocutory application is being reproduced herein below:

"That by this Interlocutory Application the petitioner most humbly seeks permission to this Hon'ble Court to implead Bihar State Sugar Corporation Ltd, Patna through its Managing Director as respondent no. 5 to the present writ application.

Further it is humbly prayed that the order dated 24.12.2010 bearing memo no. 249 be allowed to be made impugned in the writ application because in the main writ application there is a prayer of quashing of the order dated 16.07.2012 (Annexure-1/1) there is a reference of the order dated 24.12.2011 which appears to be a typing error because the petitioner in his appeal to the Chief Secretary, Bihar requested for quashing the order dated 24.12.2010, but in the impugned Annexure-1/1 it has wrongly been recorded as 24.12.2011 instead of 24.12.2010. The said order was not annexed

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and impugned due to inadvertence."

BRIEF FACTS OF THE CASE

4. The brief facts which are necessary for adjudication of the present writ petition are that the petitioner was appointed as a Labour Officer in the Bihar State Sugar Corporation Limited (hereinafter referred to as the Corporation) vide memo no.995 dated 05.02.1988. He gave his joining on 08.02.1988. Subsequently, he was posted as an Administrative Officer at the Head Office of the Corporation w.e.f. 08.05.1990 to 12.09.2000. Subsequent thereto, the petitioner was selected and posted on deputation on the post of Administrative Officer in the Indira Gandhi Institute of Medical Sciences (I.G.I.M.S.), Patna, in the pay scale of Rs.8000-13500/-. He remained there w.e.f. 13.09.2000 to 14.01.2004. The petitioner was sent on deputation, pursuant to his application, as an O.S.D. in the Bihar State Hydroelectric Power Corporation Limited (B.S.H.P.C.L.) on the same pay scale, which he was getting in the I.G.I.M.S. He remained there on deputation w.e.f. 15.01.2004 to 12.04.2005. While, the petitioner was working in the B.S.H.P.C.L. on deputation basis, vide letter dated 12.02.2005 issued under the signature of the Director, Bihar Institute of Public Administration and Rural Development (B.I.P.A.R.D.)

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addressed to all the Commissioners-cum-Secretary/Secretary of the Departments with regard to the vacant and sanctioned post at different levels and requested them to circulated the same in their respective departments and to send the application form along with bio-data of the interested employees to the Corporation. In the said letter, it was also intimated that the person having the requisite qualification will be posted on deputation and after obtaining permission from the Finance Department, a proposal is there to make payment of one scale higher to the employee, from which he is currently entitled. In the said letter the pay scale of the Assistant Director was mentioned as Rs.6500-10500/-, the Deputy Director as Rs.10500-15200/- and the Joint Director as Rs.12000-16500/. The petitioner being eligible and interested, submitted his application through proper channel for deputation. It is the case of the petitioner that his bio-data was sent by the competent authority of B.S.H.P.C.L., wherein the last pay drawn by the petitioner was mentioned as Rs.8000-13500/-, which he was getting in the I.G.I.M.S., Patna and the B.S.H.P.C.L., Patna. After completing all the formalities, vide letter dated 09.04.2005 issued under the signature of the Director, B.I.P.A.R.D. Patna, addressed to the Managing Director, B.S.H.P.C.L., a request was

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made to relieve the petitioner immediately, in view of his selection on deputation in the B.I.P.A.R.D., which was earlier known as (A.T.I./R.T.D.I.). In compliance of the letter dated 09.04.2005, the petitioner was relieved in the forenoon of 12.04.2005 to give his joining at B.I.P.A.R.D. In view of his relieving on 12.04.2005, the petitioner immediately submitted his joining before the Director, Administrative Training Academy, Walmi Campus, Patna on 13.04.2005. While the petitioner was posted in the B.I.P.A.R.D./Administrative Training Academy, a compliant was made before the Hon'ble Lokayukt, Patna with regard to the excess payment received by the petitioner on account of his higher pay fixation in B.S.H.P.C.L., Patna, which was excess to his entitlement in the Corporation. Pursuant thereto, an enquiry was made by the B.I.P.A.R.D. and vide letter dated 09.04.2007 written by the Director (Human Resource), addressed to the Managing Director, Bihar State Sugar Corporation Limited, a report was submitted with regard to the excess payment received by the petitioner. Vide letter dated 14.04.2007, the petitioner wrote to the Director General, B.I.P.A.R.D. to grant him the pay scale of Rs.12000-16500/-, since he had submitted his application in the B.I.P.A.R.D. against the post carrying the said pay scale i.e. the

