IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.141 of 2024
In
Civil Writ Jurisdiction Case No.937 of 2020

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1. The State of Bihar
2. The Principal Secretary, Department of Health, Govt. of Bihar, Patna.
3. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna.
4. The Director-in-Chief, Department of Health Govt. of Bihar, Patna.
5. The Controlling Officer-cum-H.O.D., Bihar College of Physiotherapy and Occupational Therapy.

... ... Appellant/s

Versus

1. Dr. Sarju Prasad @ Sarjoo Prasad S/o Late Rajendra Prasad R/o Mohalla-Rental Flat 125 Kankarbag Colony, P.S. Kankarbag, District- Patna- 800020.
2. The Accountant General, Bihar

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Chandra Shekhar Singh, A.C. to G.A-10

For the Respondent/s : Mr. Vishwa Mohan Kumar Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

C.A.V JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 09-09-2024

Heard learned counsel for the appellants- State of Bihar, learned counsel for the respondent no. 1- writ petitioner and learned counsel for the Accountant General.

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Re: I.A. No. 2 of 2024

2. This application has been filed by the appellants praying for condonation of delay of 76 days in filing of the instant appeal.

3. Having heard learned counsel for the parties and having perused the material on record, this Court is of the opinion that based on the submissions made and the contents of the application, the appellants have made out a case for condonation of delay.

4. The delay is condoned.

5. I.A no. 2 of 2024 stands allowed.

Re: L.P.A. no. 141 of 2024.

6. The instant appeal has been preferred by the State of Bihar against the judgment dated 2.11.2023 passed in C.W.J.C no. 937 of 2020.

7. The case of the writ petitioner in brief is that having successfully completed his training, he was appointed on the post of Occupational Therapist in the Department of Orthopedics, Patna Medical College and Hospital (PMCH) and was granted the upgraded pay scale of Rs. 250-510 which was revised to Rs. 415-720 on 1.1.1971. He worked in the said capacity from 14.4.1969 to 31.8.1971 when he was relieved for

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joining in Viklang Bhawan Hospital. On his selection, he joined the said hospital as a Senior Occupational Therapist on 31.8.1971 in a higher pay scale of Rs. 415-925. His services were confirmed on 16.8.1974. In the year 1977, he was declared as Instructor and as a Senior Tutor in the year 1979. It is the case of the writ petitioner that the School of Physiotherapy and Occupational Therapy was upgraded in the year 1998 and the Government took a policy decision that the qualification of the post and pay will be the same as other medical colleges with the senior most person in the occupational cadre being the Head of the Department. The writ petitioner on being appointed joined as the Head of Department-cum-Principal in the Bihar College of Physiotherapy and Occupational Therapy on 20.8.1998 and was also declared as Drawing and Disbursing Officer. He retired in the year 2002.

8. It is the case of the writ petitioner that though being similarly situated to 16 officers in the health services who were given the benefits, the writ petitioner was not given the benefit of 3rd Pay Commission inspite of his having filed a number of representations before the authority concerned. His grievances were not redressed and he was only given verbal

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assurances. As such the writ petitioner filed C.W.J.C. no. 937 of 2020 praying for the following relief(s) :-

> *"(1) (i) For revising the pension in the light of Third Pay Commission and also in the light of subsequent fourth and fifth pay commission.*
> *(ii) For granting the benefit of recommendation of Third Pay Commission and subsequent recommendation of Fourth and Fifth Pay Commission.*
> *(iii) For any other benefits of Third and subsequent pay Commission such as enhancement of DCRG and Leave Encashment."*

9. It was the case of the writ petitioner that consequent to him not being given the benefit of pay revision from time to time has led to less payment of salary and consequently pension which he is drawing as on date. The writ petitioner having fulfilled all the requisite criteria was appointed on the post of Professor and Head of Department where he joined on 20.8.1998. Inspite of him having continued on the said post till his retirement in January, 2002, he was neither given any raise during his service period nor the benefit of 5th and 6th Central Pay Commission.

10. The case of the respondents- State of Bihar in the writ application was that the writ petitioner retired in the year 2002. Having filed this writ application and having raised the

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grievance of the revision of his pension in light of 3rd Pay Commission, after a period of about 17 years of his retirement, the prayer of the writ petitioner is clearly stale and misconceived and on this ground alone the writ application was fit to be dismissed. It was further case of the respondents-State of Bihar that from the averments made in the writ application itself, it would be evident that pursuant to the recommendation of the 4th Pay Commission, the writ petitioner was placed in the scale of Rs. 1000-1820 with effect from 1.4.1981, which was again revised to Rs. 2000-3800 with effect from 1.1.1986. The writ petitioner was initially appointed as a Non-Diploma Occupational Therapist in the pay scale of Rs. 115-165, promoted to Occupational Therapist on 14.4.1969 in the upgraded pay scale of Rs. 250-550 which was further upgraded on 1.1.1997 to Rs. 415-720. He was thereafter promoted as Senior Occupational Therapist on 31.7.1978 in the higher pay scale of Rs. 415-925. Thus it was submitted by learned counsel for the State of Bihar that the writ petitioner having been granted two regular promotions during his service period, he was not entitled for any further promotion under the ACP Scheme, 2003.

