

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4764 of 2020

Most. Vijaya Laxmi Devi, Wife of Late Bisheshwar Singh, Retired Assistant Electrical Engineer, resident of Village - Kushwaha Colony Diggi Kala East, Near Hazipur Block, P.S. Sadar, P.O. Diggikala, East, District Vaishali, Hazipur, PIN Code - 844101.

... .. Petitioner/s

Versus

1. The Bihar State Power Holding Company Ltd. through its Chairman-Cum-Managing Director, Vidyut Bhawan, Bailey Road, Patna- 800021
2. The North Bihar Power Distribution Company Ltd. through its Managing Director, Vidyut Bhawan, Bailey Road, Patna- 800021
3. The Deputy General Manager(Admn/HR), North Bihar Power Distribution Company Ltd. Vidyut Bhawan, Bailey Road, Patna- 800021

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dhananjay Mishra, Advocate
		Mr. Nilesh Kumar Nirala, Advocate
For the Respondent/s	:	Mr. Kunal Tiwary, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 30-06-2025

Heard Mr. Dhananjay Mishra, learned Advocate for the petitioner and Mr. Kunal Tiwary, learned Advocate for the North Bihar Power Distribution Company Ltd.

2. The challenge in the present writ petition is made to an order no. 472 dated 14.05.2010 by which the pension of the erstwhile employee (original petitioner) came to be reduced by 25%, with a further direction that the petitioner shall not be entitled to any benefit, except subsistence allowance during the period of suspension.

3. Before parting with the case it would be pertinent to note that during the pendency of the writ petition, the sole petitioner died on 30.07.2022; subsequently an interlocutory



application came to be filed on behalf of the wife of the erstwhile employee and her name has been substituted by this Court, who has been pursuing this writ petition.

4. Mr. Dhananjay Mishra, learned Advocate for the petitioner referring to the materials available on record primarily contended that while the (deceased) petitioner was holding the post of Assistant Electrical Engineer in the Bihar Power Holding Company Ltd., he was subjected to a departmental proceeding, which came to be initiated vide resolution no. 2366 dated 05.10.2002 on the alleged negligence in duty, in not detecting the delay in crediting of the amount in the board's account by the cashier (Account Assistant) who is responsible for maintenance of cashbook and cheque register in terms with the Board Circular No. 125 dated 31.03.1962.

5. While assailing the impugned order learned Advocate for the petitioner primarily contended that it is the admitted position, while the departmental proceeding was pending consideration, in the mean while, the (deceased) petitioner superannuated on 31.01.2004 and without converting the departmental proceeding under Rule 43(b), they proceeded further and inflicted the punishment of reducing 25% of the pension, which is wholly without jurisdiction. There is no specific order converting the proceeding under Rule 43(b),



hence the punishment inflicted under Rule 43(b) is unsustainable in law. Various other points have been urged to sustain the challenge to the impugned order.

6. On the other hand, at the outset, a preliminary objection has been raised with regard to delay and laches in approaching the Court, inasmuch as, the impugned order of dismissal dated 14.05.2010 came to be challenged in the year 2020.

7. Mr. Kunal Tiwary, learned Advocate for the respondent placed reliance upon a full Bench decision of this Court in the case of *Shambhu Saran Vs. The State of Bihar & Ors., (2000) 1 PLJR 665* and contended that no specific order is required to converting the proceeding under Rule 43(b). A supplementary counter affidavit came to be filed and from the averments made in paragraph no. 3 it appears that on being aggrieved with the order of punishment passed by the respondent company, the erstwhile employee had preferred appeal, which also came to be rejected vide order contained in letter no. 271 dated 03.02.2011.

8. Reliance has also been placed on a decision rendered by Apex Court in the case of *State of U.P. Vs. Harendra Arora & Anr., (2001) 6 SCC 392*. Referring thereto it is contended that every infractions of statutory provisions could



not make the consequent action void and/or invalid. The Court observed that in respect of procedural provision other than that of fundamental nature, the theory of substantial compliance would be available and in such cases objection on this score have to be judged on the touchstone of prejudice. The test would be, whether the delinquent officer had or did not have a fair hearing.

