

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.721 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 16508 of 2012**

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1. The Vice Chancellor, Patna University, Patna
 2. The Registrar, Patna University Patna .

.... Appellant/s

Versus

1. Prof. Syed Aqua Hasan, son of Late Najmul Hasan, Resident of Flat No. 505, Vishal Apartment, Bari Path , P.S. Pirbahore, District- Patna.
... Writ Petitioner – Respondent 1st set
2. The Chancellor of the University, Bihar, Patna.
3. The Finance Officer, Patna University, Patna.
4. The Principal B.N. College, Ashok Rajpath , Under Patna University, Patna.

.... Respondents 2nd set -Respondent/s

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Appearance :

For the Appellant/s : Mrs. Soni Shrivastava, Advocate
For the Respondent/s : Mr. Shashi Bhushan Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 29-06-2016

I.A.No. 3032 of 2015

This interlocutory application has been filed on behalf of the appellants for condonation of the delay of 213 days in preferring the present Letters Patent Appeal.

As per the appellants, the copy of the order of the learned Single Judge was made available to the Vice-Chancellor on 10.05.2014, i.e., after the period of limitation of the appeal and the Vice-Chancellor was advised by the Legal Section of the University to prefer an appeal. The file was sent to the Senior Advocate on 20th



July, 2014. Thereafter, sometime was taken by the Counsel in preparing the memo of appeal. The delay also occurred due to closure of the High Court for vacation. It is thus prayed that delay of 213 days in filing the appeal is for the reason beyond the control of the appellants and that the appellants were not to gain anything by not preferring the appeal within the period of limitation.

Prayer for condonation of the delay is resisted by learned counsel for the respondent-writ applicant. It is pointed out that the application does not disclose any plausible and satisfactory reasons for condoning the delay.

The University had taken by the Vice-Chancellor to file an appeal against the order impugned in the present appeal. Procedural requirements are such which were not met within the period of limitation. It cannot be said that the appellant was negligent in not prosecuting the filing of the appeal.

Keeping in view the facts and circumstances of the case and the nature of controversy, we find that sufficient cause is made out for condonation of delay in filing the appeal. Consequently, this application is allowed. The delay is condoned.

L.P.A. No. 721 of 2015

The challenge in the present Letters Patent Appeal is to an order dated 01.04.2014 passed by the learned Single Bench in CWJC

No. 16508 of 2012, whereby the appellants have been directed to make payment of retiral dues of the writ applicant-respondent no.1 herein.

The writ applicant was temporarily appointed as Lecturer in the Department of English at B.N.College, Patna under Patna University on 30.04.1958. He was promoted to the post of Reader in the year 1975 and superannuated from service on 30th November, 1992. The stand of the petitioner is that after his superannuation, he submitted all the pension papers for payment of retiral dues. But it was on 22nd July, 2003 the Registrar, Patna University, asked the petitioner to submit the relevant documents and thereafter he submitted relevant papers but nothing was paid to him. He filed the writ application on 05.09.2012.

In the counter affidavit, the stand of the appellants is that the petitioner remained on study leave from 08.07.1968 to 30.8.1973. Subsequently, he joined his post on 01.09.1973. But proceeded on leave on 23.3.1975. Thereafter, the petitioner remained absent from duty for more than five years. He was directed to join the duty by 02.01.1981. But he did not join. He was again directed to join his duty by 31.01.1984 with a caution that failure to join would be treated as termination from service. He failed to join his post till 31.01.1984. It is also stated that the resolution dated 05.10.1983 of the Syndicate of



the University to terminate the services of those employees who were on leave for more than five years or more to join their post latest by 31.01.1984 was stayed by the Chancellor on 3.3.1984. The petitioner joined his duty only on 20th August, 1987 under Fellowship Scheme after remaining absent from 23rd March, 1975, i.e., for more than 12 years. The petitioner attained the age of superannuation on 30th November, 1992.

The learned Single Judge allowed the writ petition finding that though the petitioner proceeded on leave from 23rd March, 1975 but his leave was extended up to 31st January, 1984. Thus, it cannot be said that the petitioner has not completed 10 years of qualifying service. It was found that there is no order of termination of service of the petitioner. The fact is that the resolution of the Syndicate was stayed by the Chancellor. Therefore, the petitioner is entitled to pensionary benefits.