11. The learned Single Judge by his judgment dated

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2.11.2023 was pleased to allow C.W.J.C no. 937 of 2020 in the following terms :-

> *"21. It is not clear from the pleadings made in the writ petition as well as counter affidavit particularly subsequent to the adoption of the Service Condition Rules of Government Medical College, Nagpur vide Gazette Notification dated 04.04.1998 the prescribed pay scale for the Professor and Head of the Department. The petitioner by way of Annexure 7 has been able to bring on record that the pay scale for Professor and the Head of the Department, Physiotherapy has been notified by the State Government vide notification no. 103(1) dated 29.03.1998 just before the Gazette Notification dated 04.04.1998 and said pay scale has been claimed by the petitioner to be applicable to him, whereas the State Government has denied the same and has relied on Finance Department Resolution dated 30.11.1972 which was applicable to the tutor of the medical college including the dental colleges in pay scale of Rs. 415-925/-. Accordingly, incorrect pay scale of the petitioner has been fixed depriving him of the benefit which, in fact, was to be calculated on the basis of pay scale prescribed vide Notification no. 103(1) dated 29.03.1998. That is the point which is required to be considered by the State Government based on the factual position, which has emerged from the pleadings made in the writ*

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petition as well as in the counter affidavit.

22. The Additional Chief Secretary, Health Department, Bihar is directed to call for the service particulars of the petitioner as well as the notification prescribing the required pay scale pursuant to the Gazette Notification No. 102(1) dated 04.04.1998, pursuant to which the Bihar College of Physiotherapy and Occupational Therapy came into existence and had adopted the service condition Rules of Government Medical College, Nagpur. In case no pay scale has been prescribed as a consequence of the said notification, the petitioner is held to be entitled to the pay scale of Rs.4100- 5300/- which has been prescribed vide Notification No. 103(1) dated 29.03.1998 by the government which was issued just few days before the Gazette Notification dated 04.04.1998.

23. The Additional Chief Secretary must ensure to direct the concerned sanctioning authority to fix the pay scale of the petitioner and grant difference of salary on account of pay revision and financial upgradation as a result of ACP/MACP and accordingly direct to sanction the pension by revising it on the basis of the prescribed pay scale of Professor and Head of the Department from the date of appointment of the petitioner in accordance with law within a period of six weeks from the date of passing of this order.

24. The petitioner, if so advised, may also

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provide assistance to the Additional Chief Secretary, Health Department, Bihar.

25. The writ petition is allowed."

12. It is submitted by learned counsel appearing for the State of Bihar that the learned Single Judge in allowing the writ application failed to take into consideration the fact that the petitioner had been granted two promotions after his appointment as Occupational Therapist in P.M.C.H in the year 1966. He became the Senior Occupational Therapist in the year 1972 and Professor-cum-Head of Department in the year 1998. He had no claim for ACP/MACP in the writ petition. More importantly, the writ petitioner having retired in the year 2002 filed the instant writ application for benefits of successive pay commission after an unexplained delay of more than 17 years, in the year 2020. The writ application should have been dismissed on this ground alone and the same having been allowed, the order impugned is not sustainable and thus be set aside.

13. Learned counsel for the writ petitioner (respondent no.1 herein) submitted that there is no illegality in the order of the learned Single Judge which has been passed after considering all the submissions made by both the sides.

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14. Having heard learned counsel for the parties and having perused the material on record, the relevant facts in brief are that the writ petitioner was appointed as an Occupational Therapist in the year 1966 and was granted promotion on the post of Diploma Holder Junior Occupational Therapist in the year 1971. In the year 1972, he became a Senior Occupational Therapist-cum- Tutor. With each promotion he was given the higher pay scale as against the respective higher post. The writ petitioner, on being made the Head of Department in the year 1998, was given the pay scale of Rs.6500-10500 which he continued to receive till the time of his retirement in January 2002. The writ petitioner having received the scale of Rs. 4500-7000 of Junior Occupational Therapist, Rs. 5500-10,000 of Diploma Holder Occupational Therapist and Rs. 6500-10,500 as Senior Occupational Therapist, he was not entitled for further benefits under the ACP Scheme of 2003.