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post of Joint Director and he gave his joining on the said post only, therefore he requested to make payment of the said pay scale and also informed the Director that he is getting the lower pay, to what was being given to him in B.S.P.H.C.L.. When the said request of the petitioner was not acceded to, he was constrained to file a writ petition bearing C.W.J.C. No.6871 of 2007 before this Hon'ble Court. The writ petition filed by the petitioner was heard by an Hon'ble Single Judge of this Court. In the meantime, vide order contained in memo no.593 dated 18/21.05.2007, the deputation of the petitioner in B.I.P.A.R.D. was cancelled and he was repatriated to his parent organization i.e. the Corporation. The said order of repatriation was also assailed by the petitioner by filling an Interlocutory Application in C.W.J.C. No.6871 of 2007. The writ petition was finally heard by an Hon'ble Single Judge of this Court on 09.10.2007. The Hon'ble Single Judge after hearing the parties was pleased to quash the order dated 18/21.05.2007, by which the petitioner was repatriated to his parent organization and a direction was issued to the Chief Secretary, Bihar, who happens to be the Chairman of B.I.P.A.R.D. to examine both the controversies i.e. the petitioner drew salary in the higher scale, while serving as an O.S.D. in the B.S.H.P.C.L., Patna and also his grievances

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raised in the representation dated 16.04.2007, after giving an opportunity of being heard. It was further directed that the Chief Secretary should examine the aforesaid two controversies as early as possible, in any case within a period of one month from the date of receipt/production of a copy of the order. It was further directed that the Chief Secretary will forward his finding to the B.I.P.A.R.D., for being considered by its Executive Council. The Hon'ble Single Judge further directed that since the repatriation order dated 18/21.05.2007 has been quashed, the petitioner will be allowed to join in B.I.P.A.R.D. and will be paid his arrear of salary in the scale, in which he was being paid salary in B.I.P.A.R.D., however such payment shall be subject to the findings of the Chief Secretary about the admissibility of the scale of the petitioner in the B.I.P.A.R.D. The State of Bihar assailed the order dated 09.10.2007passed by the Hon'ble Single Judge in C.W.J.C. No.6871 of 2007 by filing L.P.A. No.897 of 2007. During pendency of the Letters Patent Appeal, the petitioner was permitted to join in B.I.P.A.R.D. on 12.07.2011. In the meantime, vide memo no.321 dated 01.11.2007 issued under the signature of the Managing Director of the Corporation, a decision was taken to initiate departmental proceedings against the petitioner. The memo of charge was

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issued to the petitioner and similarly the Enquiry Officer as well as the Presenting Officer were appointed. Vide letter dated 06.11.2007 issued under the signature of the Enquiry Officer, the petitioner was directed to submit his reply to the charges levelled against him on or before 21.11.2007. The petitioner vide his letter dated 20.11.2007 requested the Conducting Officer to keep the proceedings in abeyance, till the decision is taken by the Chief Secretary, in compliance of the directions issued by the Hon'ble Single Judge of this Court. Since the departmental proceedings initiated against the petitioner was pending, the petitioner was again requested vide letter dated 18.02.2008 to submit his reply on or before 26.02.2008. The petitioner, in compliance thereof submitted his reply before the Conducting Officer on 26.02.2008 and requested to complete the departmental proceeding after the decision is taken by this Court in the appeal preferred by the State of Bihar, which was pending for adjudication before this Hon'ble Court. Since the petitioner was not submitting his reply, again a letter was sent to him on 01.04.2008, whereby the petitioner was again requested to submit his reply. Again, the petitioner vide his letter dated 07.04.2008 requested the Enquiry Officer to keep the matter pending till decision is taken on the contempt petition filed by

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the petitioner for non-compliance of the order passed by the Hon'ble Single Judge.

5. It is further case of the petitioner that the Enquiry Officer without waiting for the conclusion of the Letters Patent Appeal preferred by the State of Bihar, submitted his enquiry report before the Disciplinary Authority on 11.06.2008, wherein he recommended for recovery of the excess salary and allowances received by the petitioner, which was in excess of his entitlement and to refund the same to the concerned Institutions/Departments, from where the petitioner received the excess payment. Upon submission of enquiry report, vide letter dated 03.09.2010 issued under the signature of the Managing Director of the Corporation, second show-cause was issued to the petitioner. In compliance thereof, the petitioner vide his letter dated 11.09.2010, addressed to the Managing Director of the Corporation again requested that since the Letters Patent Appeal filed by the State of Bihar is pending, he be not forced to give any reply, since any reply submitted by him will be against his interest in the Letters Patent Appeal. Left with no other option, the order contained in memo no.249 dated 24.12.2010 was issued, whereby the petitioner was imposed punishment of stoppage of promotion for the next 5 years,

