

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20448 of 2013

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Nagendra Prasad Singh Son Of Late Mundrika Prasad Singh Resident Of
Lane No.- 4A, Vijay Nagar, Police Station- Rupaspur, District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, General Administration Department, Secretariat Building, Bihar, Patna
3. The Principal Secretary, Department Of Revenue And Land Reforms, Secretariat Building, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manoj Priyadarshi, Sr. Advocate
	:	Mr. Ram Kishor Singh, Advocate
For the Respondent/s	:	Mr. Arvind Kumar, AC to Ex GA-9

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CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
CAV JUDGMENT

Date : 11-05-2026

Heard the parties.

2. The present writ petition has been filed for the following reliefs:-

“I. To quash the letter contained in memo no. 2414 dated 16.11.2005 of the General Administration Department whereby and where under the petitioner has been inflicted punishment of withholding of three increments with cumulative effect in a departmental proceeding.

II. To quash the letter contained in memo no. 2325 dated 21.07.2011 passed by the General Administration Department by which at the conclusion of the same departmental proceeding against petitioner the department



has decided to impose and withhold the salary and allowances of the petitioner for the suspension period, running between 5.10.2000 to 27.05.2005, other than the subsistence allowance already paid, in transaction under which three increments have been withheld by the letter dated 17.11.2005 against him.

III. To hold and declare entire departmental proceeding against petitioner vitiated and suspension unjustified in law, including the punishments of withholding of three increments by letter dated 17.11.2005 and further disallowing petitioner to get full salary and allowances for suspension period through letter dated 21.07.2011 under the same departmental proceeding illegal, void and inoperative in the eye of law.

IV. To command the respondents and order them to restore the increments already withheld in pursuance of letter dated 17.11.2005 and to further direct them to pay full salary and allowances to the petitioner, other than the subsistence allowance already paid, for suspension period that continued from 5.10.2000 to 27.05.2005 after the punishments of the petitioner being declared illegal and unsustainable in law.”

FACTS OF THE CASE

3. The brief facts giving rise to the present writ petition are that the petitioner was appointed as an Assistant in the Revenue and Land Reforms Department. Subsequently, in the year 1988, on account of formation of a joint cadre of assistants of the



secretariat and assistants of the attached offices to the secretariat, the General Administration Department became the parent department of the assistants of the Secretariat. While the petitioner was posted as an Assistant in the year 2000, he was put under suspension vide order contained in Memo No. 1050 dated 05.10.2000 issued under the signature of Under Secretary, Personal and Administrative Reforms Department, Government of Bihar, Patna with respect to alleged irregularities committed by him in passing forged travelling allowances bills and getting financial benefits, in making payment of honorarium to the beneficiaries, without approval of the Finance Department. The departmental proceeding was initiated against the petitioner vide letter contained in Memo No. 39 dated 12.01.2001 issued under the signature of the Deputy Secretary, Personal and Administrative Reforms Department, Government of Bihar, Patna and the enquiry officer was appointed. The petitioner was directed to submit his explanation before the enquiring authority. Memo of charge was also given to the petitioner wherein altogether 9 charges were levelled against him, which appears to have been prepared on the basis of preliminary enquiry conducted by the then Additional Secretary, Revenue and Land Reforms Department. The petitioner appeared before the enquiry officer and submitted his reply on



12.04.2001, wherein he raised the objection with regard to clarity of the charges, since the petitioner was of the view that the charges should have been more clear, so that the petitioner could have submitted an effective reply. The petitioner further requested the enquiry officer to make available the relevant documents for examination and the list of witnesses, who according to the petitioner were necessary witnesses in the enquiry proceeding for their examination and cross-examination. Pursuant thereto, the enquiry officer wrote a letter to the department and asked for clarification with respect to the charges to be proceeded with, against the petitioner. Thereafter, fresh charge-sheet was issued vide memo No. 1072 dated 16.11.2001, which contained altogether 5 charges against the petitioner. It is the case of the petitioner that the departmental proceeding was initiated on the basis of the complaint submitted by two persons and the then Additional Secretary, Revenue Department, who had conducted preliminary enquiry and prepared a report, should have taken statement of those two persons, but neither the statement of the two persons nor the report of the Additional Secretary was supplied to the petitioner. The petitioner submitted his explanation before the enquiry officer, wherein he refuted all the charges levelled against him. The petitioner was directed to clarify more