Learned counsel for the appellants has vehemently argued that the respondent-writ petitioner abstained from duty for long period and, therefore, the petitioner has disentitled himself for availing the pensionary benefits.

However, it is not disputed that the service of the petitioner were never terminated nor any departmental proceeding was initiated

against him. The decision to terminate the services of the employees who were on leave for more than five years was stayed by the Chancellor. There was no termination of service of the petitioner by the University. The writ applicant attained the age of superannuation on 30th November, 1992.

The pension papers were forwarded by the Principal of B.N.College, Patna on 6th September, 2004 (Annexure 4) to the University. The communication on behalf of the petitioner received by the Principal of B.N.College, Patna on 08.09.2004, reads as follows:-

“To
The Registrar
Patna University
Patna
Through
The Principal
B N College, Patna
Sir,

I retired from service vide P.U. Notification No. 99/R dated 4 December 1992 and G/35053 dated 17 December 1992, but I was not able to apply for my pension and gratuity etc. for unavoidable reasons.

Now I take the opportunity of submitting herewith all my pension papers for your perusal and necessary action at your earliest convenience.

Yours sincerely

Sd/ S.A. Hasan
(SYED AQUA HASAN)
505 Vishal Apartment
Bari Path
Patna 800006

Or S.A.Hasan
72 Durham Road
Sparkhill
Birmingham
B 11 4 LQ
U.K”



Learned counsel for the respondent-writ applicant has referred to certain judgments of the Supreme Court in the case of *State of Jharkhand v Jitendra Kumar Srivastava* [(2013) 12 SCC 210] and in the case of *Dayal Singh vs. Union of India* [2003 (2) PLJR (SC 40)] and a Division Bench judgment of this Court in the case of *Dr. Upendra Prasad Singh v State of Bihar* [2006(4) PLJR 642] to contend that on account of delay the claim of the writ applicant cannot be defeated.

In the judgment in the case of *Jitendra Kumar Srivastava* (supra), the Supreme Court has held that pension is a “property” and no person can be deprived of pension without the authority of law. In the present case, the right of the petitioner to avail the pension was taken away on account of his long absence from the assignment from 1975 till 1987. Whether such absence makes him eligible for pension was a question which was required to be determined. The claim of the writ applicant was not open and shut case for the grant of pension which was not considered by the University. The background in which the petitioner abstained from the duty and his entitlement for pension was required to be established. Therefore, it is not deprivation of pension but assertion of right of pension which was delayed by the petitioner for more than 12 years after his superannuation and delay of 8 years before he approached this Court. Therefore, the judgment in

the case of ***Jitendra Kuamr Srivastava*** (supra) does not help the arguments advanced by the petitioner.

Dayal Singh's (supra) case is a case arising out of Land Acquisition Act, wherein the Supreme Court has refused to interfere on account of delay and laches when High Court has granted the benefit even after delay and laches. The said judgment is of no help to the arguments raised on behalf of the petitioner.

The case of ***Dr. Upendra Prasad Singh*** (supra), deals with the question of seniority. Although there was lapse of eight years, the petitioner therein was in service and the facts of the case are different to that of the present case.

It transpires that though the petitioner attained the age of superannuation on 30.11.1992 but he applied for pension only in the year 2004, i.e., almost after 12 years after superannuation. The writ petition was filed in 2012. Therefore, such writ petition suffers from delay and laches.

But since the claim of the writ petitioner is for pensionary benefit which is a continuing right, therefore, the writ petition is not liable to be dismissed on account of delay and laches. But the benefit of arrears of monthly pension is restricted to the period of three years prior to invocation of writ jurisdiction of this Court that would be from 6.9.2009. The equitable jurisdiction of writ court is meant for the

persons who are vigilant about their rights and not for those who sleep over their rights such as the petitioner who slept for more than 12 years for pension and later for more than 8 years before invoking the jurisdiction of this Court. Therefore, it would be just and proper to restrict the benefit of arrears of monthly pension to a period of three years prior to filing of the writ petition.

Consequently, we deem it appropriate to allow the present appeal partly so as to restrict the benefit of payment of arrears of monthly pension for a period of three years prior to filing of the writ petition.

With such modification in the order of the learned Single Judge passed in CWJC No. 16508 of 2012, this appeal is disposed of.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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