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recovery of the amount, which was received in excess of his entitlement and stoppage of 3 increments with non-cumulative effect. The Letters Patent Appeal, which was filed by the State of Bihar was finally heard by an Hon'ble Division Bench of this Court and the Hon'ble Division bench, after considering the entire aspect of the matter, vide order dated 17.05.2011 was pleased to hold that we concur with the opinion expressed by the Hon'ble Single Judge. Accordingly, we confirm the order passed by the Hon'ble Single Judge and dismiss the appeal. It was directed that we clarify that a fresh look can be given by Executive Council in the matter. We are also of the opinion that the petitioner may place the matter before the Executive Council for passing necessary orders, in case no approval is received from the Department of Personnel and Administrative Reforms. It was further directed that the report submitted by the Chief Secretary has become part of the record of this case, therefore we direct that the matter should be considered on merit by the Chief Secretary after giving an opportunity of hearing to the respondent writ petitioner. If the respondent is aggrieved with the order of the Chief Secretary, liberty is granted to question the same before an appropriate forum in accordance with law.

6. It is further case of the petitioner that the

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Executive Council of the B.I.P.A.R.D. in its meeting dated 08.08.2011 took a decision to immediately cancel the deputation of the petitioner on the post of Deputy Director in B.I.P.A.R.D. with immediate effect, in view of the directions given by the Hon'ble Patna High Court in C.W.J.C. 6871 of 2007. It was further decided to repatriate the petitioner to his parent organization with immediate effect. It is further case of the petitioner that in terms of the directions given by the Hon'ble Single Judge and the Hon'ble Division Bench of this Court, the Chief Secretary again heard the matter in detail and proceeded to pass a final order contained in memo no.9972 dated 16.07.2012, whereby the Chief Secretary came to the conclusion that the decision for recovery of the excess amount from the petitioner is appropriate and the same has to be recovered after conclusion of the Departmental proceedings. It is further case of the petitioner that in view of the decision of the Executive Counsel of the B.I.P.A.R.D. dated 08.08.2011, the Managing Director, B.I.P.A.R.D. by his order dated 11.08.2011 issued a separate order, whereby the deputation of the petitioner was cancelled and he was directed to be repatriated to his parent organization i.e. the Bihar State Sugar Corporation Limited. The petitioner being aggrieved with the order passed by the

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Managing Director, B.I.P.A.R.D., on 11.08.2011 and the order dated 16.07.2012 passed by the Chief Secretary, Government of Bihar, Patna, preferred the present writ petition.

SUBMISSSION ON BEHALF OF THE PETITIONER

7. The learned counsel for the petitioner submits that the deputation of the petitioner was cancelled on a nonexistent ground. When the termination/cancellation of the deputation was quashed by this Hon'ble Court, the respondent B.I.P.A.R.D. started adding other reasons for termination of deputation, which was not in accordance with law. He submits that the order of repatriation was issued on the ground of absence of approval of the petitioner's deputation by the General Administration Department of the State. He submits that the approval of General Administration Department was not required as the respondent B.I.P.A.R.D. itself disclosed this fact through their letter dated 23.08.2007. The learned counsel for the petitioner submits that so far, the dispute of pay scale of the petitioner is concerned, the petitioner while posted on deputation in the I.G.I.M.S., Patna, was placed in the pay scale of Rs.8000-13500/-. Thereafter in the B.S.H.P.C.L., the same pay scale was given to him and thereafter the same pay scale was given to him in the B.I.P.A.R.D. He submits that the pay

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fixation of Rs.8000-13500/- is the bone of contention, for which the petitioner filed the writ petition, since he was not being given the pay scale of Rs.12000-16500/-. The learned counsel for the petitioner submits that since the petitioner had submitted his application for the post of Joint Director, which carries the pay scale of Rs.12000-16500/-, it was incumbent upon the B.I.P.A.R.D. to make payment of the said pay scale to him. He submits that in the letter dated 12.02.2005 issued by the B.I.P.A.R.D., whereby options were invited from interested candidates to work on deputation in the B.I.P.A.R.D. It was mentioned that the person concerned would be paid one scale higher of the pay, which he is getting in parent organization. Since the petitioner was getting Rs.8000-13500/- in the I.G.I.M.S. and B.S.H.P.C.L., therefore he was entitled for the pay scale of Rs.12000-16500/-. He next submits that there is no illegality in the petitioner submitting the last pay certificate granted by the I.G.I.M.S., Patna, before the B.S.H.P.C.L., Patna, since in the I.G.I.M.S., he was getting Rs.8000-13500/-. He submits that since his last pay in the I.G.I.M.S., Patna and the B.S.H.P.C.L., Patna, was Rs.8000-13500/-, therefore, he submitted the said last pay certificate before the B.I.P.A.R.D. He submits that till date the Corporation has not disclosed the

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amount which has been found recoverable from the petitioner.

