

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8081 of 2014

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1. Himanshu Kumar Choubey Son of Sri Nakul Prasad Choubey resident of Village- Salempur, Police Station- Amarpur, District- Banka
 2. Om Prakash Pandey @ Ratish Kumar Pandey Son of sri Rajendra Prasad Pandey resident of Village- Lalmatia, Police Station- Bounsi, District- Banka
 3. Ram Prasad Manjhi Son of Late Bhn Mataroo Manjhi resident of Village- Lalmatia, Police Station- Bounsi, District- Banka
 4. Rajesh Kumar Pandey Son of Sri Ugra Mohan Pandey resident of Village- Lalmatia, Police Station- Bounsi, District- Banka
 5. Kundan Kumar Chaturvedi Son of Sri Vijay Bhushan Chaturvedi resident of Village- Lalmatia, Police Station- Bounsi, District- Banka
 6. Jiwan kumar Prasant son of Sri Upendra Sharma resident of Village- Daliya, Police Station- Bounsi, District- Banka
 7. Rajesh Kumar Choudhary Son of Sri Chandeshwar Prasad Choudhary resident of Village- Phaga, P.S.- Bounsi, District- Banka

.... Petitioners

Versus

1. The Union of India through the Secretary, Department of Railway (Ministry of Railway), Rail Bhawan, New Delhi
2. The Secretary, Department of Railway, Rail Bhawan, New Delhi
3. The General Manager, Eastern Railway, 17 Netaji Subhash Road, Have Street Kolkata, West Bangal
4. The Chief Administrative Officer (Construction), Eastern Railway, 17- Netaji Subhash Road, Have Street Kolkata, (W.B.)
5. The Deputy General Manager, Eastern Railway, 17- Netaji Subhash Road, Have Street Kolkata
6. The Divisional Railway Manager, Eastern Railway Malda (W.B.)
7. The Deputy Chief Engineer (Construction) Eastern Railway, Bhagalpur
8. The State of Bihar
9. The District Magistrate, Banka
10. The District Land Acquisition Officer, Banka

.... Respondents

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Appearance :

For the Petitioners : Mr. Y.V. Giri, Sr. Advocate & Mr. Balram Kapri
Advocate
For the Respondents: Mr. Anil Singh
For the State : Mr. Prabhat Ranjan AC to GP-12

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

Date: 17-09-2015

For the same relief, the petitioners had earlier filed a writ petition vide CWJC No. 4664 of 2003. The writ petition was sought to be withdrawn with liberty to approach the Central Administrative Tribunal (for short ‘the CAT’) for redressal of the grievance. The

writ application was accordingly withdrawn with the said liberty vide order dated 17.12.2003 (Annexure-1). Indisputably, liberty sought by the petitioners was not availed of. The petitioners instead continued to persuade the respondents to redress their grievance and thereafter filed the present writ petition.

Heard Mr. Y.V. Giri, Sr. Advocate in support of the writ petition, Mr. Anil Singh, the counsel appearing for the respondent-Eastern Railways and the counsel for the State.

Petitioners have prayed to give them parity in treatment in providing employment in the Railways on any appropriate post, on account of acquisition of their land by the respondent Railways for the purpose of construction of Mandar Hill Rampur Halt Broad Gauge railway line as provided to similarly situated persons whose lands had been acquired for the same project. The aforesaid relief is founded on the circular issued by the Government of India, Ministry of Railways vide Circular no. 3 (NG) 11/89/RC-2/38 dated 10.11.1989 (Annexure-7) which, inter alia, provides for employment of one persons in the family displaced as a result of acquisition of land on certain conditions enumerated therein. One member of a family whose land has been acquired in the year 1999-2000 for large scale railway project was entitled to suitable employment in the railways. It has been stated that the lands of the family to which the petitioners belong have been acquired by the State Government for the use of the respondent Railways resulting the family to the status of



displaced person(s). Repeated representations/applications were filed by them after such acquisition for providing them a suitable job but no action was taken and in such circumstance they filed CWJC no. 4664 of 2003 which was disposed of in the manner stated above. Another writ petition being CWJC No. 7047 of 2008 was filed by some of the persons similarly situated for a direction upon the respondent Railways to provide suitable employment to one in the family whose land was acquired rendered the family landless/homeless. The writ petition was dismissed vide order dated 04.09.2012. A writ appeal thereagainst was filed vide LPA No. 1850 of 2012 which was allowed vide order dated 6.12.2012 (Annexure-10). The order of the learned Single Judge was set aside. The Railway Board-respondent was directed to consider the case for providing employment to one member of each family of the displaced person whose land had been acquired in accord with the 1989 Scheme. The respondent- Union of India and others preferred Special Leave Petition to challenge the said order which was dismissed vide order dated 11.7.2013. The Apex Court on a consideration of the case concurred with the order passed by the writ appeal Court. While rejecting the Special Leave Petition the Apex court observed thus:-

“In our considered view, the reasons recorded by the Division Bench for granting relief to the respondents are correct and the order under challenge does not call for interference by this Court under Article 136 of the Constitution.”