9. Learned Advocate for the petitioner refuted the contention and submitted that the order passed by the appellate authority has never been served upon the (deceased) petitioner; had the order been served upon him, he would have certainly assailed the same in the writ petition itself. So far the delay in filing of the present case is concerned, drawing the attention of this Court to averments made in paragraph no. 6 of the writ petition, it is submitted that the petitioner had all along been representing before the authorities concerned, but the concerned authority has never considered the same. Since the copies of earlier representation was lost during the journey, therefore the copy of the same could not be brought on record.

10. Having considered the submissions set forth; while exercising prerogative discretionary writ jurisdiction under Article 226 of the Constitution, the Court must consider the point of delay and laches; and if the same is found, the Court



should be reluctant to grant extraordinary relief to those who approach the Court belatedly. It would be apposite to encapsulate the relevant extract of decisions rendered in the case of ***Karnataka Power Corporation Limited through its Chairman and Managing Director and Anr v. K. Thangappan and Anr.*** [(2006) 4 SCC 322] :-

“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. Chief Controller of Imports and Exports* [(1969) 1 SCC 185 : AIR 1970 SC 769] . 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* [(1874) 5 PC 221 : 22 WR 492] (PC at p. 239) was approved by this Court in *Moon Mills Ltd. v. M.R. Meher* [AIR 1967 SC 1450] and *Maharashtra*



SRTC v. Shri Balwant Regular Motor Service [(1969) 1 SCR 808 : AIR 1969 SC 329] . Sir Barnes had stated:

“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.”

11. This Court while dealing with an identical issue involving delay and laches, has emphasized and reiterated the



settled legal position that if the Court while exercising extraordinary writ jurisdiction finds that the claims raised are stale and delay is unexplained on the part of the litigant, it deserved to be thrown overboard at the very threshold. It would be apposite to refer relevant paragraphs of the decision rendered in the case of ***Ravi Ranjan Kumar Gupta vs. The State of Bihar & Ors. [C.W.J.C. No. 16745 of 2021]*** :-

*“12. In the case of **City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla and Others [(2009) 1 SCC 168]**, the Apex Court has cautioned that while dealing upon the jurisdiction under Article 226 of the Constitution, is duty bound to consider whether “(a) adjudication of writ petition involves in complex of disputed question of fact and whether they can be satisfactorily resolved; (b) the petition reveals of materials facts;(c) the petitioner has any alternative or effective remedy for the resolution of the dispute; (d) person invoking the jurisdiction is guilty of unexplained delay and laches;(e) ex facie barred by any laws of limitation; (f) grant of relief is against public policy or barred by any valid law; and host of other factors.”*

13. Delay or laches is one of the factors which is borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution and



*if there is such negligence or omission on the part of the applicant to assert his right has taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. The High Court may refuse to invoke its extraordinary power in an appropriate case, is the observation of the Hon'ble Supreme Court in the case of **Karnataka Power Corporation Limited through its Chairman and Managing Director and Another v. K. Thangappan and Another [(2006) 4 SCC 322]**.*

*14. As a Constitutional Court, it has a duty to protect the rights of the citizen 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 scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity [vide **Chennai Metropolitan Water Supply and Sewerage Board and Others v. T.T. Murli Babu (2014) 4 SCC 108**].*

12. In the light of the aforesaid settled legal position and the materials available on the record *prima facie* this Court is of the opinion that the impugned order of dismissal came to be passed in the year 2010 and the present writ petition is filed much belatedly after a decade. The grounds/reasons mentioned



in paragraph no. 6 to the writ petition, also does not find merit.

13. Accordingly, the present writ petition stands dismissed on account of delay and laches.

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
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