

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10502 of 2013

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1. Shri Sachchidanand Sinha Son Of Late Parma Nand Lal Resident Of 7, Bside Colony, Dr. Rameshwar Dayal Path Boring Road, Patna - 13

.... Petitioner/s

Versus

1. The State Of Bihar Through Its Principal Secretary-Cum-Industrial Development Commissioner, Dept. Of Industries , Bihar, New Secretariat, Patna
2. Bihar State Industrial Development Corporation Ltd. Through Its Managing Director, 1st Floor, Indira Bhawan, Patna - 1
3. The Chief Personnel Officer, Bihar State Industrial Development Corporation Ltd., 1st Floor, Indira Bhawan, Patna - 1

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar, Adv.
For the Corporatilon : Mr. Satyabir Bharti, Adv.
For the State : Dr. Suobha Choubey, AC to G.P.1

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

CAV JUDGMENT

Date: 18-02-2015

*Shivaji
Pandey,J*

Heard counsel for the petitioner and the Corporation.

In the present case, petitioner was in service of Bihar State Industrial Development Corporation (hereinafter, in short, 'Corporation') and superannuated from service on 31st August 2008 .

The Corporation, vide its resolution dated 22nd December 1961 adopted the provisions of the Bihar Service Code and other financial Rules of the State of Bihar till framing of its Rules and, as such, the service condition of the employees of the

Corporation is governed by the Bihar Service Code. The Government of Bihar amended the Rule 73 of Bihar Service Code by which the age of superannuation has been extended from 58 years to 60 years.

The petitioner after superannuation from service filed a representation dated 21st July 2008 requesting the authority in view of the amendment of the Rule 1973 of the Bihar Service Code, his age of superannuation be also extended upto 60 years, In the mean time, employees of other Corporation, including the employees of Bihar State Food and Civil Supply Corporation filed a writ petition and there the plea was taken, in view of the resolution passed by the Corporation, their age of superannuation should also be treated as 60 years.

This Court in LPA No. 829 of 2009 (Lala Nand Kumar v. The Bihar State Food & Civil Supply Corporation) reported in 2008(1) PLJR 529 held that as per the resolution, automatically the age of superannuation is deemed to have been extended to 60 years. On the strength of aforesaid judgment, two persons, namely, Ram Naresh Singh and Sheo Kumar Singh from Bihar State Industrial Development Corporation filed CWJC No.8451 of 2005 and CWJC No.10107 of 2008, this Court, vide order dated 15th July 2008, relying on the judgment in the case of

Lala Nand Kumar (supra) extended the age of superannuation to those petitioners.

The petitioner filed the present petition on 14th May 2013 making prayer that his age should also be treated to have been extended upto 60 years, submitted that as nature of relief sought for does not affect the third party right, even some delay, cannot be a ground to non-suit him, identical benefit has been given to two persons, as above, same cannot be denied to him taking the plea of equality.

In support of his contention, he has relied on AIR 1974 SC 259 (Ramchandra Shankar Deodhar v. State of Maharashtra) (Para-9), 2006 (4) PLJR 573 (M/s Oscar Security & Fire Services v. Union of India) (Para-6 and 8) and 2006(4) PLJR 642 (Dr. Upendra Prasad Singh v. State of Bihar) and 2000(2) PLJR 187 (Mohan Prasad Singh v. State of Bihar), the petitioner further submitted the judgment that has been relied upon by the Corporation is per incurium as that judgment has not taken into consideration the Lala Nand Kumar's case and, as such, he cannot be deprived of the benefit on the strength of LPA No. 1558 of 2011 Namindra Singh v. The State of Bihar (Annexure-A) whereas counsel for the respondents has submitted that those who are sitting outside the fence and only observing the action inside the

circle remains mere expectator the benefit though has been given to others cannot be given to him. As there is no explanation of delay in filing the writ petition, mere filing of the representation and taking no action, relief cannot be granted.

Had he taken some action during the service period, then the matter would have been otherwise or the Corporation would have taken work even during the extended period. Now it will be nothing but to get the monetary benefit without any contribution, will be burden for the Corporation as it is facing financial constrain. He has further submitted, except two persons as mentioned above, no other person has been granted the benefit of the extension of age of 60 years.

In the mean time the Division Bench of this Court in the aforesaid LPA 1558 of 2011 (Namindra Singh v. State) has taken a view that even if there is a resolution of adopting the Bihar Service Code will be applicable what was there on the day of passing the resolution. Any subsequent amendment to the Bihar Service Code will not be extended ipso facto, as there is nothing in the resolution to suggest, the amendments from time to time in Bihar Service Code will be applicable to the employees of the Corporation. The amended provisions of the Service Code will be applicable to the employees only when there is specific averment

in the said resolution.

In support of his contention, counsel for the corporation has relied on (2009)3 SCC 281 [Yunus(Babooobhai) A. Hamid Pavekar v. State of Maharashtra] (Para-7 and 10) and (2009) 1 SCC 768 (Tridip Kumar Dingal v. State of West Bengal) (Para-55-64) on the point that even if relief has been granted to others, if the person concerned did not approach the Court, within the permissible time, delay itself is a factor for refusing relief.

