

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 2046 of 2005

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Dhurandhar Prasad Singh Son of Sri Jai Krishna Singh, resident of Village- Simaria Khurd, P.O.- Jhelhari, Via- Kopa Bazar, P.S. Revelganj, District- Saran (Chapra), at present working as Routine-cum-Examination Clerk in Ganga Singh College, Chapra, District- Saran (Chapra).

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Human Resources Development (Higher Education) Department, Government of Bihar, Patna.
3. The B.R.A. Bihar University, Muzaffarpur through its Registrar.
4. The Vice-Chancellor, B.R.A. Bihar University, Muzaffarpur.
5. The Registrar, B.R.A. Bihar University, Muzaffarpur.
6. The Finance Officer, B.R.A. Bihar University, Muzaffarpur.
7. The J. P. University, Chapra, District Saran through its Registrar.
8. The Vice-Chancellor, J. P. University, Chapra, District- Saran.
9. The Registrar, J. P. University, Chapra, District- Saran.
10. The Finance Officer, J. P. University, Chapra, District- Saran.
11. The Principal, Ganga Singh College, Chapra, District- Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Mr. Ujjawal Bhushan and Mr. Kushagraj, Advocates
For the J. P. University	:	Mr. Anjani Kumar, Sr. Advocate Mr. Nagendra Kumar Singh, Advocate
For the State	:	Mr. Arvind Ujjwal, S.C. 4 Mr. Upendra Pratap Singh, A.C. to S.C. 4

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 13-02-2018

Heard Mr. Abhinav Srivastava, learned counsel for the petitioner and Mr. Anjani Kumar, learned senior counsel along with Mr. Nagendra Kumar Singh, learned counsel for the J.P. University.

2. The Court had recorded a detailed order on 08.02.2018, but due to paucity of time, arguments remaining inconclusive, the matter was adjourned for the day.



3. Thus, for the sake of convenience, the said order, which is necessarily a part of the present final order is reproduced hereinbelow for the sake of convenience:

Heard Mr. Abhinav Srivastava, learned counsel for the petitioner and Mr. Anjani Kumar, learned senior counsel along with Mr. Nagendra Kumar Singh, learned counsel for the J.P. University.

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

“(i) For commanding the respondents to immediately make payment of arrears of salary due to the petitioner since 11.10.1977 as well as current salary to him. (ii) For holding that the petitioner is entitled for all arrears of salary since 11.10.1977 since the order of termination of his services dated 11.10.1977 has already been declared illegal by the learned Munsif I, Chapra vide judgment and decree dated 14.7.1982 passed in Title Suit No. 115/77. (iii) For holding that the impugned non-payment of arrears of salary as well as current salary and allowances due to the petitioner since 11.10.1977 is illegal, arbitrary, malafide, unreasonable and without any lawful justification. (iv) For grant of any such other relief or reliefs as your Lordship may deem fit and proper in the facts and circumstances of the case.”

3. The petitioner was initially appointed on a Class- III post in a private college by the Principal of the college on the post of Routine Clerk-cum-Examination Clerk by order dated 08.01.1977, on which post he joined the same day. Such appointment was later approved by the Governing Body of the college in its meeting dated 27.08.1977. However, his services were terminated by order dated 11.10.1977 in terms of the resolution of the Governing Body. The petitioner challenged the same in Title Suit No. 115 of 1977 before the Munsif Ist, Chapra and by order dated 19.01.1978, the Court passed an order restraining the defendants from implementing the order of dismissal dated



11.10.1977. In the meantime, the college became a constituent unit of the then University of Bihar in the year 1980 and the Principal of the college wrote to the University on 19.02.1982 seeking instructions with regard to the petitioner in light of the interim order of the Munsif in the Title Suit indicating that the petitioner had been working in the college and had been pressing for salary which had been paid to him only till 30.09.1977. Earlier the Principal of the college had written to the Deputy Secretary of the Higher Education Department, Government of Bihar on 10.12.1980 giving names of eight persons who had been appointed on sanctioned posts after 15.08.1976, in which the name of the petitioner also figured. The Title Suit was ultimately decreed in favour of the petitioner by judgment dated 14.07.1982, though ex-parte, and the termination order was declared illegal and the defendants were permanently restrained from acting upon the said order of dismissal. Due to non-implementation of the judgment in the Title Suit by the authorities, the petitioner filed Execution Case No. 3 of 1983 before the Munsif Ist, Chapra. Initially, the Execution Case was allowed ex-parte, but later on a miscellaneous case was filed by the University of Bihar and the ex-parte order in the Execution Case was recalled by order dated 06.12.1983. Being aggrieved, the petitioner filed Civil Revision No. 2004 of 1986 before this Court and by order dated 07.04.1993, the Civil Revision was allowed setting aside the order passed by the Munsif dated 06.12.1983 in Execution Case No. 3 of 1983 and the matter was remanded to the Executing Court for fresh consideration. In the meantime, J. P. University, Chapra was created in the year 1992 and the college in question became a constituent college of the new J. P. University. Subsequently, the Munsif Ist, Chapra by order dated 22.09.1997, rejected the objection filed by the J. P. University and the petitioner was directed to take further steps in the Execution proceeding. The J. P. University moved this Court in Civil Revision No. 98 of 1998 against the said order and the application was allowed by order dated 22.07.1999 by which the order dated



22.09.1997 was set aside. The petitioner approached the Hon'ble Supreme Court in S.L.P. (Civil) No. 19378 of 1999, which was finally converted into Civil Appeal No. 4481 of 2001 and by a detailed judgment, the Civil Appeal was allowed by order dated 24.07.2001. Subsequent thereto, by order dated 10.01.2002 passed in the Execution Case, direction was issued to the Registrar J. P. University, Chapra and the Principal of the college to ensure compliance of the judgment of the Title Suit dated 14.07.1982. In terms thereof, the Registrar of J.P. University under letter dated 16.03.2002 informed the Professor Incharge of the college with regard to approval for joining by the petitioner with immediate effect. Under letter dated 19.03.2002, the professor Incharge of the college asked the petitioner to assume charge of the post which he did on the same day. The J. P. University filed compliance before the Execution Court whereafter the case was finally disposed off. The petitioner represented before the authorities for payment of his arrears of salary for the period 11.10.1977 till 18.03.2002 but the same went unheeded leading to filing of the present writ application.

