

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18152 of 2015

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Upendra Kumar Singh Son of Late Jagdish Singh R/o Village Raipur Chor, P.O.
Raipur Chor, District Rohtas

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Director Secondary Education, Education Department, Budha Marg, Patna
3. The Deputy Director Education Department, Budha Marg, Patna
4. The District Education Officer, Rohtas

... ... Respondent

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• **The Constitution of India - Article 226 challenging Order of Secondary Education, Government of Bihar rejecting the petitioner's claim for reinstatement as Peon (Class-IV) - Whether the delay in approaching the court (24 years) was a valid ground to deny relief Delay and Laches as a Bar to Relief -** Petitioner filed the writ petition in 2015, after 24 years of termination (1991) – *(relied on :- U.P. Jal Nigam v. Jaswant Singh [(2006) 11 SCC 464] (Para 7) - Inaction for 24 years disentitles the petitioner from claiming reinstatement (Para 13) - The court rejected the argument that filing representations extends the limitation period, citing 2022 Live Law (SC) 232 where the Supreme Court ruled that mere submission of representations does not prevent the application of limitation (Para 11).*

• **Rejection of Petitioner's Representation Justified -** Petitioner failed to provide copies of representations filed before 2013 indicating lack of diligence (Para 10) - The Director of Secondary Education lawfully rejected the representation in 2015, as the petitioner's claim was stale (Para 11). *(referred to:- State of U.P. v. Arvind Kumar Srivastava [(2015) 1 SCC 347]*

(Para 12).

• **No Vacancy Available for Reinstatement -** State Government declared Clerk & Peon posts as a "dying cadre" effective from 21.08.2022 (Para 7) - Court held that even if the petitioner had a valid claim, reinstatement was impossible due to the abolition of the post. - Writ Petition Dismissed on Grounds of Delay & Laches

(Para 15).

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Appearance :

For the Petitioner/s : Mr. Pratap Sharma, Advocate

For the Respondent/s : Mr. Gyan Prakash Ojha, GA-7

Mr. Abhinav Ashok, JC to GA-7

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
Date : 16-07-2024

1. The petitioner has filed the present writ application for quashing the order dated 31.08.2015 contained in letter no. 2440 passed by the Deputy Director, Secondary Education, Government of Bihar by which the claim of the petitioner for reinstatement as Peon (Class-IV) has been rejected. It has further been prayed for quashing the Memo No. 6949-76 dated 04.12.1991 in respect to the petitioner.

2. Brief facts giving rise to the present application is that in the year 1988 a panel was prepared by the then District Education Officer, Rohtas for the purpose of appointment on



Class-IV post wherein the name of the petitioner figured at serial no. 10. The petitioner thereafter was appointed as Peon in Project Girls High School, Nokha, Rohtas on 23.11.1988.

3. A show-cause was served upon the petitioner vide letter no. 1697 dated 10.04.1991 questioning his appointment to which the petitioner submitted his reply, and thereafter, vide letter no. 51 dated 06.12.1991 petitioner's services were terminated finding the reply unsatisfactory.

4. Some of the similarly situated persons namely, Jagdish Singh and others filed writ application bearing C.W.J.C. No. 8996 of 1991 which was disposed on 19.01.2000 reinstating the petitioners of the writ application. Following the order passed by the writ court, the District Education Officer, Rohtas vide his letter no. 1506 reinstated nine petitioners as Peon.

5. Learned counsel for the petitioner submits that similarly situated persons have been reinstated in the light of different judgments passed by this Hon'ble Court, as such, petitioner should also be reinstated. In the light of the judgments passed by this Court, the petitioner filed a representation before the Director, Secondary Education for his reinstatement on the ground of parity to which Deputy Director, Secondary Education vide his letter no. 2189 dated 08.08.2014 sought a



reply from the D.E.O., Rohtas. The D.E.O., Rohtas vide letter no. H-57 dated 23.02.2015 informed that the case of the petitioner is similar to other terminated Peons, as such, the application of the petitioner may be considered in that light. But the claim of the petitioner for reinstatement has been rejected on the ground that the petitioner did not file any writ application and the Peons who have been reinstated were recommended on the basis of the order passed by this Hon'ble Court.

6. On the other hand, learned counsel for the State argued that similarly situated persons have been reinstated in service in compliance of the order passed by this Court in different writ petitions filed in 1991, 1994, 2000 & 2001. The petitioner woke up from deep slumber and filed the instant writ application in the year 2015.

7. It is well settled that fence sitters are not entitled to grant of relief merely on the ground that other similarly situated persons have been granted relief. He relies on the judgment of the Hon'ble Supreme Court reported in (2006) 11 SCC 464 U.P. Jal Nigam and Another *versus* Jaswant Singh and Another. He further argued that the post of Clerk and Peon was declared dying cadre with effect from 21.08.2022, as such, there is no post of Peon lying vacant in the Project School, Nokha or any



other school in the district of Rohtas.

8. In reply, learned counsel for the petitioner submits that one post of Peon has fallen vacant after the death of one Pramod Singh on 06.05.2024 in Nishan Singh Smarak Inter College, Nokha, Rohtas on which the petitioner can be appointed / reinstated.

9. Upon hearing the parties and perusal of the materials on record it is evident that the petitioner was terminated on 06.12.1991 on the basis of Memo No. 6949-76 dated 04.12.1991 along with some other similarly situated Peons. Similarly situated persons approached this Court immediately in 1991, 1994, 2000 & 2001 and by virtue of the orders passed by this Court in writ petitions / LPA they were reinstated. Even in the year 2007 when the order with regard to similarly situated persons was passed in C.W.J.C. No. 7300 of 2000 the petitioner kept waiting and did not take any step for filing writ application.

10. Though the petitioner has given statement in the writ application that he kept on filing representation but no copy of the same has been brought on record. However, the representation filed by the petitioner on 03.12.2013 before the Director, Secondary Education has been brought on record. The claim of the petitioner was rejected by the Director in the year



2015 being stale claim and after that the present writ application has been filed.

11. The Hon'ble Supreme Court in a judgment reported in 2022 Live Law (SC) 232 has held that mere filing representation does not extend the period of limitation and if it is found that the writ petitioner is guilty of delay and laches, the High Court should dismiss it at the threshold and ought not to dispose of the writ petition by relegating the writ petitioner to file representation and / or directing the authority to decide the representation.

12. In yet another judgment reported in (2015) 1 SCC 347 *State of Uttar Pradesh & Others Versus Arvind Kumar Srivastava and Others*, the Hon'ble Supreme Court has held that the normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts,



then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence sitters and laches and delays, and / or the acquiescence, would be a valid ground to dismiss their claim.

13. Coming back to the facts of the present case undisputedly the order of termination is of the year 1991 and the petitioner approached this Court in 2015 after a lapse of about twenty four years on the ground that in the writ application filed by similarly situated persons challenging the order of termination, this Court directed for reinstatement of those petitioners.

14. Assuming that the petitioner kept on filing representation, though no copy of the representation has been brought on record except the last representation filed for the first time in the year 2013, the same does not extend the period of limitation and the writ application is fit to be dismissed on the ground of delay and laches. Furthermore, the petitioner is not entitled to be reinstated after a long period of time for another reason that he was a fence sitter and filed the writ application after considerable delay.

15. The specific stand of the respondent / State is that no



post of Peon is available now in the district of Rohtas, as such, in my considered opinion, the order for reinstatement of the petitioner cannot be passed for the reasons discussed hereinabove.

16. In the result, this writ application is dismissed.

(Anil Kumar Sinha, J)

praful/-AFR

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05-08-2024
Transmission Date	NA