with respect to charge no.1, which the petitioner duly complied by submitting a detailed reply on 27.12.2001. After conducting the departmental enquiry, the enquiry officer submitted his report on 31.01.2002, wherein he came to the conclusion that the charges levelled against the petitioner are not proved and the department failed to prove its case against any of the charges on the basis of preponderance of probabilities. The department/disciplinary authority sat on the report of the enquiry officer and proceeded with further enquiry with regard to charge nos.1 and 4 respectively, for which memo no. 417 dated 20.04.2002 was issued, whereby another enquiry officer was appointed and the petitioner was directed to submit his explanation before the enquiry officer. Being aggrieved with the action of the departmental authorities, initiating fresh enquiry, the petitioner preferred C.W.J.C. No. 8766 of 2002. However during pendency of the writ petition, the enquiry officer proceeded with the enquiry and the petitioner was directed to submit his explanation vide letter contained in Memo No. 1348 dated 14.12.2002. By letter dated 14.12.2002, another enquiry officer was appointed. The petitioner filed his show cause reply on 17.02.2003, reiterating his earlier explanations submitted on 06.12.2001 and 27.12.2001, whereby he denied all the allegations levelled against him and requested the



enquiry officer to exonerate him from the charges levelled against him. In the fresh enquiry, the enquiry officer submitted his report on 19.05.2003, wherein he did not find anything against the petitioner with respect to charge no.1, however for charge no.4, the enquiry officer could not give any conclusive finding, that the petitioner was associated in any way in making irregular payment to any firm or was benefitted in any manner through transactions in question. Second show cause notice was issued to the petitioner vide letter dated 13.08.2003. The petitioner challenged all the actions of the respondent authorities by way of filing Interlocutory Application in C.W.J.C. No. 8766 of 2002. The writ petition filed by the petitioner was allowed vide order dated 08.11.2004, whereby the second enquiry initiated on 20.04.2002 was found to be unlawful and accordingly was set aside. The petitioner had also preferred a writ petition bearing C.W.J.C. No. 1141 of 2001, whereby he challenged the suspension order dated 05.10.2000. The said writ petition was disposed of vide order dated 11.04.2005 with a direction to the authorities concerned to consider revocation of the suspension of the petitioner, if the same was not already revoked. The suspension of the petitioner was revoked vide letter dated 28.05.2005 and the department again issued a show cause notice vide letter contained in Memo No. 920 dated 21.06.2005,



showing disagreement with the findings of the enquiry officer dated 31.01.2002, with respect to charge no.1 and 4. The petitioner submitted his explanation on 23.09.2005, wherein he refuted all the allegations levelled against him. Finally, the disciplinary authority vide memo no. 2414 dated 17.11.2005 found the petitioner guilty for charge no.1, on the ground that he could not satisfy the disciplinary authority with regard to submitting and receiving fake TA bills. The petitioner was inflicted with the punishment of withholding of three increments with cumulative effect. The petitioner was exonerated of the charge no.4. The decision with respect to payment of salary and allowances, apart from the subsistence allowance, during the period of suspension, was not taken by the disciplinary authority while passing the order dated 17.11.2005, therefore vide another order contained in Memo No. 2325 dated 21.07.2011, a decision was taken to withhold salary and allowances of the petitioner from 05.10.2000 to 27.05.2005, except the subsistence allowance, which was paid to the petitioner, during the said period of suspension. No notice whatsoever was issued to the petitioner, before passing the order dated 21.07.2011, in terms of Rule 97 of the Bihar Service Code, thereby depriving the petitioner from getting full salary and allowance for the suspension period, which is of grave civil



consequences. The petitioner superannuated from service on completion of the age of superannuation w.e.f. 30.04.2013, while working as Section Officer, in the Revenue Department. It is further case of the petitioner that the departmental proceeding in question was initiated for stale charges that allegedly were part of actions occurring 12-15 years back and the proceeding was initiated without giving any opportunity to the petitioner.

