

Neutral Citation No. - 2024:AHC-LKO:8416-DB**Court No. - 1****Case :-** WRIT - A No. - 641 of 2024**Petitioner :-** Kashi Nath Chaubey And Others**Respondent :-** State Of U.P. Thru. Addil. Chief Secy. Public Works Deptt. Civil Sectr. Lko. And Others**Counsel for Petitioner :-** Anurag.S.Kaalesh,Durga Prasad Shukla**Hon'ble Attau Rahman Masoodi,J.****Hon'ble Brij Raj Singh,J.**

1. Heard learned counsel for the petitioners and Sri Indrajeet Shukla, learned Additional Chief Standing Counsel appearing for the State-respondents.

2. By means of this writ petition, the petitioners have assailed the judgment and order dated 11.09.2023, rendered by the U.P. State Public Service Tribunal, Lucknow in Claim Petition No.1018 of 2019. The petitioners have approached this Court as a consequence of rejection of their claim petition wherein the relief prayed for is extracted below :-

(i) to issue direction to the opposite parties to regularize services of the petitioners on their posts w.e.f. 18.03.2005 in place of 03.05.2010 and to allow the petitioners the benefit of regularization w.e.f. 18.03.2005 in place of 03.05.2010, and allow all consequential service benefits including arrears of salary after revision of the pay scale.

(ii) pass any other order or direction which Hon'ble Tribunal deems fit and proper in the circumstances of the matter.

3. A perusal of the relief set-out in the Claim Petition clearly reveals that the petitioners, who were regularized in service, vide order dated 03.05.2010, have prayed for relating back their date of regularization as 18.03.2005 in place of 03.05.2010 with consequential service benefits. The Claim Petition for seeking such a relief was instituted in the year 2019. The Claim Petition as per the pleadings set-out therein stated that some junior persons to the petitioners were actually regularized in service on 26.02.2014 w.e.f. a retrospective date i.e. 18.03.2005, therefore, they immediately

made representations to the higher authorities for relating back their date of regularization from the due date at par with their junior counterparts. The representations so made as per the averments made in the Claim Petition were duly recommended by the departmental authorities for due consideration but when the correspondence in this regard with the higher authorities did not yield positive result, the petitioners finally chose to issue a legal notice to the department on 10.05.2019 and for failure to respond to the said legal notice, a cause for approaching the Tribunal arose to the petitioners, hence, Claim Petition No. 1018 of 2019 was filed before the Tribunal seeking the above relief.

4. Learned Tribunal having issued notices to the State authorities called for a written statement. The written statement was accordingly filed by the State disputing the claim of the petitioners. In paragraph-8 of the written statement, the stand put-forth by the State reads as under :-

"यह कि निर्देश याचिका के प्रस्तर-4.7 से 4.9 तक के कथन जिस प्रकार से वर्णित है, असत्य, भ्रामक एवं निराधार है, अतः स्वीकार नहीं है। इस सम्बन्ध स्पष्ट करना है कि रिट याचिका सं०-2412(एसएस)/2009 मोहसिन अली एवं अन्य बनाम उ०प्र० सरकार एवं अन्य तथा रिट याचिका सं०-4303(एसएस)/2003 भारत सिंह एवं अन्य बनाम उ०प्र० सरकार एवं अन्य में मा० उच्च न्यायालय द्वारा पारित संयुक्त आदेश दिनांक 20.08.2015 के अनुपालन में अधिशासी अभियन्ता, प्रान्तीय खण्ड, लो०नि०वि०, लखनऊ के कार्यालय आदेश सं०-1403/ई-8/2018, दिनांक 21.04.2018 द्वारा विभिन्न ट्रेड के कर्मियों को संशोधित ज्येष्ठता सूची अन्तिम की गयी है, जिसमें प्रयोगशाला सहायक की ज्येष्ठता निम्नवत निर्धारित की गयी है:-

क्र० सं०	नाम	ज्येष्ठता क्रमांक	दैनिक मस्टररोल में रखे जाने की तिथि
1	श्री प्रमोद कुमार शंखधर	5	01.07.1983
2	श्री चन्द्र शुक्ला	8	01.01.1984
3	श्री काशीनाथ चौबे	10	01.02.1986
4	श्री सुनील कुमार श्रीवास्तव	14	23.05.1987
5	श्री अली कैसर	18	06.09.1988

उक्त से स्पष्ट है कि याचीगण से कनिष्ठ किसी प्रयोगशाला सहायक का विनियमितीकरण नहीं किया गया है और न ही जूनियर रिसर्च अटेन्डेण्ट के पद पर पदोन्नति प्रदान की गयी है।"

5. Having regard to the averments set-out by the State and the reply filed in response thereto by the petitioners, it is gathered that the date of initial appointment of the petitioners vis-a-vis the persons termed to be juniors was specifically spelt out in paragraph-8 of the written statement. This position of date of initial engagement has not been disputed by the petitioners in the rejoinder affidavit. However, the stand put forth on record reveals that the petitioners had also worked continuously ever since the date of initial engagement as is spelt out in paragraph-8 of the written statement. In so far as the ground of initial engagement for the purposes of determination of the seniority is concerned, once the initial engagement of the other persons stated to have been regularized in the year 2014 remained undisputed, the placement of the petitioners in the seniority at a higher position seems to have no foundation, therefore, the very ground of terming such persons as junior would lose its basis and is unacceptable.

