

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7172 of 2014

=====

Rajendra Prasad @ Rajendra Prasad Ram, S/o Late Dularchand Mallick,
resident of Mohalla - Kankarbagh, Near Harijan Tola, Tampo Stand, Lohia
Nagar, P.S. Kankarbagh, Distt. Patna

.... Petitioner/s

Versus

1. The Bihar State Housing Board through its Managing Director, 6
Mangles Road, Patna P.S. Sachiwalaya, Distt. Patna.
2. The Managing Director, the Bihar State Housing Board, 6 Mangles Road,
Patna P.S. Sachiwalaya, Distt. Patna.
3. The Chief Engineer, the Bihar State Housing Board, 6 Mangles Road,
P.S. Sachiwalaya, Distt. Patna.
4. The Secretary, the Bihar State Housing Board 6 Mangles Road, P.S.
Sachiwalaya, Distt. Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Braj Kishore Singh Chouhan, Advocate.

For the Respondent/s : Mr. Anshuman Singh, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 13-02-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application

reads as follows:

*"1. That this petition is being filed with a prayer for
issuance of writ of mandamus directing and commanding
upon the respondents to regularize the service of the
petitioner against the post of Driver from the day on which
his junior or contemporary has been regularized in the
services as driver and pay all the monetary benefits from
that very day."*

3. Mr. B.K.Singh Chauhan, learned counsel appearing
on behalf of the petitioner, in support of the aforementioned
prayer, has straightway invited attention of this Court to an earlier
inter parte order dated 18.01.1999 in C.W.J.C. No. 815 of 1998 to
contend that despite certain direction given by this Court, the

respondent authorities have not regularized the services of the petitioner. He has also referred to statement made in paragraph 7 of the writ application which according to him would make out a case of discrimination.

4. Mr. Anshuman Singh, learned counsel for the respondents- Bihar State Housing Board (hereinafter referred to as 'the Board'), on the other hand, has submitted that first of all, there was no direction by this Court in the order dated 18.01.1999 much less for regularisation of services of the petitioner inasmuch as this Court had only observed that if there be a vacancy on the post of Driver and that post is advertised and if the petitioner applies in response to such advertisement, his case would be considered by giving relaxation of age for the period he had worked in the Board on daily wage basis as also give some weightage for his past satisfactory services.

5. Mr. Singh, therefore, explains that once this Court had not granted relief of regularisation and had left only on the petitioner with option to apply as and when the post would be advertised, there cannot be a second writ petition for the relief which was already not granted to him in the order dated 18.01.1999 in C.W.J.C. No. 815 of 1998.

6. In addition to it, Mr. Singh submits that the

petitioner has suppressed this fact that the aforementioned order dated 18.01.1999 in C.W.J.C. No. 815 of 1998 was made subject matter in a civil review application being Civil Review No. 98 of 2001 and the same was dismissed on 02.09.2004.

7. Having regard to the aforementioned submissions, this Court would firstly hold that the present writ application is bared by the principle of *res judicata* and constructive *res judicata* for a simple reason that if in the earlier round of litigation the petitioner's relief for regularisation was not allowed, as is evident from reading of the order dated 18.01.1999 in C.W.J.C. No. 815 of 1998, the petitioner had no right to move again this Court for the same cause of action. Let it be noted that this Court in the order dated 18.01.1999 in C.W.J.C. No. 815 of 1998 had held as follows:

" The petitioner was engaged to work on daily wages as a Sweeper some time in the year, 1972. Later on, it appears that in the absence of the regular driver, he was made to work as a jeep driver continuously from 10.06.1985 to 7.11.88 (as evidenced from annexure-1). According to the petitioner's case, later also the petitioner worked as a jeep driver. However, when his services were regularized in the year, 1991, he was given the post of Sweeper and not that of a driver. Aggrieved by this, the petitioner has come to this court seeking a direction to the respondent authorities to regularise his service as a driver in the higher scale of pay. It is also his case that even after his regularisation on the post of Sweeper, he is working as a driver and not as a Sweeper.

In the counter affidavit, it is submitted that while on daily wages the petitioner worked of and on as a driver. It is, however, denied that after his regularisation as Sweeper he is still working as a driver. On the contrary, it is stated that at present the petitioner was posted at Bhagalpur Division on the post of Sweeper.

In the writ petition, it is stated that there is a

vacancy in the reserved post for driver and the petitioner belongs to the scheduled caste reserved category. There is no denial to this statement in the counter affidavit filed on behalf of the respondents 1 to 3.

Having, therefore, heard counsel for the parties and having perused the writ petition and the counter affidavit, this writ petition is disposed of with a direction that in case there is vacant sanctioned post of driver (whether reserved or unreserved) and the concerned authorities wish to fill it up, they should do so in a regular manner after issuing necessary advertisement etc. In case, such an advertisement is issued, it will be open to the petitioner to apply for appointment and in that even, he will be entitled to relaxation of age for the period he worked in the department on daily wage basis and would also be entitled to some weightage for his past satisfactory service."

