

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 13306 of 2023

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Gyasuddin @ Gyasuddin Khan S/o Late Shamsheer Khan, resident of village-
Sarailla, P.O. and P.S. - Dildarnagar, District-Gajipur (U.P.).

... .. Petitioner/s

Versus

1. The State of Bihar through The Secretary, Home Police Department, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Bettiah (West Champaran)
4. Inspector, Police, Sadar Anchal, Bettiah (West Champaran)
5. Superintendent of Police, West Champaran, Bettiah.

... .. Respondent/s

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Appearance:

For the Petitioner/s : Mr. Chandra Shekhar Anand, Adv.
For the Respondent/s : Mr. Manish Kumar, GP-4

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 11-03-2024

The present writ petition has been filed for quashing the order of punishment dt. 30.7.1997, passed by the Superintendent of Police, Bettiah (West Champaran), by which the petitioner has been terminated from the post of constable. The petitioner has also prayed for his reinstatement in the services of the Respondents and payment of the consequential benefits.

2. Shorn of unnecessary details, it would suffice to state that a departmental proceeding was initiated against the petitioner bearing Departmental Proceeding No. 10 / 96, leading to passing of the impugned order of punishment of dismissal from



service dated 30.7.1997, issued by the Superintendent of Police, Bagaha (West Champaran), Bihar. It appears that thereafter, the petitioner had challenged the order of dismissal from service, by filing an appeal before the Director General of Police, Bihar, Patna, however, the same had stood dismissed, by an order dated 18.05.2012, being time barred. The petitioner had then approached this Court, by filing a writ petition bearing CWJC No. 5115 of 2013, which has stood dismissed as withdrawn, vide order dated 01.04.2013 and therein, it has been observed that since the petitioner has approached the writ Court after lapse of 16 years of arising of cause of action, there is no merit in the writ petition.

3. The learned counsel for the petitioner has submitted that after dismissal of his writ petition by the aforesaid order dated 01.04.2013, the petitioner had filed an appeal before the Deputy Inspector General of Police, West Champaran Range, as also before the Director General of Police, Bihar, Patna, however, to no avail, hence, the petitioner has approached this Court, thus, a sympathetic view be taken.

4. Per contra, the learned counsel for the Respondent-State has raised a preliminary objection with regard to the maintainability of the present writ petition, inasmuch as the



present writ petition has been filed belatedly, after a great delay of about 26 years. The learned counsel for the Respondent-State has submitted that the Hon'ble Apex Court, in a catena of judgments, has held that while exercising extraordinary and equitable jurisdiction under Article 226 of the Constitution of India, the Constitutional Court, while protecting the rights of citizens, should simultaneously keep itself alive to primary principle that when an aggrieved person, without adequate reason, approaches the Court belatedly, at his own leisure or pleasure, the writ Court is not required to grant any indulgence to such indolent person and on the ground of delay and laches alone, the writ Court ought to throw the petition overboard at the very threshold. In this regard, the learned counsel for the Respondent-State has referred to the following judgments:-

“(i). ***Chennai Metropolitan Water Supply & Sewerage Board & Others vs. T.T.Murali Babu***, reported in (2014) 4 SCC 108.

(ii). ***State of Uttranchal & Anr. vs. Shiv Charan Singh Bhandari & Ors.***, reported in 2013 AIR SCW 6627.

(iii). ***C. Jacob vs. Director of Geology & Mining & Anr.***, reported in AIR 2009 SC 264.

(iv). ***State of Jammu & Kashmir vs. R.K. Zalpuri & Others***, reported in AIR 2016 SC 3006.

(v). ***State of Tamil Nadu vs. Seshachalam***, reported in (2007) 10 SCC 137.



5. The learned counsel for the Respondent-State has further submitted that even otherwise the present writ petition is barred by the principles of res judicata, inasmuch as the order of punishment of dismissal from service as also the appellate order were challenged by the petitioner earlier, by filing a writ petition bearing CWJC No. 5115 of 2013, however, the same has stood dismissed by an order dated 01.04.2013.

6. Having heard the Ld. counsel for the parties and having gone through the materials on record, this Court finds that the present writ petition is fit to be dismissed on the ground of delay and laches alone, inasmuch as the petitioner has approached this Court belatedly after a lapse of about 26 years. Thus, considering the principles laid down by the Hon'ble Apex Court in a catena of judgments, as referred to by the Ld. counsel for the Respondent-State and recorded herein above in the preceding paragraphs, as also considering the maxim-“equity aids the vigilant and not those who slumber on their rights”, this Court is of the view that since the petitioner has not filed the writ petition within a reasonable period of time, this Court is not under any legal obligation to entertain the writ petition, especially considering the fact that the petitioner has not offered any reason whatsoever, for the enormous delay which has taken



place in approaching this Court, hence, the present writ petition is dismissed on the ground of delay and laches.