8. The learned counsel for the petitioner next submits that the petitioner is entitled for grant of the pay scale, which was given in the selection letter dated 09.04.2005. He submits that prior to his joining on deputation, he was already being paid the pay scale of Rs.8000-13500/-, along with other benefits and prerequisites attached to the said post of O.S.D. in B.S.H.P.C.L. and even after his joining in A.T.I. /B.I.P.A.R.D., he was being paid Rs.8000-13500/-. He next submits that so far, the departmental proceeding initiated against the petitioner is concerned, the same was not conducted as per the law, despite the objection raised by the petitioner. He submits that the entire departmental proceeding was conducted ex-parte and the enquiry report was also not provided to the petitioner. No show cause was issued to the petitioner and the order dated 24.12.2010 was passed without any enquiry report. He submits that the Managing Director of the Corporation on his own passed the impugned order, inflicting 3 punishments under the Bihar CCA Rules, 2005 Part-V. He submits that though it is a minor punishment under the Bihar CCA Rules, 2005, but, the impact of the same is devastating for the petitioner. The learned counsel for the petitioner finally submits that there is no

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irregularity and illegality in the petitioner getting the pay scale of Rs.8000-13500/-, since he was getting the same in the I.G.I.M.S. and therefore he submitted his last pay certificate issued by the I.G.I.M.S. to the B.S.H.P.C.L., where he gave his joining, after his relieving from I.G.I.M.S., Patna and then again, the same was submitted before the B.I.P.A.R.D. He submits that now the writ petition is confined to the prayers made in the Interlocutory Application only.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS-STATE/CORPORATION.

9. Per contra, the learned counsel appearing on behalf of the respondents no.3 submits that pursuant to the letter dated 12.02.2005 circulated by the Director, Administrative Training Institute/B.I.P.A.R.D., Patna, the petitioner, who was working on deputation as an O.S.D. in the B.S.H.P.C.L., submitted his application. His application was accepted and accordingly he gave his joining on the post of Deputy Director, which was approved by the Executive Council of the B.I.P.A.R.D. on 13.06.2006. While working in the B.I.P.A.R.D. he filed a writ petition bearing C.W.J.C. No.6871 of 2007, for grant of pay scale of Rs.12000-16500/- and to make payment of his arrears of his salary. During pendency of the writ petition, a decision was taken to repatriate the petitioner to his parent

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organization, in absence of any approval from the General Administration Department. The said order was also assailed by the petitioner and finally the writ petition was allowed with certain directions. The State of Bihar preferred a Letters Patent Appeal against the order passed by the Hon'ble Single Judge. In terms of the directions given by the Hon'ble Single Judge, the petitioner filed a petition before the Chief Secretary, Government of Bihar, Patna. The Chief Secretary vide his order dated 13.12.2008 passed final orders. The same was also brought on record in the Letters Patent Appeal filed by the State of Bihar. The appeal preferred by the State of Bihar was finally disposed of on 17.05.2011 with certain directions. The petitioner submitted his application for joining on 11.07.2011 and the same was accepted on 12.07.2011. The matter regarding the petitioner was placed before the Executive Council of the B.I.P.A.R.D. on 13.07.2011 and after considering the entire aspect of the matter an opinion was formed that it is not desirable to retain the petitioner in the services of B.I.PA.R.D. and accordingly a decision was taken to issue show cause notice to the petitioner, seeking his clarification that as to why his services be not returned to his parent organization. Show cause notice was issued to the petitioner on 15.07.2011. The petitioner

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submitted his reply on 22.07.2011, wherein he enclosed a representation dated 21.07.2011 submitted before the Chief Secretary. From perusal of the representation dated 21.07.2011, it transpired that the petitioner was aware about the order of punishment dated 24.12.2010 passed against him by his parent organization. The Executive Council of the B.I.P.A.R.D. took a decision on 08.08.2011 to repatriate the petitioner and in compliance thereof, an office order was issued on 11.08.2011. In compliance of the orders passed by the Hon'ble Single Judge and the Hon'ble Division bench, vide letter dated 20.07.2012, the petitioner has already been paid his entire arrears of salary pending before the B.I.P.A.R.D. and the petitioner did not raise any objection with regard to the said calculation.