8. From the reading of the aforementioned order, it would become very clear that though the petitioner wanted to this Court to issue a direction for his regularisation on the post of Driver but the relief for regularisation was not granted and the only direction was given that in case, there was a vacant sanctioned post of Driver and the authorities wanted to fill it up, the same should be filled up by way of regular appointment after issuance of advertisement etc. Thus, when this Court had refused the relief for regularisation on the post of Driver, a second writ petition for the same cause of action definitely held to be not maintainable.

9. At this stage, Mr. Anshuman Singh points out that as a matter of fact this is the third writ petition after the disposal of C.W.J.C. No. 815 of 1998 inasmuch as the petitioner for the same cause of action had filed C.W.J.C. No. 6378 of 2001 and C.W.J.C.

No. 1712 of 2005.

10. Mr. Singh seems to be correct and, in fact, the petitioner appears to be a veteran litigant, who probably in order to meet his habit of moving this Court time and again is taking chances for getting the same relief. This Court fails to understand that when his first writ petition, so far it related to regularisation on the post of Driver, had failed and only a direction was given for consideration of his case on the appointment of the post of Driver as and when the advertisement would be issued by the Board and his review application also was dismissed by this Court by order dated 02.09.2004, how could he file a series of writ petitions for the same cause of action?

11. The only possible answer now being found by Mr. Chauhan that there was a plea of discrimination, which has brought the petitioner before this Hon'ble Court again, has to be now taken into account. Such plea of discrimination, as is evident from paragraph 7 of the writ petition, reads as follows:

"7. That in fitness of the things, it is being mentioned here that services of 36 persons were regularized on the post of Choukidar and Peon etc, though they are junior to the petitioner and service of one Shatrughan Singh was regularized against the post of driver however, he was working on the post of Peon."

12. From reading of the aforementioned averments, it does not clear that as to when Shatrughan Singh was regularized



against the post of Driver and as to whether this had been done after disposal of his four writ petitions and a review application. The statement, contained in paragraph-7 of the writ petition, to say least, is most vague and would not lead to any different consequence for a simple reason that in the case of the petitioner there is an inter parte order which binds him that his appointment on the post of Driver can only be made by way of direct recruitment.

13. The issue of direct recruitment could only arise if the respondents would find need to fill up the post because this Court did not say that the post must be advertised. The discrimination being dependent on the act of the authorities of the Board if the post had never been advertised for filling up the post of Driver the petitioner cannot claim as a matter of right for his being appointed on the post of Driver.

14. In any event, much water has flown so far the matter of regularisation in service of the petitioner is concerned. The law, in this regard has been recently settled by the Full Bench of this Court in the case of **Ram Sevak Yadav Vs The State of Bihar**, reported in **2013(1) PLJR 964**, wherein law was laid down in the following terms:-

"We therefore sum up our conclusions and answer the reference as follows:-

(A) *Secretary State of Karnataka vs Uma Devi, reported in 2006(2)PLJR (SC) 363, prohibits regularization of daily wage, casual, ad-hoc and temporary appointments, the period of service being irrelevant;*

(B) *An illegal appointment void ab initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularized under any circumstances.*

(C) *Irregular appointments can be regularized if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.*

(D) *The appointment must not have been an individual favour doled out to the appointee alone and the person must have continued in service for over ten years without intervention of any Court orders.*

The petitioners were appointed in temporary capacity by a process contrary to Article-14 of the Constitution without competitive selection as an individual favour doled out to them. There is no material to hold that they were appointed against vacant sanctioned post and possessed qualifications for the same. They were terminated before (Uma Devi) (supra) and have sought to retain their status by virtue of Court proceedings and are therefore not entitled to the benefits of paragraph 53. The issue of any procedural irregularity for a finding of forged appointment is therefore irrelevant."

15. As a matter of fact this writ application for a cause of action for more than three years is even otherwise not

maintainable as was held by the Apex Court in the case of ***Union of India v. Tarsem Singh*** reported in ***(2008) 8 SCC 648*** wherein paragraph 7 and 8, it was held as follows:

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of thirds parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to sixteen years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the

date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances”.

16. Having regard to the findings recorded above, this writ petition must be held to be misconceived and ill-advised and frivolous and thus is fit to be dismissed.

17. This Court, in fact, was inclined to pass order of exemplary cost but then a prayer has been made by Mr. Chauhan that the petitioner is holding the post of Sweeper and, therefore, he may not be subjected to payment of cost. Such submission of Mr. Chauhan is accepted with a rider that now the petitioner shall never move this Court for the relief sought in this writ petition and if he does so, he shall be subjected to exemplary cost.

Sujit/-

(Mihir Kumar Jha, J)

U			
---	--	--	--