

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13014 of 2015

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Lakhan Prasad, son of late Parmeshwar Dayal, resident of Village Mansoorchak, Purani Basar, P.S. Lakhisarai, Dist. Lakhisarai.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Minor Irrigation, Patna.
2. The Chief Engineer, Minor Irrigation, Munger.
3. The Superintending Engineer, Minor Irrigation, Munger.
4. The Executive Engineer, Minor Irrigation, Lakhisarai, Munger.
5. The Assistant Engineer, Minor Irrigation, Lakhisarai, Munger.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kr. Sinha

For the Respondent/s : Mr. Subhash Pd. Singh

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 21-08-2015

Heard learned counsel for the parties.

2. Having regard to the relief sought in this writ application, relevant portion whereof reads as follows:-

“1. ---- commanding the respondents to pay extra increment which is due and payable to a person having two children in view of the letter vide Memo No. 1337 dated 22.12.2003 issued by the Respondent No.4 which has to be paid with effect from 22/01/1996 the letter as contained in Annexure-1 which has not been given to the petitioner till his superannuation and/or issuance of appropriate consequential writ or writs directing the Respondents to regularize the pension of the petitioner after granting him the said increment in the form of revised pension and/or issuance of any other writ or writs under the facts and circumstances of the case.”

this Court is confident that it is a stale claim of the year 1996 which has been sought to be raised on the basis of office order dated 22.12.2003 after the petitioner had retired in the year 2008 and now has filed this application on 20.8.2015.

3. The issue as to whether the petitioner will be entitled for family planning increment on the basis of his operation undergone in the year 1996 cannot be now reopened for any reason whatsoever because the claim of the petitioner in that event will become payment of amount for the period 1996 to 2008 when such additional increment could have been admissible. This, however, cannot be done in the light of law laid down by the Apex Court in the case of **Union of India & Ors. v. Tarsem Singh** reported in (2008) 8 SCC 648 wherein it has been 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”.*

(underlining for emphasis)

4. The petitioner in this case claims payment of one additional increment from 1996 to 2008 on account of family planning operation on the basis of an alleged order of 2003 by filing this writ application on 20.08.2015 which is well beyond the period of three years as explained by the apex court in the case of Tarsen Singh (supra).

5. As a matter the authenticity and correctness of such an order of the Executive Engineer dated 22.12.2003 on the basis of which he has claimed one additional increment is itself shrouded in mystery inasmuch as if he had allegedly undergone family planning operation in 1996, there was no reason of its being sanctioned after a period of seven years and that too on the basis of certificate of a medical officer.

6. It is thus aspect which also gets reflected from the subsequent letter of the Executive Engineer dated 22.10.2014

wherein he had also explained to the petitioner that his such claim was not only state but also that he had not furnished the required prescribed certificate of Civil Surgeon for getting the benefit of one additional increment.

7. The petitioner infact had neither produced such certificate of Civil Surgeon before the Executive Engineer nor has produced the government decision showing that such increment could be given on certificate of any other Doctor.

8. Thus, this application must fail and is, accordingly, dismissed both on the ground of delay and laches as well as on merit.

(Mihir Kumar Jha, J)

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