6. Having regard to the averments made in the Claim Petition and the written statement filed by the State in response thereto, the questions that arise are threefold: Firstly, as to whether the petitioners were entitled for regularization from a retrospective date; Secondly, as to whether such a relief could be claimed by the petitioners within the ambit of law and thirdly, as to whether the prayer for relating back the order dated 03.05.2010 was asserted before the Tribunal within the scope of limitation as prescribed under Section 5 of the U.P. Public Service Tribunal Act.

7. Taking up all the questions together, it is necessary to delve into the details of the claim put-forth by the petitioners. Admittedly, the petitioners were initially engaged as Daily Wagers on 01.02.1986, 23.05.1987 and 07.02.1987 respectively. Later on, they

were appointed on the post of Lab Assistant on work charge basis on 01.05.1990, 01.11.1990 and 06.09.1988 respectively. When the opposite parties did not regularize their services, they approached this Court by filing Writ Petition No.6003 (SS) of 1996 which was disposed of vide judgment and order dated 05.01.2004 with a direction to the opposite parties to consider the case of the petitioners for regularization in accordance with the relevant rules within a period of three months from the date of production of a certified copy of the order. It was also directed tht the petitioners shall also be entitled for other benefits from the date their similarly circumstanced juniors are getting the same.

8. It is borne out from the record that Sri Pramod Kumar Shankhadhar and Sri Chandra Shukla who were alleged to be juniors to the petitioners have been regularized w.e.f. 05.04.2005 on the post of Junior Research Assistant, whereas the petitioners, who were working on the post of Lab Assistant, have been regularized vide order dated 03.05.2010. No protest ever since the date of their regularization was ever registered by the petitioners. The petitioners as a matter of fact waited till 2014 and woke from deep slumber when the date of regularization of aforesaid alleged junior persons was given effect to from 05.04.2005.

9. As to why and under what circumstances, the date of regularization of other senior persons was given effect to from 05.04.2005, there is no rule placed reliance upon to claim parity. Representation having no statutory sanctity followed by legal notice were sent to the opposite parties for changing the date of their regularization but the same were of no avail. The petitioners finally approached the Tribunal by filing Claim Petition which was dismissed by the learned Tribunal vide judgment dated 11.09.2023 on the ground of limitation. Needless to say that a reference to the Tribunal is understood, as if, it is a suit. There is no power of delay condonation vested with the Tribunal.

10. It is clear from the record that the regularization order in relation to the petitioners was issued on 03.05.2010 and any grievance in relation thereto order ought to have been raised within a period of one year as prescribed under law. In absence of a valid proof of any junior person who was subsequently regularized from any earlier date, we are not convinced that mere representations or legal notice would give rise to a cause for alteration of the date of petitioners' regularization contrary to the order issued on 03.05.2010 that too in absence of any rule. Thus the ground of limitation urged before us would bar the proceeding before the Tribunal.

11. Hon'ble Supreme Court, in a Special Leave Petition, recently reprimanded the State of Orissa for the lackadaisical attitude with which the petitioner-State has been prosecuting the cause in a matter. Relying on the judgment passed in ***State of Odisha v. Surama Manjari Das*** (W.P.(C) No. 15763 of 2021) the Special Leave Petition filed against the judgment and order dated July 26, 2023, passed by the Orissa High Court, the Apex Court refused to entertain the same at 'the belated stage', as it suffered from delay and laches.

12. In ***S S Balu v. State of Kerala [2009 (2) SCC 479]***, the Apex Court observed thus:

“17. It is also well-settled principle of law that “delay defeats equity”. ...It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.”

(emphasis supplied)

13. Law has long set its face against delay in approaching the Court. The courts have consistently declined to condone the delay and denied relief to litigants who are guilty of laches. Litigants who are in long slumber and not vigilant about their rights are discouraged by the courts. Belated claims are rejected at the threshold.

14. In view of what has been stated above, it is evidently clear that the Courts can help to the litigants who are vigilant and the reason put forth for the delay in filing the petition is not at all acceptable or convincing.

15. In view of what has been stated above, the answer to all the questions set out in para-6 hereinabove, is in **negative** on the ground that the petitioners failed to establish that they were senior or juniors to them were regularized prior to their regularization or there exists a rule for relating back the date of regularization. In the circumstances of the case, the order passed by the Tribunal is perfect in all respects calling for no interference by this Court under Article 226 of the Constitution of India.

16. For all the reasons stated above, the writ petition fails and it is accordingly **dismissed**.

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[Brij Raj Singh, J.] [Attau Rahman Masoodi, J.]

Order Date :- 30.1.2024
Sanjay