10. The learned counsel for the State further submits that the Chief Secretary by his order dated 16.07.2012 has considered all the issues raised by the petitioner in the writ petition and in his representation. The same was passed after giving an opportunity to the petitioner and the Chief Secretary after recording the entire fact, came to the conclusion that there was no illegality in the order of punishment, either procedural or on merits. He submits that the order of recovery passed by the Chief Secretary is not required to be interfered with, since the

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same is in accordance with law.

11. The learned counsel appearing on behalf of the Corporation, while referring to the counter affidavit, submits that the prayer sought for by the petitioner through the interlocutory application i.e. for setting aside memo no.249 dated 24.12.2010 is not maintainable on the ground of delay and laches. He submits that the order of punishment was passed on 24.12.2010 and the petitioner being fully aware about the said order, chose not to challenge the same before the Appellate Authority in appeal or Writ proceeding and after 8 years of the passing of the order, has challenged the same by an Interlocutory Application. He submits that so far, the departmental proceeding conducted against the petitioner is concerned, he was appointed as a Labour Welfare officer in the Corporation. When he was relieved to join at I.G.I.M.S., Patna he was posted in the pay scale of Rs.2000-3800/-. At the said time, the financial condition of the corporation was very bad and it was on verge of liquidation. Subsequently, the Corporation went into liquidation and a liquidation petition bearing Company Petition No.09 of 2002 was filed before the Patna High Court. He next submits that so far, the pay revision of the petitioner is concerned, it is submitted that since the

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Corporation went into liquidation, therefore, the employees of the Corporation were given the 4th pay revision only and 5th or 6thpay revision was never given to the employees of the Corporation. He further submits that the petitioner applied for deputation in I.G.I.M.S., Patna and pursuant to his selection at the relevant time when he was relieved to join the I.G.I.M.S., Patna, he was posted in the pay scale of Rs.2000-3800/-. While he was posted in different organization on deputation, an allegation was levelled against him that while he was on deputation in B.S.H.P.C.L., he deceitfully received the salary in the scale of Rs.8000-13500/-. The petitioner intentionally suppressed the pay scale, which he was getting in the Corporation, while he went on deputation to the B.S.H.P.C.L. The Managing Director of the B.S.H.P.C.L., vide his letter dated 09.04.2007 requested the Corporation to initiate proceeding and to recover the excess amount paid to the petitioner, since he was posted in the pay scale of Rs.6500-10500/- in the B.S.H.P.C.L., however he received the pay scale of Rs.8000-13500/-, which was not correct. It was further stated that the petitioner the petitioner was appointed on deputation on 15.01.2004 after his relieving from the Corporation, however his last Pay certificate from the Corporation was not made available and the petitioner

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provided the Last Pay certificate of the I.G.I.M.S., instead of the Corporation, therefore his pay scale of Rs.8000-13500/- was approved in the B.S.P.H.C.L. Simultaneously, a compliant was also filed before the Hon'ble Lokayukt, Bihar with regard to the excess payment received by the petitioner. A decision was taken to initiate departmental proceedings against the petitioner, for which memo of charge was issued on 01.11.2007. The same was served upon the petitioner. Despite repeated request made by the Enquiry Officer on different dates i.e. 06.11.2007, 20.11.2007, 18.02.2008, 26.02.2008 and 07.04.2008, he did not appear before the Enquiry Officer on one pretext or another. The enquiry report was submitted on 11.06.2008.A second show cause notice was issued to the petitioner on 03.09.2010, however he again did not reply to the second show cause, informing the Disciplinary Authority to wait for the result of the Letters Patent Appeal. Finally, the order of punishment was passed on 24.12.2010, whereby the petitioner has been inflicted with punishment of stoppage of promotion for next 5 years, recovery of excess pay received by him and stoppage of 3 increments with non-cumulative effect. The petitioner did not file any appeal against the order of punishment and did not file any writ petition against the same. In 2018, during pendency of

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the present writ petition, he assailed the order of punishment dated 24.12.2010 by filing an interlocutory application. He submits that the statement made in the paragraph no.5 of the Interlocutory application is completely false, since the enquiry report was provided to the petitioner with the 2nd show cause notice. The petitioner submitted his reply on 11.09.2010, but he did not mention about non receipt of the enquiry report.

