

**(2011) 07 PAT CK 0287**

**Patna High Court**

**Case No:** LPA No. 966 of 2011 in CWJC 12785 of 2004; with IA No. 4401 of 2011

Baikuntha Bihari Mishra

APPELLANT

Vs

The Champaran Kshetriya  
Gramin Bank and Others

RESPONDENT

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**Date of Decision:** July 6, 2011

**Citation:** (2011) 4 PLJR 197

**Hon'ble Judges:** R.M. Doshit, C.J; Birendra Pd. Verma, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

R.M. Doshit, Chief Justice

1. This appeal under Clause 10 of the Letters Patent is filed 521 days beyond the period of limitation.

2. The appellant, a retired employee of the Kshetriya Gramin Bank-the respondent no. 1 (hereinafter referred to as "the Bank"), has preferred this appeal under Clause 10 of the Letters Patent against the judgment and order dated 6th August, 2009 passed by the learned Single Judge in above CWJC No. 12785 of 2004. Pending the petition, the appellant, on reaching the age of superannuation, retired from service.

3. It appears that the appellant joined the Bank as officer. He was posted as Branch Manager on 3rd October, 1980. In course of time he came to be transferred from one branch to another. In or around the year 2001 the appellant appears to have some dispute with the then Chairman of the Bank. On 4th July, 2002, a disciplinary proceeding was initiated against the appellant. One more disciplinary proceeding was initiated against him on 20th July, 2002. After holding due enquiry, the appellant was found guilty of several charges leveled against him. In view of the said finding of guilt, by order dated 17th December, 2003 made by the disciplinary

authority-cum-Chairman of the Bank, the appellant was dismissed from service.

4. The said order was carried in appeal before the Board of Directors by the appellant. The Board of Directors, under order dated 25th September, 2004, allowed the appeal partially; set aside the order of dismissal from service, instead imposed punishment of reduction in pay upon the appellant; the period of suspension was ordered to be treated as such and the salary till the date of reinstatement in service was not allowed.

5. The said order, in so far as it imposed punishment of reduction in pay and did not allow the past wages, was challenged by the appellant in above CWJC No. 12785 of 2004. The appellant also made grievance that the order of the Board of Directors was not implemented. The appellant was not allowed to resume duty in spite of the order of the Board of Directors. The learned Single Judge, by the impugned judgment and order dated 6th August, 2009, allowed the writ petition to the extent that the Bank was directed to allow the appellant to join the service and to pay the salaries from the date of joining report till he reached the age of superannuation. Challenge to the said judgment by the Bank in LPA No. 1604 of 2009 failed.

6. We are informed at the Bar that the aforesaid directions have been complied with.

7. Feeling aggrieved by the said order the appellant filed MJC No. 3997 of 2010 for modification of the order. Same came to be dismissed on 6th April, 2011. The learned Single Judge held that in the guise of seeking modification of the order, the appellant demanded re-hearing of the writ petition. In view of the said observation, the appellant-petitioner has filed the present appeal against the abovereferred order dated 6th April, 2011 after a considerable delay.

8. Learned Advocate Mr. Shashi Bhushan Singh has appeared for the appellant. He has submitted that CWJC No. 12785 of 2004 was not heard by the learned Single Judge on merits. The appellant challenged the order of the Board of Directors imposing punishment of reduction in pay and not allowing the wages for the interregnum period. The said challenge was not considered by the learned Single Judge; nor the learned Single Judge rendered his decision on the said issue. He has submitted that the delay in question occurred on account of the appellant's pursuing the remedy before the learned Single Judge in abovereferred MJC No. 3977 of 2010. The appeal could be preferred only after the said application was rejected.

9. Learned Advocate Mr. Prabhakar Jha has appeared for the Bank. He has submitted that since the impugned judgment and order dated 6th August, 2009 the appellant preferred CWJC No. 13478 of 2010 in the same subject matter. It came to be dismissed on 25th August, 2010. The factum of the said writ petition and the decision on it has not been disclosed in the present appeal. He has produced the memo of the said CWJC No. 13478 of 2010.

10. In CWJC No. 13478 of 2010 the appellant sought directions to allow the revised time scale from 29th October, 2002 and claimed recovery of the amount of difference in salary. According to the appellant, the learned Single Judge, while deciding CWJC No. 12785 of 2004, had not confirmed the guilt of the appellant and the punishment imposed upon the appellant. The appellant was, therefore, entitled to the benefit of revised time scale.

11. It is apparent that the above-referred CWJC No. 13478 of 2010 also arose from the same cause of action, i.e. the disciplinary proceeding held against the appellant and the order of punishment.

12. To us, it appears that the challenge to the impugned judgment dated 6th August, 2009 in the present appeal is an afterthought. The appellant first tried to avail the benefit of want of specific finding in respect of the guilt proved against him in the impugned judgment dated 6th August, 2009, in CWJC No. 13478 of 2010. Long thereafter, he filed application for modification. It may be noted that the application for modification was also not filed within the period of limitation for filing appeal. It, therefore, cannot be said that the appellant could not file the present appeal within the period of limitation because of pendency of MJC No. 3977 of 2010 or because he was pursuing an alternative remedy.

13. We are not satisfied about the cause of inordinate delay of 521 days occurred in filing the present appeal. Moreover, the suppression of fact regarding filing of CWJC No. 13478 of 2010 (rejected on 25th August, 2010) by the appellant amounts to abuse of process of law. The appeal deserves to be dismissed on the ground of suppression of material facts also.

14. For the aforesaid reasons, the appeal and the interlocutory application are dismissed.