SUBMISSION ON BEHALF OF THE PETITIONER

4. The learned counsel for the petitioner submits that the preliminary enquiry was conducted behind the back of the petitioner and the said enquiry was conducted on the basis of the complaint filed by two persons, who were employees of the Revenue Department and the proceeding was initiated after 12-15 years of the alleged misconduct. He further submits that the identity of the complainant was never verified and they were never produced as a witness for cross examination, thereby denying the opportunity to the petitioner to rebut the charges, which were levelled against him on the basis of the complaint submitted by two individuals. He further submits that the order of withholding salary and allowances for the period of suspension, except the subsistence allowance, which was already paid to the petitioner, is a civil consequence and could not have been passed without



following the procedure prescribed under Rule 97 of the Bihar Service Code.

5. The learned counsel for the petitioner submits that the enquiry against the petitioner was completed on 31.01.2002 and the department in most cavalier manner kept the matter with regard to the petitioner pending till 2005, despite having no proof against the petitioner. The enquiry officer submitted his enquiry report wherein he did not find the charges to be proved against the petitioner, however the disciplinary authority was adamant on inflicting punishment against the petitioner.

6. The learned counsel for the petitioner relies upon a judgment of the Hon'ble Supreme Court of India reported in **(2006) 5 SCC 88 (M. V. Bijlani versus Union of India and Others)**, wherein in paragraph nos. 16, 17 and 19 it has been held as follows:-

“16. So far as the second charge is concerned, it has not been shown as to what were the duties of the appellant in terms of the prescribed rules or otherwise. Furthermore, it has not been shown either by the disciplinary authority or the Appellate Authority as to how and in what manner the maintenance of ACE-8 Register by way of sheets which were found attached to the estimate file were not appropriate so as to arrive at the culpability or otherwise of the appellant. The Appellate Authority in its order



stated that the appellant was not required to prepare ACE-8 Register twice. The appellant might have prepared another set of register presumably keeping in view the fact that he was asked to account for the same on the basis of the materials placed on records. The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and they continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer.

17. In State of M.P. v. Bani Singh [1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514] this Court has clearly held: (SCC p. 740, para 4)

“The irregularities which were the subject-matter of the enquiry are said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view



that it will be unfair to permit the departmental enquiry to be proceeded with at this stage.”

19. *It is really a matter of great surprise that a disciplinary proceeding was initiated five years after the appellant handed over charge. At that time he was admittedly not having possession of any documents. The enquiry officer furthermore took a period of seven years to complete the enquiry. The Appellate Authority also took seven years in disposing of the appeal. Even then, the Appellate Authority did not go into the question as to whether the procedures laid down for holding the disciplinary proceedings had been followed or not. He did not go into the contentions of the appellant herein minutely. The memo of appeal filed by the appellant was very elaborate. He raised a number of contentions therein. The enquiry officer was charged with bias. He was also charged with unfair conduct. He was said to have committed a large number of irregularities in the departmental proceeding. The memo of appeal of the appellant was in about 65 typed pages. It was subdivided into five parts. He made all endeavours to deal with each and every finding of the enquiry officer and dealt with almost all the documents relied upon by the department. He also dealt with the deposition of the witnesses examined on behalf of the parties.”*

7. The learned counsel for the petitioner relies upon a judgment of the Hon'ble Supreme Court of India reported in



(1997) 11 SCC 374 (Manzoor Ahmed Mazumdar versus State of Maghlaya and Others), wherein in paragraph no. 4 it has been held as follows:-

“4. In view of the decision in M. Gopalkrishna Naidu [AIR 1968 SC 240 : (1968) 1 SCR 355 : (1968) 2 LLJ 125] it must be held that even though there is no express requirement in Fundamental Rule 54(3) for giving an opportunity to the employee before passing an order, giving of such an opportunity is implicit in the exercise of the power which has been conferred by the said provision. It was, therefore, necessary for the competent authority to afford an opportunity to the appellant before passing the order regarding pay and allowances payable to the appellant in respect of the period of suspension (sic absence). Since this was not done in the present case, the order dated 12-8-1982 cannot be upheld and has to be set aside. For the same reason the impugned judgment of the High Court has also to be set aside. It will be open to the respondents to pass a fresh order in accordance with law after affording an opportunity to the appellant.”