Counsel for the petitioner in reply submitted that the sanction order in favour of Ram Naresh Singh has been issued in 2013 though this Court passed the order in CWJC No. 8457 of 2008 on 15th July 2008.

Having heard the counsel for the parties, two points have emerged for consideration by this Court:

- i) Whether it will be proper and justified to entertain the application after such a long delay ?
and
- ii) Whether it will be proper to give the relief of extended age of 60 years to the petitioner when the Board has taken a decision to extend the age of superannuation from 58 years to 60 years later on and if it is decided in favour of petitioner, whether

he should be given full arrear of salary or any part thereof ?

In the present case, petitioner has superannuated from service on 31st January 2008 upon reaching the age of 58 years. It appears that the petitioner, for the first time, filed application dated 21st July 2008 requesting the authority to allow him to work till 60 years of age placing reliance on a Division Bench order passed by this Court in Lala Nand Kumar v. Bihar State Food and Civil Supplies Corporation Ltd, reported in 2008(1) PLJR 579 and the order dated 15th July 2008 Ram Naresh Singh (supra) whereby both the employees have been given relief of extended age of superannuation of 60 years.

Delay and laches is fatal and extinguishes the right, if the same is not pursued at the proper time. In a case of fundamental right, delay in filing the writ petition does not create any impediment in giving relief.

The issue of delay and laches to exercise the power of judicial review has been considered from time to time by the Hon'ble Supreme Court as well as by this Court. No straight jacket and fixed principle is emanating as there is no period of limitation prohibiting the exercise of power of judicial review. It depends upon in what manner the Court has exercised discretion looking to



the facts and circumstances of each case taking into consideration the wide language of Article 226 of the Constitution of India. Discretion has to be exercised on equitable consideration, for the ends, justice and the discretion should be exercised properly, judicially and suitably, having regard to the facts and circumstances of each case.

In Mohan Prasad Singh v. State of Bihar, 2000(2) PLJR 187 the Single Bench of this Court has considered large number of judgments of Privy Council, the judgments of the Hon'ble Supreme Court and the judgments of different High Courts. The principle that emerges of exercising jurisdiction to remove the grave and patent errors which infringe human rights unless by undue delay and laches inconsistent legal or equitable considerations have arisen which judicial conscience cannot with equanimity ignore, justice should not be denied simply because parties have not moved soon after the injury was caused or threatened and the delay has not been explained. The real test to determine delay in such cases is that the petitioner should come to the writ court before parallel right is created and that the lapse of time is not attributable to any laches or negligence. The exercise of judicial review can be refused when parallel right is created in favour of others as a result of lapse of time. The test is not

physically running of time, when some circumstances exist justifying the condonation of delay and the illegality in the impugned order is so manifest that it cannot be sustained, the delay and laches should be condoned.

In the case of Ramchandra Shankar Deodhar v. State of Maharashtra, reported in AIR 1974 SC 259 the Hon'ble Supreme Court has elucidated the exercise of jurisdiction of judicial review in a case of delay and laches in the following words:

“It may also be noted that the principle on which the Court proceeds in refusing to the petitioner on the ground of laches or delay is that the right which has accrued to others by reason of delay in filing the appeal should not be allowed to be disturbed unless there is reasonable explanation for the delay.”

In the case of Dr. Upendra Prasad Singh v. State of Bihar reported in 2006)4 PLJR 642, the Court has exercised discretion in favour of petitioner rejecting the plea that writ petition was suffering from delay and laches. It is relevant to quote Para-7 of the judgment which is as follows:

Para-7 :From the records before us it does not



appear that the case of promotion of the petitioner was considered while the case of promotion of respondent no.4 was considered. In any event the petitioner, who had been subsequently promoted and thereby had been acknowledged to be fit to be promoted, could not be ignored while considering the case of promotion of respondent no.4 inasmuch as admittedly the petitioner was senior to respondent no.4. In a situation of this nature delay of eight years did not stand in the way of the petitioner establishing his right of being considered in the manner as directed by constitutional mechanism in addition to conditions of service.”

The Hon’ble Supreme Court in the case of Yunus (Baboobhai) A. Hamid Padvekar v. State of Maharashtra reported in (2009)3 SCC 281 the Court has given caution to exercise the jurisdiction in case of delay and laches. The Hon’ble Supreme Court has said that in an appropriate case, the High Court may refuse to exercise extra-ordinary power, if there is such negligence or omission on the part of applicant to assert his right as taken in lapse of time and other circumstances causes prejudice to the opposite party. Even where fundamental right is involved, the

matter is still within the discretion of the Court and the discretion has to be exercised judicially and reasonably. It is relevant to quote Para-10 of the judgment which is as follows:

Para:10 “Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution of India. In an appropriate case, the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in *Durga Prasad v. Controller of Imports and Exports* reported in [(1969)1 SCC 185]. Of course, the discretion has to be exercised judicially and reasonably. ..”

