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Court : Patna

Decided On : Oct-15-2009

Judge : Navin Sinha, J.

Appeal No. : CWJC No. 13410 of 2009

Appellant : Alik Kumar Bhattacharjee

Respondent : The State of Bihar and ors.

Disposition : Application dismissed

Judgement :

Navin Sinha, J.

1. Heard learned Counsel for the petitioner and the State.
2. The petitioner retired from the post of Inspector of Police on 31.5.2003. The petitioner invites the Court to adjudicate his claim for payment of certain arrears on account of difference of salary consequent to removal of pay anomaly to put him at par with his juniors paid the same.
3. The cause of action is alleged from 1.4.1982 due to revision of pay with effect from 1.4.1981. Reliance is placed on certain administrative orders of the Government issued by letter No. 1122 dated 10.2.1983 and letter No. 21/82/764 dated 24.2.1992. The claim is additionally based on certain orders of the erstwhile

Ranchi Bench of this Court in CWJC No. 908 of 1988 (R) (Md. Zahir Ahmad v. State of Bihar and Ors.). He claims to have represented on 30.10.2007 more than four and half years after his superannuation. The contention is that he had kept representing while he was in service to which the Respondents did not react.

4. Six and half years after his retirement, the petitioner desires adjudication with regard to matters arising in the years 1982, 1983, 1988 and 1992.

5. The law stands settled that mere filing of representations is not a sufficient explanation for delay unless a legal remedy was being pursued. The onus for the same escalates when the delay is extraordinary as is the case presently. After his superannuation, when the petitioner is at leisure and needs to keep himself occupied to maintain good health, mind and body, he has chosen proceedings before this Court as the source for occupation for his mind and body.

6. The question of delay has always vexed the courts in exercise of writ jurisdiction. Discretion has played a major part in exercise of this power. Discretion is not arbitrary power to be exercised at whims but on certain norms and standards. What may have been relevant for exercise of discretion a decade or two back may not necessarily be valid today. The theory that delay may not be a bar unless the third party rights have accrued and intervened may not be necessarily relevant in every case today. The Court will have now to forge beyond the aforesaid considerations simplicitor in the new changed circumstances.

7. As awareness of legal rights increases and the citizens' belief in the Court gains further ground, the Courts are under extreme pressure of the burden of litigations. The issue of delay in disposal of cases is the concern today of one and all. Additionally, to grant relief at a very belated stage imposing financial obligations on the respondents may also upset economic planning imposing unwarranted burdens by giving a benefit to those who were themselves responsible for not raising the issues in time. A litigant coming to Court with a fresh cause of action deserves better and immediate attention than a litigant who chooses at his leisure to raise a stale and belated claim on foundations of representations taking what is euphemistically called a 'pot-shot' with a gamble before the Court which may or may not pay off and provide him with a fresh cause of action when the authority

decides such representation on a belated claim in the garb of certain orders of the Court.

8. The question of delay shall, therefore, have to be considered in the background of the nature of the grievance, the gravity of the matter, the injustice caused and the conduct of the litigant himself in the meantime.

9. In (2004) 10 SCC 679 S.K. Kapoor v. New Delhi Municipal Council, the appellant retired in 1981 and wanted to take advantage of certain orders of the Court in 1987 with regard to ex-gratia payment and grant of pay scales. The appellant made an application before the Labour Court for the first time in the year 1995 after a delay of 14 years. The Court held that the application was barred by delay and laches.

10. Even if a relief has been granted to certain others, the same can be denied to another, who was not vigilant in pursuing his remedy as held in : (2006) 11 SCC 464.

11. This Court is also not persuaded to make any observation, as prayed, for disposal of his representation stated to be pending since 2007. Noticing the modus operandi of filing representation in belated matters to create cause of action, cautioning the Court, the Supreme Court in : (2008) 10 SCC 115 C. Jacob v. Director of Geology and Mining and Anr. has held that such a litigant aware of his own laches refrains from moving the Court directly. The belated representation obviously takes time for consideration. Taking advantage of the same, he moves the Court against the delay in disposal of his representation. The Court on a prayer simpliciter without examining the matters on merits, disposes it simply with directions to consider the representation. If he is not granted relief, he either files a contempt application or the subsequent order refusing relief, is made the foundation of a fresh cause of action. Such orders do not revive a stale claim. This Court is not persuaded to give any directions for disposal of the representation.

12. There is no explanation in the writ application for this long inordinate delay except to contend that representations have been filed.

13. The writ application is, therefore, dismissed on grounds of delay and laches.

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