

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1882 of 2012

IN

Civil Writ Jurisdiction Case No. 13505 of 2012

=====

Sri Ram Krishna Prasad Sinha, S/o Late Jagdish Nandan Verma, R/O Q. No. Sob-11, P.O.- Dalimanagar, P.S.- Dehri-On-Son and District- Rohtas (Bihar).

.... Appellant.

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, HRD New Secretariat, Patna,
3. The Director, Secondary Education HRD New Secretariat, Patna.
4. The District Education Officer, Rohtas, Sasaram .
5. The Accountant General, Bihar.

.... Respondents.

=====

Appearance :

For the Appellant : M/s Yugal Kishor, Sr. Adv., Sanjay Kumar, Rajesh Kumar Singh and Lalitesh Mani, Advocates.

For the Respondents : Mr. Avinash Kumar, SC-30.

=====

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 01-04-2016

This Intra-Court appeal has been preferred against the order dated 08.08.2012 passed in C.W.J.C. No.13505 of 2012 by a learned Single Judge of this Court. We have heard learned counsel for the appellant and the State and with their consent this appeal is being disposed of at this stage itself.

It appears that the writ petitioner/appellant was a teacher in Dalmianagar High School. In the year 1976, he migrated to Rohtas Industry. It is his case that he was kept on filing application to be put back to the school where he still maintained lien, but, no action was taken and, ultimately, he

- 2 -

superannuated. He sought certain payments and pensionary benefits from the Government because by then the Government had taken over the Dalmianagar High School. Ultimately, the writ petitioner/appellant filed C.W.J.C. No.12479 of 2005, which was disposed of on 11.05.2011, directing the Chief Secretary to look into the matter and pass appropriate orders. Let it be specifically noted that question of delay was never raised by either of the parties nor noticed by the Court and the writ petition was not dismissed on grounds of delay. Upon this order of the Writ Court, the Chief Secretary then examined the matter and, on 07.02.2012, passed a reasoned order declining the claims as made by the petitioner/appellant. Being aggrieved by the aforesaid order, the petitioner again filed C.W.J.C. 13505 of 2012, which was dismissed *in limine* on 08.08.2012 by a learned Single Judge of this Court holding that belated/stale claims cannot be raised and the Writ Court should not interfere in such matters. Without adjudicating the merits, on the ground of delay and laches, the writ petition was dismissed.

Having considered the matter, in our view, the order dated 08.08.2012 passed by the learned Single Judge cannot be sustained. What was in challenge in the writ proceedings before the learned Single Judge was the correctness

- 3 -

or the otherwise of the order of the Chief Secretary dated 07.02.2012. It is within a few days of the said order, the writ petition was filed challenging it. The learned Single Judge was not sitting in appeal over the order passed by the earlier learned Single Judge in the writ petition, whereby the Chief Secretary was directed to decide the issue. It would have been totally different matter if the writ petition was first considered and dismissed on grounds of delay. It is the discretion of the Court and not an absolute rule. The discretion was exercised by the Court in the first writ proceedings, whereby instead of dismissing it on account of delay and laches direction was given to the Chief Secretary to examine the matter and pass appropriate orders. The orders having been passed by the Chief Secretary, when the writ petition was filed challenging the order of the Chief Secretary, delay in approaching the Writ Court at the first instance could not be made a ground for refusing interference. That had become part of history and the learned Single Judge was not sitting in appeal over the earlier writ proceedings.

Therefore, we have no option but to allow the appeal and set aside the order of the learned Single and remand the matter for reconsideration by appropriate learned Single

Judge. Thus, C.W.J.C. No.13505 of 2012 is restored to its file and the order dismissing it being order dated 08.08.2012 is set aside.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Trivedi/-

U			
---	--	--	--