8. The learned counsel for the petitioner relies upon a judgment of the Hon’ble Supreme Court of India reported in **1991 Supp. (1) SCC 504 (Kulwant Singh Gill versus State of Punjab)**, wherein in paragraph no.4 it has been held as follows:-

“4. Withholding of increments of pay simpliciter undoubtedly is a minor penalty within the meaning of Rule 5(iv). But sub-rule (v) postulates reduction to a lower stage in the time scale of pay for a specified period with further directions as to



whether or not the government employee shall earn increments of pay during the period of such reductions and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay. It is an independent head of penalty and it could be imposed as punishment in an appropriate case. It is one of the major penalties. The impugned order of stoppage of two increments with cumulative effect whether would fall within the meaning of Rule 5(v)? If it so falls Rules 8 and 9 of the Rules require conducting of regular enquiry. The contention of Shri Nayar, learned counsel for the State is that withholding two increments with cumulative effect is only a minor penalty as it does not amount to reduction to a lower stage in the time scale of pay. We find it extremely difficult to countenance the contention. Withholding of increments of pay simpliciter without any hedge over it certainly comes within the meaning of Rule 5(iv) of the Rules. But when penalty was imposed withholding two increments i.e. for two years with cumulative effect, it would indisputably mean that the two increments earned by the employee was cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. In other words the clock is put back to a lower stage in the time scale of pay and on expiry of two years the clock starts working from that stage afresh. The insidious effect of the impugned order, by necessary implication, is that the appellant employee is reduced in his time scale by two places and it is in perpetuity during the rest of the



tenure of his service with a direction that two years' increments would not be counted in his time scale of pay as a measure of penalty. The words are the skin to the language which if peeled off its true colour or its resultant effects would become apparent. When we broach the problem from this perspective the effect is as envisaged under Rule 5(v) of the Rules. It is undoubted that the Division Bench in Sarwan Singh v. State of Punjab [ILR (1985) 2 P&H 193 : (1985) 1 SLJ 513 (P&H)] , P.C. Jain, A.C.J. speaking for the Division Bench, while considering similar question, in paragraph 8 held that the stoppage of increments with cumulative effect, by no stretch of imagination falls within clause (v) of Rule 5 or in Rule 4.12 of Punjab Civil Services Rules. It was further held that under clause (v) of Rule 5 there has to be a reduction to a lower stage in the time scale of pay by the competent authority as a measure of penalty and the period for which such a reduction is to be effective has to be stated and on restoration it has further to be specified whether the reduction shall operate to postpone the future increments of his pay. In such cases withholding of the increments without cumulative effect does not at all arise. In case where the increments are withheld with or without cumulative effect the government employee is never reduced to a lower stage of time scale of pay. Accordingly it was held that clause (iv) of Rule 5 is applicable to the facts of that case. With respect we are unable to agree with the High Court. If the literal interpretation is adopted the learned Judges may be right to arrive



at that conclusion. But if the effect is kept at the back of the mind, it would always be so, the result will be the conclusion as we have arrived at. If the reasoning of the High Court is given acceptance, it would empower the disciplinary authority to impose, under the garb of stoppage of increments, (sic stoppage) of earning future increments in the time scale of pay even permanently without expressly stating so. This preposterous consequence cannot be permitted to be permeated. Rule 5(iv) does not empower the disciplinary authority to impose penalty of withholding increments of pay with cumulative effect except after holding inquiry and following the prescribed procedure. Then the order would be without jurisdiction or authority of law, and it would be per se void. Considering from this angle we have no hesitation to hold that the impugned order would come within the meaning of Rule 5(v) of the Rules; it is a major penalty and imposition of the impugned penalty without enquiry is per se illegal.”