12. The learned counsel appearing on behalf of the Corporation next submits that considering the bad financial conditions of the Corporation, under the policy decision of the State government, an “Exist Settlement Scheme” was framed for the employees of the Corporation. The said scheme was approved on 23.10.2013 and the cut-off date for the permanent employees of the headquarter was fixed as30.04.2013. After the said cut-off date, the services of all the employees of the headquarter has come to an end and the relationship of employer/employee between the petitioner and the respondent Corporation has come to an end. The learned counsel for the Corporation submits that so far the issue of admissibility of the benefits of 5th and 6th pay revision to the employees of the Corporation is concerned, this Hon’ble Court vide its order dated 26.03.2010 passed in C.W.J.C. No.4677 of 2010 and vide

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order dated 19.04.2010 passed in C.W.J.C. No.6591 of 2010 has already decided that the employees of the Corporation are not entitled for the benefits of 5th and 6th pay revision and the same has also been upheld by the Hon'ble Division Bench of this Court. He further submits that the validity of the Exist Settlement Plan has also been upheld by the Hon'ble Patna High Court in C.W.J.C. No.5400 of 2014and L.P.A. No.1491 of 2018. He submits that in view of the fact that the petitioner did not assail the order of punishment, either by filing an appeal or before this Hon'ble Court for almost 8 years, the challenge of the petitioner to the impugned order of punishment dated 24.12.2010 is not to be entertained by this Hon'ble Court. He submits that the order passed by the Chief Secretary is also in consonance with the enquiry made by the Chief Secretary at his own level, since after considering the entire aspect, he has passed a detailed order, which is also not required to be interfered with.

ANALYSIS/CONCLUSION

13. Having considered the rival submissions and after going through the documents available on record, it appears that the petitioner was initially appointed as a Labour Officer in the Bihar State Sugar Corporation Limited and was

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subsequently posted on deputation in different institutions, including the Bihar State Hydroelectric Power Corporation Limited and the Bihar Institute of Public Administration and Rural Development. The dispute arose on account of the pay scale of Rs.8000-13500/- received by the petitioner, while he was posted on deputation in the Bihar State Hydroelectric Power Corporation Limited, which, according to the respondent Corporation, was in excess of his entitlement. Pursuant thereto, departmental proceeding was initiated against the petitioner on 01.11.2007. After competition of the proceeding, an enquiry report was submitted on 11.06.2008, recommending recovery of the excess salary and allowances received by him. Thereafter, a second show-cause notice was issued to the petitioner on 03.09.2010, to which he submitted his reply on 11.09.2010, requesting the respondent authorities to await the outcome of the Letters Patent Appeal preferred by the State of Bihar. Ultimately, vide order contained in memo no.249 dated 24.12.2010, the petitioner was inflicted with the punishment of stoppage of promotion for the next five years, recovery of the amount received in excess of his entitlement and stoppage of three increments with non-cumulative effect. The petitioner, however, did not challenge the said order before the appellate

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authority or by way of a separate writ proceeding at the relevant time and subsequently sought to assail the same by filing an Interlocutory Application bearing I.A. No. 4072 of 2018 in the present writ petition on 17.05.2018. It further transpires from the record that despite the petitioner being aware about the departmental proceeding against him and passing of the impugned order of punishment, did not make the Bihar State Sugar Corporation as the party respondent in the present writ petition, although the Corporation was a necessary party, since the order of punishment was passed by the authorities of the Corporation. Ultimately a prayer was made by the petitioner through the I.A. No.4072 of 2018 for setting aside the order of punishment dated 24.12.2010 as well for impleading the Corporation as party respondent in the present writ petition. The Interlocutory application filed by the petitioner was allowed by an Hon'ble single Judge of this Court vide order dated 17.01.2023 and only thereafter the Corporation was impleaded as Respondent no.5 in the present writ petition. A counter affidavit was filed on behalf of the Corporation, wherein apart from others, a preliminary objection with regard to maintainability of the prayer made in I. A. No.4072 of 2018, with regard to quashing the order of punishment dated

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24.12.2018, with delay and laches was raised.

14. Before proceeding to argue the writ petition, the Learned Counsel for the petitioner had submitted before this Court that he will not be pressing for the prayers made in the writ petition, since during pendency of the writ petition the prayers made in the writ petition have become infructuous on account the superannuation of the petitioner on 31.08.2018, therefore, he will be pressing only the prayers made in I.A. No.4072 of 2018, so far it relates to setting aside of the punishment imposed vide order dated 24.12.2010. Now the only issue, which arises for consideration before this court is that whether the order of punishment dated 24.12.2010, which has been challenged by the petitioner after a considerable long time, warrants interference or not. From the materials placed on record, it transpires that the petitioner was aware of the departmental proceedings initiated against him and was repeatedly called upon to submit his reply to the charges levelled against him. It further appears from the stand taken by the respondent Corporation, that the enquiry report was furnished to the petitioner, along with the second showcause notice dated 03.09.2010 and he submitted his reply on 11.09.2010. The petitioner, instead of participating in the

