

**(2015) 04 PAT CK 0109**

**In the Patna High Court**

**Case No :** Letters Patent Appeal No. 1377 of 2012 in Civil Writ Jurisdiction Case No. 5858 of 2012

Brajesh Prasad Sing

APPELLANT

Vs

State of Bihar

RESPONDENT

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**Date of Decision :** 01-04-2015

**Acts Referred:**

**Citation :** (2015) 2 BLJud 342

**Hon'ble Judges :** Mr. Navaniti Prasad Singh and Mr. Jitendra Mohan Sharma, JJ.

**Bench :** Division Bench

**Advocate :** Mr. Vijay Kumar Singh and Mr. Pankaj Kumar Singh, Advocates, for the Appellant; Mr. Anil Kumar Sinha, GA-9 and Mrs. Nutan Kumari Sharma, AC to GA-9, for the Respondents

**Final Decision :** Allowed

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## Judgement

Mr. Navaniti Prasad Singh, J.(Oral)&mdash;The present Intra-Court appeal has been filed by the petitioner/appellant against the judgment and order dated 19.04. 2012 passed in C.W.J.C. No.5858 of 2012, by which the writ petition filed by the petitioner for directing the State to complete his service book and make payment of his salary for various periods has been dismissed on grounds of claim being barred by limitation. The learned Single Judge held that where a suit for claim would be barred, the writ remedy would also be barred.

2. Heard learned counsel for the writ petitioner/ appellant, learned counsel for the respondents and with their consent, this appeal is being disposed of at this stage itself.

3. Having considered the matter, we are unable to uphold the judgment of the learned Single Judge who has proceeded to take a hyper-technical view of the matter to disallow the legitimate claim of the writ petitioner. It is well settled that State and the State instrumentality are expected to do what is just and fair and should not deny the legitimate rights of a citizen on legal technicalities. Here,

what we have is a pure technicality. We may only refer what was said by the Apex Court in the case of M/s Hindustan Sugar Mills v. the State of Rajasthan and others since reported in AIR 1981 Supreme Court 1681 wherein their Lordships held thus:-

"We hopefully expect that the Central Government will not try to shirk its legal obligation by resorting to any legal technicalities for we maintain that in a democratic society governed by the rule of law, it is the duty of the State to do what is fair and just to the citizen and the State should not seek to defeat the legitimate claim of the citizen by adopting a legalistic attitude but should do what fairness and justice demand."

4. Fortunately, in this appeal the State has filed a counter affidavit and has sought to justify the delay in settling the accounts of the petitioner who was an engineer in State service. State does not deny its liability to pay the amounts. All it says is that they have been seeking confirmations and verifications from various offices where the writ petitioner/appellant had worked but have not received any response. They are unable to make payments or fix the correct salary as they are unable to make full and correct entries in his service book. It may be noted that when the writ petitioner/appellant was to retire he was informed by the letter dated 25.01.2012 that it did not appear as to what was the salary he was paid for the different period and what was the salary fixed. Accordingly, petitioner/appellant was advised by the said letter to get the records (service book) rectified otherwise there would be delay in settling his retiral dues. He being aggrieved by this letter, that the writ petition was filed immediately thereafter (within month), which has been dismissed by the learned Single Judge on grounds of delay and laches basing his judgment on the case of Sakal Deep Sahai Srivastava v. Union of India since reported in AIR 1974 Supreme Court 338 and in particular paragraph-7.

5. While holding that we do not subscribe to the view taken by the learned Single Judge, we may only note that the Division Bench judgment of the Apex Court in the case of Sakal Deep Sahai (supra) was a case arising from pure money suit and not out of writ proceeding. In this connection, we may note what the Constitution Bench through Justice M. Hidayatullah, C.J. has held in paragraph-11 of the judgment in the case of M/s Tilokchand and Motichand and others v. H.B. Munshi and another since reported in 1969 (1) Supreme Court Cases 110, which is quoted hereunder:-

"11. Therefore, the question is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit. A case may be brought within Limitation Act by reason of some article but the Court need not necessarily give the total time to the litigant to move this Court under Article 32. Similarly in a suitable case this Court may entertain such a petition even after a lapse of time. It will all depend on what the breach of the Fundamental Right and the remedy claimed are when and how the delay arose."

6. Now, coming to the counter affidavit of the State. The counter affidavit clearly shows what was already there in the letter which prompted the writ petitioner/appellant to come to this Court that the authorities on different stations where the writ petitioner/appellant was posted had failed to fill the service book. It was a failure on the part of the State authorities that resulted in injustice to the writ petitioner/appellant. He was paid his retiral dues taking his pay that of a Junior Engineer though he retired decades later and was entitled to pay-scale and increments etc. The only reason forthcoming in the counter affidavit is that letters were sent to various places on his earlier posting but officers were not responding. In that view of the matter, the service book could not be completed and his retiral dues were being affected. Instead of asking the question, as to why the State failed to perform its legal obligation and duty to the citizen, the question has been asked as to why the citizen has delayed in moving the Court. That we do not think it to be an appropriate approach for we are exercising jurisdiction under Article-226 of the Constitution whereby rights have been conferred on citizens to approach the Court as against the might of the State.

7. In that view of the matter, we set aside the judgment of the learned Single Judge and allow this appeal. Consequently, we allow the writ petition with a direction to the Engineer-in-Chief-cum-Additional Secretary-cum- Special Secretary, Building Construction Department, Government of Bihar, Patna (respondent no.4) to immediately look into the grievance of the petitioner and ensure that his service book is completely filled up and all his dues including consequential retiral dues, which remained unpaid, are paid within a period of six months. The responsibility of timely compliance of order of this Court would be solely upon the Engineer-in-Chief, Building Construction Department, Government of Bihar, Patna.