SUBMISSION ON BEHALF OF THE RESPONDENTS

9. Per contra, the learned counsel appearing on behalf of the respondent-State submits that the petitioner was found prima facie guilty of the misappropriation of public money by adopting unfair means, since the petitioner availed travelling allowances for journeys, which he said to have travelled through scooter and availed it on the basis of fake T.A. Bill, for which he was not entitled and he was not authorised by any superior authority. When



the matter came to the notice of the authorities concerned, an explanation was sought for from the petitioner and proceeding was initiated against him. The enquiry officer was appointed and after considering the enquiry report, the authorities came to the conclusion that the report of the enquiry officer was not up to mark, since the charge no.4, which was related to fake bills and fake firm was not enquired by the conducting/enquiry officer, which was essential to be enquired into. It was not taken into account that without approval or permission of the competent authority, the petitioner had undertaken the journey by scooter to distant places. Finally, the disciplinary authority awarded punishment of withholding of three annual increment to the petitioner with cumulative effect.

10. The learned counsel for the State further submits that all the TA bills were fake, since it is not possible to travel 250-300 kilometers by scooter in a day and to come back. Further, the petitioner was absent from his duty in the name of travelling from one place to another for 15-20 days in a month. The petitioner committed financial blunder/irregularity by submitting fake T.A. Bills, which is misconduct on the part of the petitioner, therefore, he was rightly given the punishment. He further submits that the petitioner approached this Hon'ble Court after a much delay in as



much as that the order of punishment was passed on 16.11.2005 and the petitioner has filed the present writ petition on 03.10.2013, which is after more than 8 years and that too, after his retirement on 30.04.2013. Therefore, he submits that on the ground of delay and laches, the writ petition is fit to be dismissed at the stage of admission itself.

11. The learned counsel for the State finally submits that under Article 226 of the Constitution of India, the Court has to see that whether any procedural lapses are there or not, whether there is violation of principles of natural justice, whether there is any allegation of bias and the perversity of the judgment or not. In the present case, no such plea has been taken by the petitioner and no perversity has been shown. All the defence taken by the petitioner has been considered by the disciplinary authority, while awarding punishment to him.

12. The learned counsel for the state refers to and relies upon a judgment of the Hon'ble Supreme Court of India reported in **(2024) 15 SCC 215 (Mrinmoy Maity versus Chhanda Koley & Ors.)**, wherein in paragraph nos. 9, 10, 11, 12 and 13 it has been held as follows:-

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 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] , 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 Prasad 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 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 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.”*



13. The learned counsel for the State further refers to and relies upon a judgment of the Hon'ble Supreme Court of India reported in ***(2014) 4 SCC 108 (Chennai Metropolitan Water Supply and Sewerage Board and Others versus T.T. Murali Babu)***, wherein in paragraph no. 16 it has been held as follows:-

“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.”



14. The learned counsel for the State further refers to and relies upon a judgment of the Hon'ble Supreme Court of India reported in **2009 1 SCC 768 (Tridip Kumar Dingal and Others versus State of West Bengal and Others and its analogues cases)** wherein in paragraph nos. 56 to 58 it has been held as follows:-

“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 exhumed 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 [AIR 1964 SC 1006 : (1964) 6 SCR 261] , Moon Mills Ltd. v. Industrial Court [AIR 1967 SC 1450] and Bhoop Singh v. Union of India



[(1992) 3 SCC 136 : (1992) 21 ATC 675 : (1992) 2 SCR 969]). This principle applies even in case of an infringement of fundamental right (vide Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110] , Durga Prashad v. Chief Controller of Imports & Exports [(1969) 1 SCC 185] and 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.”