The above judgments described that the discretion of judicial review can be exercised in a suitable case when really the person should approach the Court suffers from the action of the

respondents and when a parallel right has not been created and there is explanation of the delay. Discretion has to be exercised with circumspection making overall assessment of the pros and cons of facts and attending circumstances, discretion cannot to be exercised in a arbitrary and in pedantic manner.

In the present case, one major plea has been taken by the respondents that the petitioner after lapse of 5 years has approached this Court which itself disentitled him of the relief as has been sought for and this Court cannot exercise its discretion in his favour by extending the period of superannuation from 58 years to 60 years.

The present writ petition has been filed after five years. First representation was given in the year 2008 and another in 2013. There is a delay of 5 years without any explanation, but the Corporation itself has taken a decision to extend the age of superannuation after superannuation of the petitioner.

In the present case, a plea has been taken by the petitioner that when relief has been given to other employees of the same organization, there was no need to file a separate petition for granting the same relief.

Counsel for the Corporation disputed the submission and submitted that if the person sitting outside the

fence does not come forward, he cannot be given relief even though others have been given the same relief.

This Court has directed the Corporation to give names of persons who have superannuated in between the period March 2005 to 2008. As per the statement of the Corporation, it shows that 312 persons will be required to be given the benefit of 60 years. The writ petition has been filed after 5 years without any explanation for the delay due to which it is hit by laches as the relief sought for is not arising from fundamental right, rather the benefit is arising from amendment of service rules, extending the age of superannuation from 58 years to 60 years.

So far other point taken by the petitioner, as per counsel for the petitioner, the Corporation has decided to adopt the Bihar Service Code. On amendment of Bihar Service Code in 2005, extending the age of superannuation automatically will also extend the age of superannuation from 58 years to 60 years on the strength of judgment in the case of Lala Nand Kumar (supra). It will be relevant to quote Para-8 of the judgment which is as follows:

“Para-8 : A look at the resolution dated 21st

May 1973 makes it absolutely clear that the Bihar Service Code applicable to the State Government



employees was adopted for the employees of the Corporation. The adaptation, no doubt, was made of the Code as was then in existence. The question is whether this adaptation was made of the future changes which may be incorporated in the Code in future or not. The resolution is required to be read as a whole. This Code as applicable to the State Government employees until Service Code and financial Rules as framed by the Corporation were adapted for the employees of the Corporation. Therefore, time until when adaptation will remain in force had been indicated and that is until Service Code and Financial Rules are framed by the Corporation. The true meaning of the resolution, therefore, would be that until Service Code and Financial Rules are framed by the Corporation, the Bihar Service Code as applicable to the State Government employees shall apply to the employees of the Corporation. This resolution dated 21st May 1973 admittedly had not been withdrawn until 29th July 2006. Much prior thereto on 24th March 2005, the Service Code was altered



as regards the age of superannuation. By that time or even thereafter no Service Code or Financial Rules had been framed by the Corporation. While on and from 24th March 2005 in terms of the Service Code as applicable to the State Government employees, the State Government employees became entitled to serve upto the age of 60 years, since by that time no Service Code or Financial Rules had been framed by the Corporation, in terms of the resolution dated 21st May 1973 the officers and the employees of the Corporation became entitle to the same benefit”.

There the Court has dealt with the resolution which was adopted by the Bihar State Food and Civil Supplies Corporation where on interpretation of the resolution, the Court has arrived to the conclusion that as like the employees of the State Government, the age of superannuation of employees of the Bihar State Food and Civil Supplies Corporation will be treated to have been extended without any further resolution of adoption of amended provisions of the Bihar Service Code, but another order passed in Namindra Singh (supra) (Annexure-A to the counter affidavit) the Court considered the identical resolution of Bihar



State Electronic Development Corporation, there the Division Bench arrived to a conclusion that in absence of any further resolution adopting the amended provisions of the Bihar Service Code automatically the age of superannuation will not ipso facto be treated to have been enhanced from 58 years to 60 years. It will be relevant to quote the following portion of the said order:

“We see no merit in this Appeal. The above referred order only indicates that whatever service Rules and financial Rules of the State Government were applied to the employees of the Corporation, such application was approved by the Board of Directors of the Corporation. Nothing in the said order indicates that the Corporation has/had adopted the provisions contained in the Bihar Service Code as modified or altered from time to time, unless the Resolution passed by the Board of Directors expressly or by necessary application provides that the Provisions contained in the Bihar Service Code as amended from time to time shall apply to the employees of the Corporation the contention cannot be countenanced”.

In view of the subsequent decision taken by this

Court and the resolution passed by the Corporation, it does not indicate that the future amendment in the Bihar Service Code would automatically apply to the employees of the Corporation. This Court is of the view that whatever the provisions of the Bihar Service Code was there at the time of resolution, will only apply to the employees of the Corporation in absence of any further resolution thereby adopting the amended provisions of the Service Code. This Court has great reservation in accepting the submission of the petitioner that the age of superannuation of employees of the Corporation will be treated to have been extended to 60 years.

In view of the aforesaid discussion, this Court is of the view that the petitioner is not entitled to the relief sought for, first it suffers from delay and laches and secondly on merit also.

This petition is, accordingly, dismissed.

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(Shivaji Pandey, J)