

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 4712 of 2016

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Satyendra Prasad, Son of Late Nagendra Nath Verma, resident of B- 111, Housing Colony, Kankarbagh, P.O. - Lohiya Nagar, P.S. - Kankarbagh, Patna - 800020.

.... Petitioner/s

Versus

1. The Patna University, through its Vice Chancellor.
2. The Vice Chancellor, Patna University, Patna.
3. The Registrar, Patna University, Patna.
4. The Budget and Accounts Officer, Patna University, Patna.
5. The Principal, Magadh Mahila College, North of Gandhi Maidan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Akashdeep and Mr. Shyameshwar Kumar Singh, Advocates
For the Patna University	:	Mrs. Nivedita Nirvikar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 07-03-2018

Heard learned counsel for the petitioner and Patna University.

2. The petitioner has moved the Court for the following relief:

“That this is an application praying for issuance of an appropriate Writ/Order or Direction in the nature of a Writ of Mandamus or any other appropriate writ/order or direction commanding the Respondents to sanction and pay full pension to petitioner from the date of his retirement, Full amount of Gratuity, after deducting the amount of Gratuity already paid, as well as the arrears of difference of salary from 1.1.2006, on account of revision of Pay Grade from 1900/- to 2400/-, in accordance with law.”

3. The grievance of the petitioner is that his service while



he was engaged as a daily wage worker in the college has not been taken into consideration resulting in a situation where, upon his regularization in the year 2004, till his superannuation on 30.09.2013, pension has been denied on the ground that his service does not qualify, being less than 10 years.

4. Learned counsel for the petitioner submitted that he was initially appointed, though on a daily wage basis, such period has to be counted for grant of pensionary benefits in terms of the concerned statute itself which defines qualifying service, especially its Clause 14(iii). It was further submitted that in view thereof, the entire period from his initial appointment as a daily wager has to be taken into account for the purposes of grant of pension. In the alternative, it was submitted that since there is power to relax the qualifying period, after grant of the same by the University, a little over one month remains to be waived, it should be allowed in view of the fact that the regularization of the service of the petitioner was pursuant to a recommendation made by the competent authority in the year 2001 itself, though it resulted in ultimate appointment three years later. It was submitted that for the limited purpose, this Court may permit the effective date of regularization to relate back the date of recommendation by way of compassion so that the petitioner can get the benefit of pension.



5. Learned counsel for the Patna University submitted that the writ petition itself is misconceived. It was submitted that the petitioner was never an employee in a regular establishment and even his payment as a daily wager was from contingency fund, which clearly is a group which is not included for the purposes of counting of previous service, for the stipulation under the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Rules'), which has been adopted by the Patna University, stipulates that such service can be counted for pensionary benefit provided the same has not been paid from the contingency fund. It was further submitted that even under Rule 106 of the Rules, the power by the competent authority to waive the qualifying period is only limited to three months, whereas in the case of the petitioner, the same is more than four months and, thus, the University by itself cannot waive the said period. Learned counsel submitted that the petitioner despite being recommended could have been denied regularization as recommendations are not binding on the appointing authority and only finally when the recommendations are accepted, followed by an appointment letter, the legal status of an employee is that of a regular employee of the University and not before that.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is



unable to issue any direction for payment of pension. The fact that the petitioner was a daily wager prior to his regularization, is not denied and categorical stand taken by the Patna University that payment was also made from the contingency fund is also not denied. The only question which remains for consideration is whether the period between the recommendation for regularization and the final order of such regularization can be counted for the purposes of payment of pension. The Court, at this juncture, is handicapped to venture into this area for the simple reason that neither such prayer is made in the writ petition nor this writ petition can be extended to include such relief, primarily on the ground that the cause of action arose in the year 2004 and the petitioner not having exercised the option to move before the competent authority or the Court cannot now take a plea for grant of such relief. As far as the legal position in service law is concerned, it is now settled that even if a right exists to an employee and the same is not asserted or taken before a competent forum, it shall be deemed that the employee has acquiesced to such denial of benefit and has waived his right in such matter. Further, ignorance of law cannot be a plea taken by any person before a Court of law. The petitioner, thus, was fully aware that from the date of regularization, he would superannuate much prior to completing 10 years and, thus, he not



having raised the issue before any forum or authority after superannuation, cannot now start asserting his right which had to be so done at the appropriate time or within a reasonable period thereof. The cause of action arising in the year 2004 and the writ petition filed in the year 2016, after 12 years in no way can be said to be reasonable.

7. Having regard to the aforesaid, the writ petition stands dismissed.

8. However, the Court would still grant liberty to the petitioner to move in the matter before the appropriate forum, in accordance with law, as may be available to him.

(Ahsanuddin Amanullah, J.)

P. Kumar

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