CONSIDERATION

15. Having heard the learned counsel for the parties and after going through the records, it appears that the punishment order against the petitioner was passed vide Memo No. 2414 dated 17.11.2005, whereby the petitioner was found guilty for charge no.1. He was inflicted with the punishment of withholding of three increments with cumulative effect. The petitioner never challenged the said order and sat over the matter, meaning thereby that he had accepted the punishment and he was satisfied with the impugned order of punishment dated 23.09.2005. Subsequently, vide another order contained in Memo No. 2325 dated 21.07.2011, a decision was taken to withhold his salary and allowances from 05.10.2000



to 27.05.2005, except the subsistence allowance which was paid to the petitioner during the said period of suspension. The petitioner preferred the present writ petition against both the impugned orders i.e. order contained in Memo No. 2414 dated 17.11.2005 and Memo No. 2325 dated 21.07.2011. The learned counsel appearing on behalf of the State has taken a preliminary objection with regard to the maintainability of the writ petition on the ground of delay and laches and relied on different judgments of the Hon'ble Supreme Court of India in case of *Mrinmoy Maity* (supra), *Chennai Metropolitan Water Supply and Sewerage Board and Others* (supra), *Tridip Kumar Dingal and Others* (supra) wherein a consistent view has been taken that delay defeats all the cause. Further the petitioner did not challenge the order dated 16.11.2005 for almost 8 years, therefore he waived his rights and accepted the same. As per the principal of waiver and acquiescence, the petitioner cannot be permitted to challenge the same after 8 years of passing of the proceeding and no plausible reason, whatsoever has been furnished with regard to delay in approaching this Court. It is well settled proposition of law that stale claims should not be adjudged by the writ Courts. In this connection reference has to be made of a judgment of the Hon'ble Supreme Court of India reported in *(2015) 1 SCC 347 (State of*



Uttar Pradesh and Others versus Arvind Kumar Srivastava and Others), wherein the Hon'ble Supreme Court of India in paragraph no. 20, 21 and 22.2 has held as follows:-

“20. The Court also quoted the following passage from Halsbury's Laws of England (para 911, p. 395) : (Jaswant Singh case [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] , SCC pp. 470-71, para 12)

“12. ... 'In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

- (i) acquiescence on the claimant's part; and*
- (ii) any change of position that has occurred on the defendant's part.*

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.’”



21. *Holding that the respondents had also acquiesced in accepting the retirements, the appeal of U.P. Jal Nigam was allowed with the following reasons : (Jaswant Singh case [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] , SCC p. 471, para 13)*

“13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going



to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?”

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

16. Similar view has been taken by a learned Co-ordinate Bench of this Court vide its judgment dated 25.02.2020 passed in ***C.W.J.C. No. 2276 of 2020 (Arun Kumar Mehta versus the State of Bihar & Ors.)***, wherein in paragraph nos.4 and 8, it has been held as follows:-

“4. I have heard the learned counsel for the parties and gone through the materials on record. Apparently, there is a delay of about 07 years in filing the present writ petition, even if the appellate order dated 15.12.2012 is taken into



account, for which no plausible explanation whatsoever has been furnished, hence the writ petition is fit to be dismissed on the ground of principles of delay and laches, alone.

5. *Having regard to the facts and circumstances of the case, considering the submissions made by the learned counsel for the parties as also taking into account the law enunciated by the Hon'ble Apex Court in the cases referred to hereinabove, regarding the principles of delay and laches, this Court finds that as far as the present case is concerned, no plausible explanation has been furnished by the petitioner so as to convincingly explain the delay in question of about 07 years in approaching this Court, hence the present writ petition is fit to be dismissed on the ground of delay and laches. Accordingly, the writ petition stands dismissed."*

17. Similarly, a Division Bench of this Court in a judgment dated 24.03.2026 passed in ***L.P.A. No. 891 of 2025 (The Patna High Court through its Registrar General, Patna High Court & Ors. versus Chandan Kumar & Ors.)***, in paragraph nos. 55 & 60, has held as follows:-

"55. Thirdly, the issue of delay and laches, though noticed, has not been adequately appreciated in its proper legal perspective. The appellants had specifically contended that the writ petitioner approached the Court after a considerable lapse of time and, therefore, could not claim parity with those who had been vigilant in asserting their rights. The Hon'ble Supreme



Court in State of U.P. vs. Arvind Kumar Srivastava (Supra) has clearly held that though similarly situated persons are ordinarily entitled to equal treatment, this principle is subject to exceptions, particularly in cases involving delay, laches and acquiescence. Persons who wake up after long delay cannot claim the same relief as those who approached the Court in time.