7. In fact, in a judgment, rendered by the Hon'ble Apex Court in the case of *P. S. Sadasivaswamy vs. State of Tamil Nadu*, reported in *(1975) 1 SCC 152*, the Hon'ble Apex Court has held that in a service matter/promotion matter, an aggrieved person should approach the Court at least within six months or at the most a year of the arising of a cause of action and it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 of the Constitution of India, in the case of persons who do not approach it expeditiously for relief and such petitions should be dismissed in limine, inasmuch as entertaining such petitions is a waste of time of the Court, the same clogs the work of the Court and impedes the work of the Court in considering legitimate grievances. In yet another judgment, rendered by the Hon'ble Apex Court in the case of *Naresh Kumar vs. Department of Atomic Energy & Others*, reported in *(2010) 7 SCC 525*, the Hon'ble Apex Court has held that the High Court was not in error while dismissing the writ petition on the ground of unexplained delay and laches of about 8 years.

8. At this juncture, it would be gainful to reproduce



paragraphs No. 1, 16, 17 and 34 of the Judgment rendered by the Hon'ble Apex Court in the case of ***Chennai Metropolitan Water Supply & Sewerage Board*** (Supra), herein below:-

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

16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant



who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinise whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons — who compete with “Kumbhakarna” or for that matter “Rip Van Winkle”. In our considered opinion, such delay does not deserve any indulgence & on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

34. Judged on the anvil of the aforesaid premises, the



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

9. Yet another aspect of the matter is that the present writ petition is barred by the principles of res judicata and is a sheer abuse of the process of Court, inasmuch as the order of punishment of dismissal from service dated 30.07.1997 as also the appellate order was challenged by the petitioner earlier, by filing a writ petition bearing CWJC No. 5115 of 2013, however, the same has stood dismissed by an order dated 01.04.2013 and therein, it has been observed that since the petitioner has approached the writ Court after lapse of 16 years of arising of cause of action, there is no merit in the writ petition. Nonetheless, the petitioner has approached this Court again by filing the present writ petition, for the same and similar relief. The practice of filing repeated writ petitions for same and similar relief has been deprecated even by the Hon'ble Apex Court. Reference in this regard be had to the judgments, reported in *AIR 1968 SC 111* (Hular Rai Baijnath Firm v. K.B. Das and



Company), *AIR 1999, SC 509* (Upadhyay and Company v. State of U.P.), *1996 4 SCC 378* (Staff Association and others v. State Bank of India and others) and the one reported in *1997 2 SCC 534* (Avinash Nagra v. Navodaya Vidyalaya Samiti and others). Reference be also had to a judgment reported in *1987 1 SCC page 5* (Sarguja Transport Service v. State Transport Appellate Tribunal).

10. Thus, this Court finds that it is a well-settled law that filing of successive writ petitions for the same cause of action is not only against the public policy but also amounts to abuse of the process of Court. It is a well-settled proposition of law that what cannot be done “per directum” is not permissible to be done “per obliquum” meaning thereby that whatever is prohibited by the law to be done, cannot legally be effected by indirect and circuitous contrivance or the principle of “quando aliquid prohibetur, prohibetur omne per quod devenitur ad illud”.

11. Considering the facts and circumstances of the case and for the reasons mentioned hereinabove in the preceding paragraphs, the present writ petition stands dismissed, being barred by the principles of res judicata. This Court further finds that the present writ petition is fit to be dismissed on the ground of delay and laches as well, inasmuch as the petitioner has approached this Court belatedly after an unexplained delay of



26 years. Thus considering the principles laid down by the Hon'ble Apex Court in a catena of judgments, as referred to herein above in the preceding paragraphs, as also considering the maxim- "equity aids the vigilant and not those who slumber on their rights", this Court is of the view that since the petitioner has not filed the present writ petition within a reasonable period of time, this Court is not under any legal obligation to entertain the writ petition, especially considering the fact that the petitioner has not offered any reason whatsoever, for the enormous delay which has taken place in approaching this Court, hence, the present writ petition is dismissed on the ground of delay and laches as well.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