Mr. Giri has submitted that the order passed by the writ



appeal Court in LPA No. 1850 of 2012 does not confine to the petitioners thereof but is a general direction to the respondent Railway Board to provide employment to one member of each family who got displaced and became shelterless. The petitioners want a parity in the treatment by the respondent Railways. It has been argued that the public authority cannot act in indiscriminate manner by depriving the present petitioners from being benefited by the circular/policy decision in the light of the order passed by the writ appeal Court in LPA No. 1850 of 2012.

Mr. Anil Singh, counsel for the respondent Railways, on the other hand, while opposing the writ petition, has challenged its maintainability. He would argue that the writ petition filed by the petitioners for the similar relief in the year 2003 was sought to be withdrawn enabling the petitioners to move the CAT for redressal of the grievance. The petitioners on their own showing have not moved the CAT and waited on the wings for more than 11 years. The present writ petition has now been filed on the ground that a direction of general nature was passed by this Court in LPA No. 1850 of 2012. Relying on **2014(3) PLJR 724(Chini Thakur & Ors. vs The Union of India & Ors.)**, it has been submitted that the present writ petition would not be maintainable as the relief with regard to providing them employment in the Railways lies before the CAT. In similar circumstance, the writ petition was filed alleging non implementation of the policy of the Union of India in the Ministry of

Railways when this Court relying on AIR 1977 SC 685 and AIR 1964 SC 1451 declined to entertain the writ application as the matter was covered by the provisions of the Administrative Tribunal Act, 1985. Combating the submission of the counsel for the petitioners he has urged that any relief granted in a writ proceeding not filed as a public interest litigation would confine to the parties of the proceeding only. It is, therefore, wholly unjust to submit that the order passed by the Division Bench of this Court is a general direction.

In the light of the rival submissions, this Court would proceed to consider whether the present writ petition filed by the petitioners is maintainable in this Court and whether the petitioners' claim of parity in the treatment at the hands of the respondents in the light of the order dated 06.12.2012 passed in LPA No.1850 of 2012 is justified. The second question shall be adverted to first. In **A.P. STEEL RE-ROLLING MILL LTD. vs. STATE OF KERALA AND OTHERS (2007)2 SCC 725** in paragraph no.40, the Apex Court held as under:-

“40. The benefit of a judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ petitioner had chosen to sit over the matter and then wake up after the decision of this Court. If it is found that the appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief.”



The writ application being discretionary in nature and equitable in gist can be refused on many reasons. One of them is delay and laches on the part of the petitioners in seeking the relief. Delay defeats equity. The equitable jurisdiction of this Court, therefore, necessarily requires consideration of delay. If the writ petitioner is found tardy in agitating his/their claim the Court can legitimately deny the relief on the well recognized principles of acquiescence. The contention of Mr. Giri that the order passed in LPA No. 1850 of 2012 is an order passed in rem, in my view, is not well supported and cannot be sustained. In the Special Leave Petition filed thereagainst the Apex court while rejecting the same observed that reasons to grant the relief to the respondents of the petition by the High Court was/were infallible. The Apex Court, therefore, having regard to the facts of the case, clarified that the relief granted by the writ appeal Court was confined to the appellants/writ petitioners and no one else. In this connection, the observation made by the Apex Court in **S.S. Balu & Anr. Vs. State of Kerala & Ors. (2009) 2 SCC 479** would be relevant. The relevant part of the observation made by the Supreme Court is extracted hereinbelow:-

17. It is also well-settled principle of law that “delay defeats equity”. The Government Order was issued on 15.1.2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal thereagainst, they impleaded themselves as party-respondents. 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. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage.....”

Another objection of the respondent Railways is about the maintainability of the writ petition in view of the previous order. It is seen from Annexure-1 that the petitioners had earlier filed a writ petition for the similar relief which was permitted to be withdrawn with the liberty to approach the CAT for redressal of the grievance. The petitioners thereafter sat quietly and did not approach the CAT for the said relief. After the order passed by this Court placed at Annexure-10 the writ petition has been filed claiming parity in the treatment at the hands of the respondent Railways. In the case of **Sarguja Transport Service vs. State Transport Appellate Tribunal Gwalior & Ors. reported in AIR 1987 SC 88** the Apex Court held that if permission to withdraw the suit or the petition with a liberty to institute a fresh suit or petition for the same cause of action is not accorded the filing of a fresh writ petition would actually amount to abuse of the process of the Court being opposed to the public policy. A Single Judge of this Court in the case of **Rajeev Kumar Pandey vs. State of Bihar 2015(3) PLJR 308** declined to grant the relief to the writ petitioner on finding that earlier a writ petition was filed by the petitioner for the similar relief of

payment of salary which was sought to be withdrawn without getting any leave of the Court to move again for the same cause of action. The challenge of the respondents to the maintainability of the writ petition appears to be well founded and fit to be sustained.

As a result of the discussions made hereinabove, the writ application is fit to be dismissed on both counts. I order accordingly.

(Kishore Kumar Mandal, J)

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