60. *In view of the discussions and conclusions arrived at on the issues framed hereinabove, this Court is of the considered opinion that the impugned judgment and order dated 09.07.2025 passed by the learned Single Judge cannot be sustained in the eyes of law, inasmuch as the same proceeds on an erroneous application of legal principles, extends the benefit of earlier judgments beyond their intended scope, and overlooks material aspects relating to delay, laches and the statutory framework governing the field. The reasoning so adopted does not stand to judicial scrutiny and has resulted in an unwarranted direction for consideration of the writ petitioner's case."*

18. Similar view has been taken by an Hon'ble Division Bench of this Court in its judgment dated 10.04.2026 passed in ***L.P.A. No. 762 of 2025 (Raj Kumar Jha versus the State of Bihar & Ors.)***, wherein in paragraph no.8 it has been held as follows:-

"8. Law is well settled that mere representation does not extend the period of limitation and the



aggrieved person has to approach the Court expeditiously and within a reasonable time. If it is found that the writ petitioner is guilty of delay and laches, the High Court would be fully justified to dismiss the writ petition at the threshold. Equity aids the vigilant, not the indolent. Courts of equity grant relief to only those who actively protect their rights, not those who sleep on them. It demands prompt action to prevent injustice.

*In the case of **P.S. Sadashivaswamy -Vrs.- State of Tamil Nadu reported in (1975) 1 Supreme Court Cases 152**, the Hon'ble Supreme Court has been pleased to observe that in a service matter, an aggrieved party should approach the Court at least within six months or at the most a year of the arising of the cause of action, and it would be sound and wise exercise of discretion for the Court to refuse the exercise the extraordinary power under Article 226 of the Constitution of India and in case the petitioner does not approach it expeditiously for relief, such petition should be dismissed in limine as entertaining such petition is a wastage of time of the Court and it would impede the work of the Court in considering the legitimate grievances. It is the settled law 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 scrutinize whether the belated approach should be entertained or not. Inordinate delay would invite disaster for the litigant who knocks at the doors of the Court.*



Remaining innocuously oblivious to the delay does not foster the cause of justice, on the contrary it brings injustice and it is likely to affect others. A Court is not expected to give indulgence to the indolent persons who compete with Kumbhkarana and the delay does not deserve any indulgence and on that ground alone, the writ Court can throw the petition overboard at the very threshold.”

19. On the basis of the consideration made above, this Court is of the considered opinion that so far the prayer of the petitioner for quashing of Memo No. 2414 dated 16.11.2005 is concerned, the same is fit to be rejected in view of the settled legal proposition of law and taking into account the judgment passed by the Hon’ble Supreme Court of India and this Hon’ble Court in the cases referred hereinabove, since no plausible reason has been furnished by the petitioner to explain the delay of about 8 years in approaching this Court.

20. So far the quashing of the letter contained in Memo No. 2325 dated 21.07.2011 is concerned, the impugned order has been passed on 21.07.2011, without giving any notice to the petitioner, before passing the impugned order, by which the petitioner has been held to be not entitled for grant of full salary and allowances for the suspension period, which is of grave civil consequences and is in violation of Rule 97(3) of the Bihar Service



Code. This Court is of the opinion that the impugned order contained in Memo No. 2325 dated 21.07.2011 is fit to be set aside and is accordingly set aside.

21. The matter is remitted back to the respondent authorities to take a decision afresh from the defective stage i.e. after issuance of notice upon the petitioner and then to proceed in accordance with law within a period of six months form the date of receipt/production of a copy of this order.

22. With the aforesaid observation and directions, the writ petition is disposed of.

23. Pending application, if any, shall also disposed of.

(Ritesh Kumar, J)

AjayMishra/-

AFR/NAFR	
CAV DATE	21.04.2026
Uploading Date	11.05.2026
Transmission Date	NA