15. Besides the above, it is not in dispute that the writ petitioner (respondent no.1 herein) retired as Professor and Head of Department of the College in question in the year 2002. It is the case of the writ petitioner himself as stated in paragraph no.29 of the writ application that he filed so many

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representations before the authority concerned but the matter has not been redressed by the authority except only verbal assurance. It was contended by learned counsel for the writ petitioner (respondent no.1 herein) that the representation of the writ petitioner having been rejected vide letter dated 10.12.2019 (Annexure- A to I.A. no. 1 of 2022 in C.W.J.C no. 937 of 2020), the plea of delay is no longer available to the State of Bihar.

16. At this stage, it would be relevant to take into consideration the judgments of the Hon'ble Supreme Court in the cases of **C. Jacob vs Director of Geology and Mining & Another; (2008) 10 SCC 115, State of Jammu & Kashmir vs R.K Zalpuri & Others; AIR 2016 SC 3006 and Surjeet Singh Sahni vs State of Uttar Pradesh & Others; (2022) 15 SCC 536.**

17. In the case of **C. Jacob** (*supra*), with respect to filing of representation after much delay, getting an order from Court with respect to disposal of the representation and on an order being passed on merits disposing of the said representation contending that a fresh cause of action has arisen, the Hon'ble Supreme Court observed as follows :-

*"**10.** Every representation to the Government for*

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relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. *When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of "acknowledgement of a jural relationship" to give rise to a fresh cause of action.*

12*. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he*

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cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for the purpose of pension. That will be a travesty of justice.

13. *Where an employee unauthorisedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches the court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back wages.*

14. *We are constrained to refer to the several facets of the issue only to emphasise the need for circumspection and care in issuing directions for "consideration". If the representation on the face of it is stale, or does not contain particulars to*

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show that it is regarding a live claim, courts should desist from directing "consideration" of such claims.

15. *The present case is a typical example of "representation and relief". The petitioner keeps quiet for 18 years after the termination. A stage is reached when no record is available regarding his previous service. In the representations which he makes in 2000, he claims that he should be taken back to service. But on rejection of the said representation by order dated 9-4-2002, he filed a writ petition claiming service benefits, by referring the said order of rejection as the cause of action. As noticed above, the learned Single Judge examined the claim, as if it was a live claim made in time, finds fault with the respondents for not producing material to show that termination was preceded by due enquiry and declares the termination as illegal. But as the petitioner has already reached the age of superannuation, the learned Single Judge grants the relief of pension with effect from 18-7-1982, by deeming that he was retired from service on that day. We fail to understand how the learned Single Judge could declare a termination in 1982 as illegal in a writ petition filed in 2005. We fail to understand how the learned Single Judge could find fault with the Department of Mines and Geology, for failing to prove that a termination made in 1982, was preceded by an enquiry in a proceedings initiated after 22 years, when the*

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Department in which the petitioner had worked had been wound up as long back as in 1983 itself and the new Department had no records of his service."

18. In the case of **R.K Zalpuri** (*supra*), the Hon'ble Supreme Court has held as follows :-

*"**20.** Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwala and Others, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus :-*

"The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material 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."

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19. In the case of **Surjeet Singh Sahni** (*supra*), the Hon'ble Supreme Court has held that mere filing of representation does not extend the period of limitation and the aggrieved person has to approach the Court expeditiously and within a reasonable time. Paragraph no.8 of the judgment reads as follows :-

> *"**8**. As observed by this Court in a catena of decisions, mere representation does not extend the period of limitation and the aggrieved person has to approach the Court expeditiously and within a reasonable time. 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 a representation and/or directing the authority to decide the representation, once it is found that the original writ petitioner is guilty of delay and laches. Such order shall not give an opportunity to the petitioner to thereafter contend that rejection of the representation subsequently has given a fresh cause of action."*

20. In view of the facts and circumstances of the case and the judgments of the Hon'ble Supreme Court as referred to herein above, the cause of action for the petitioner having arisen for the first time in the year 1972 when as per his case

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he was not granted the benefit of Teaching Cadre and atleast before his retirement in the year 2002, the delay and laches on the part of the writ petitioner of at least 17 years cannot be explained with the rejection of his representation. The Court is of the opinion that the writ application ought to have been dismissed on the ground of delay and laches alone and the learned Single Judge has erred in not taking into consideration the submissions made on this count on behalf of the appellant State of Bihar. The Court finds merit in the appeal.

21. Accordingly, the judgment dated 2.11.2023 by the learned Single Judge allowing C.W.J.C no. 937 of 2020 is hereby set aside.

22. The appeal is allowed.

(Partha Sarthy, J)

K. Vinod Chandran, CJ; I agree.

(K. Vinod Chandran, CJ)

Shiv/-

AFR/NAFR	
CAV DATE	21.08.2024
Uploading Date	09.09.2024
Transmission Date	

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