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departmental proceeding, for taking it to its logical conclusion, requested the authorities to keep the matter pending, until the outcome of the Letters Patent Appeal preferred by the State of Bihar. However, the pendency of the said appeal, by itself, could not indefinitely prevent the respondent authorities from proceeding in the departmental matter, particularly when the petitioner had been afforded an opportunity to submit his response to the proposed punishment. The petitioner has contended that the departmental proceedings were conducted ex-parte and that the enquiry report was not supplied to him, however, the respondent Corporation in their counter affidavit have specifically disputed the said contention and have stated that the enquiry report was furnished, along with the second show-cause notice, to which the petitioner submitted his reply without raising any objection regarding nonreceipt of the enquiry report. The said fact has not been denied by the petitioner by filing any reply, therefore, the mere assertion that the departmental proceedings were conducted ex-parte would not, by itself, be sufficient to establish that the order of punishment is liable to be quashed, particularly when the respondents have placed on record their stand regarding the opportunities afforded to the petitioner during the course of the

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departmental proceedings.

15. This Court further finds that the order of punishment was passed on 24.12.2010, whereas the specific challenge to the said order was made by the petitioner by way of an interlocutory application filed in the year 2018. The respondent Corporation has contended that the petitioner was fully aware of the order of punishment and had also referred to the same in his representation dated 21.07.2011, yet he did not take any step to assail the said order before the competent authority or before this Court for almost eight years. The petitioner has not demonstrated any sufficient explanation, on the basis of the materials placed before this Court, for the delay in specifically challenging the order of punishment. The law is well settled that a party seeking relief under Article 226 of the Constitution of India must approach the Court without unreasonable delay and must satisfactorily explain the circumstances, which prevented him from seeking relief, within a reasonable period. In the present case, the petitioner was aware of the dispute relating to his pay fixation, the departmental proceedings initiated against him and the order of punishment passed on 24.12.2010. The subsequent proceeding relating to the cancellation of his deputation and the directions

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issued by this Court in the earlier writ petition and the Letters Patent Appeal do not, in the facts of the present case, satisfactorily explain why the petitioner failed to challenge the order of punishment within a reasonable period. Further, the respondent Corporation has stated that, pursuant to the Exit Settlement Scheme approved on 23.10.2013, the services of the permanent employees of the headquarters came to an end after the prescribed cut-off date of 30.04.2013, thereby bringing the employer-employee relationship between the petitioner and the Corporation to an end. The said circumstance is also relevant, while considering the nature of the consequential relief sought by the petitioner.

16. The law with regard to the principle of delay, laches, waiver and acquiescence has already been settled by the Hon'ble Supreme Court of India in a case reported in ***2015 (1) SCC 347 (State of Uttar Pradesh & Ors. VS Arvind Kumar Srivastava & Ors.)***, wherein in paragraph nos. 22.1, 22.3 and 23, it has been held as under:

> *"22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly*

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situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently."

"22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

"23. Viewed from this angle, in the present case, we find that the selection process took place in the year 1986. Appointment orders were issued in the year 1987, but were also cancelled vide orders dated 22-6-1987. The respondents before us did not challenge these cancellation orders till the year 1996 i.e. for a period of 9 years. It means that they had accepted the cancellation of their appointments. They woke up in the year 1996 only after finding that some other persons whose appointment orders were also cancelled got the relief. By that time, nine years had passed. The earlier judgment had granted the relief to the parties before the Court. It would also be pertinent to highlight that these respondents have not joined service nor working like the employees who succeeded in earlier case before the Tribunal. As of today, 27 years have passed after the issuance of cancellation orders. Therefore, not only was there unexplained delay and laches in filing the claim petition after a period of 9 years, it would be totally unjust to direct the appellants to give them appointment as of today i.e. after a period of 27 years when most of these respondents would be almost 50 years of age or above."

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17. Similarly, the Hon'ble Supreme Court of India in a Judgment reported in ***2024 (15) SCC 215 (Mrinmoy Maity VS Chhanda Koley & Ors.)*** in paragraph nos. 9, 10, 11, 12 and 13 has held as under:

> *"9. Having heard rival contentions raised and on perusal of the facts obtained in the present case, we are of the considered view that the writ petitioner ought to have been non-suited or in other words the writ petition ought to have been dismissed on the ground of delay and laches itself. An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one of the factors which should be borne in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action."*
>
> *"10. The discretion to be exercised would be with care and caution. If the delay which has occasioned in approaching the writ court is explained which would appeal to the conscience of the court, in such circumstances it cannot be gainsaid by the contesting party that for all times to come the delay is not to be condoned. There may be myriad circumstances which gives rise to the invoking of the extraordinary jurisdiction and it all depends on facts and circumstances of each case, same cannot be described in a straitjacket formula with mathematical precision. The ultimate discretion to be exercised by the writ court depends upon the facts that it has to travel or the terrain in which the facts have travelled."*
>
> *"11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been*

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invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, inasmuch as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court."

"12. This Court in Tridip Kumar Dingal v. State of W.B. [Tridip Kumar Dingal v. State of W.B., (2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119] has held to the following effect: (SCC p. 784, paras 56-58)

> *"56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches."*
>
> *"57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide State of M.P. v. Bhailal Bhai [State of M.P. v. Bhailal Bhai, (1964) 15 STC 450 : 1964 SCC OnLine SC 10 : (1964) 6 SCR 261 : AIR 1964 SC 1006] ,*

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Moon Mills Ltd. v. Industrial Court [Moon Mills Ltd. v. Industrial Court, 1967 SCC OnLine SC 117 : AIR 1967 SC 1450] and Bhoop Singh v. Union of India [Bhoop Singh v. Union of India, (1992) 3 SCC 136]). This principle applies even in case of an infringement of fundamental right (vide Tilokchand Motichand v. H.B. Munshi [Tilokchand Motichand v. H.B. Munshi, (1969) 1 SCC 110 : (1970) 25 STC 289] , Durga Prashad v. Controller of Imports and Exports [Durga Prashad v. Controller of Imports and Exports, (1969) 1 SCC 185] and Rabindranath Bose v. Union of India [Rabindranath Bose v. Union of India, (1970) 1 SCC 84]).”

“58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose.”

“13. It is apposite to take note of the dicta laid down by this Court in Karnataka Power Corpn. Ltd. v. K. Thangappan [Karnataka Power Corpn. Ltd. v. K. Thangappan, (2006) 4 SCC 322 : 2006 SCC (L&S) 791] whereunder it has been held that the High Court may refuse to exercise extraordinary jurisdiction if there is negligence or omissions on the part of the applicant to assert his right. It has been further held thereunder: (SCC pp. 325-26, paras 6-9)

“6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad v. Controller of Imports and Exports [Durga Prashad v. Controller of Imports and Exports, (1969) 1 SCC 185] . Of course, the discretion

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has to be exercised judicially and reasonably."

"7. What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd [Lindsay Petroleum Co. v. Prosper Armstrong Hurd, (1874) LR 5 PC 221 : 22 WR 492] (LR PC at p. 239) was approved by this Court in Moon Mills Ltd. v. Industrial Court [Moon Mills Ltd. v. Industrial Court, 1967 SCC OnLine SC 117 : AIR 1967 SC 1450] and Maharashtra SRTC v. Balwant Regular Motor Service [Maharashtra SRTC v. Balwant Regular Motor Service, 1968 SCC OnLine SC 54 : (1969) 1 SCR 808 : AIR 1969 SC 329] . Sir Barnes had stated: (Lindsay Petroleum case [Lindsay Petroleum Co. v. Prosper Armstrong Hurd, (1874) LR 5 PC 221 : 22 WR 492] , LR pp. 239-40)

'Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.'

"8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in Rabindranath Bose v. Union of India [Rabindranath Bose

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v. Union of India, (1970) 1 SCC 84] that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay."

"9. It was stated in State of M.P. v. Nandlal Jaiswal [State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566] that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

18. Accordingly, in view of the consideration made above, this Court does not find any merit in the challenge made by the petitioner against the order of punishment contained in memo no.249 dated 24.12.2010. The petitioner has failed to explain the considerable delay in assailing the said order and the materials placed on record do not establish

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sufficient grounds for interference with the punishment imposed by the respondent Corporation. Therefore, this Court do not find any ground to interfere in the order of punishment passed against the petitioner. The writ petition, filed by the petitioner against the impugned order of punishment dated 24.12.2010, is accordingly dismissed on the ground of delay and laches as well as on merits also, since it is an admitted position that the petitioner did not provide his pay slip of the Corporation, before the BSHPCL or BIPARD and submitted his pay slip of IGIMS, before both the places, which was admittedly in excess of his entitlement in the Corporation, which was his parent organization.

19. Pending application(s), if any, shall also stand disposed of.

shital/- **(Ritesh Kumar, J)**

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