4. Learned counsel for the J.P. University raised a preliminary objection with regard to maintainability of the writ petition. He submitted that the petitioner had earlier moved before the Munsif Ist, Chapra in Title Suit No. 115 of 1977 and had claimed declaration that order dated 11.10.1977 passed by the Secretary of the then college, which was private, terminating his services is void, illegal and *mala fide* and further that the concerned Secretary be restrained by order of mandatory injunction from terminating the service of the petitioner and further, for granting *ad interim*



injunction restraining the Secretary from giving effect to the order dated 11.10.1977. It was submitted that in such background, when there was an interim order passed in favour of the petitioner by the Court on 19.01.1978, restraining the Secretary and Principal of the college from giving effect to the termination order dated 11.10.1977, the petitioner not getting his salary since then was a cause of action which had to be agitated by him in the suit itself, and if not, before the appropriate forum which includes the High Court. It was submitted that the petitioner not having done so, would be deemed to have given up his claim to salary and, thus, in the present writ petition, which has been filed only in the year 2005 i.e., after more than 27 years of the cause of action having arisen, should not be entertained. He drew the attention of the Court to the order passed by the Munsif Ist, Chapra in Execution Case No. 3 of 1983 on 13.12.2004, where it has been held that the Execution Case cannot go beyond the original decree and, thus, the claim for salary etc. not being one of the reliefs claimed in the Title Suit, could not be granted by the Court in the execution proceeding. Learned counsel submitted that the provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'Code'), clearly stipulates that a suit has to be instituted claiming all reliefs which are available to the person which arise out of the same basic issue and are interconnected, and failure



to do so would amount to the person having given up part or whole of the claim. For this he refers to the specific provision of Order-2 Rule-2 of the Code. He further submitted that, thus, rightly the Execution Court had not entertained the issue relating to salary. Learned counsel further pointed out that even when the matter was before the High Court and the Hon'ble Supreme Court, when a direction was given to the authorities to ensure compliance of the decree, the petitioner was required to take an order from the Hon'ble Supreme Court with regard to payment of his salary and him not having done so, at this stage, in the present writ petition cannot claim the same. It was submitted that only for the purposes of claiming continuity in service, the petitioner can now be granted any relief, but with regard to payment of salary, even on the settled principle of no work no pay, the petitioner is not entitled to the same. Learned counsel submitted that when the cause of action arose in January, 1978 or soon thereafter, when despite an *ad interim* order restraining the concerned defendants from implementing the order of termination, the petitioner not being paid salary, no action taken by him by either filing a separate suit or moving the High Court or even raising the issue before the High Court in the proceeding between the parties and ultimately before the Hon'ble Supreme Court in Civil Appeal No. 4481 of 2001 filed by him, it would be deemed that the



petitioner has given up such claim and now is estopped from raising the same, on the principle of waiver and acquiescence, especially in the present proceeding.

5. Learned counsel for the petitioner, countering the objection raised with regard to maintainability of the writ petition, submitted that only when the petitioner would have joined, and upon his joining being accepted, he would have had a cause of action for salary and as the authorities did not accept such joining, till after the order of the Hon'ble Supreme Court, the matter of salary not having been agitated, cannot be held to be giving up of such claim. It was submitted that only upon the order passed by the Hon'ble Supreme Court on 24th July, 2001, the subsequent order was passed by the authorities, which has been noted by the Execution Court in its order dated 13.12.2004, the petitioner had a cause of action for seeking salary for the entire period and not before that. He further referred to Section 80A of the Bihar State Universities Act, 1976 (hereinafter referred to as the 'Act') which bars any law suit or proceeding in the civil Courts with respect to implementation of the provisions of the said Act, Statutes, Ordinances or Regulations. It was submitted that Sections 45, 46 and 56 of the Act deals with the establishment of the University fund and contribution by the Government to the University and the objects to which the University fund may be



applied and from the same, it is clear that the salary etc. of the employees of the University are also to be paid to them under the provisions of the Act and, thus, the matter being connected with the provisions of the Act and the relevant statutes, the petitioner was barred from moving before the Civil Court in the matter of salary as per Section 80A of the Act.

6. Learned counsel for the J.P. University submitted that objection raised by learned counsel for the petitioner relating to bar of filing any law suit in civil Courts as per Section 80A of the Act, such provision became effective only from 4th August, 1982, and the cause of action having arisen in January, 1978, for four and a half years, till the amendment inserting Section 80A in the Act, there was no reason for the petitioner not to file either an amendment to the suit seeking consequential reliefs or another suit for salary. It was submitted that even if the petitioner had any doubts with regard to the forum which he could approach, the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India was always available to him and still he being silent and not doing so at the relevant time and then approaching the Court after more than 27 years from the date of cause of action having arisen, is clearly indicative of gross delay and laches on his part which ought not to be condoned and further that the petitioner being fully aware of his



handicap in claiming salary after such a long period, has chosen to approach the Court under Article 226 of the Constitution by taking a chance.

7. Having considered the matter in its entirety, the Court finds substance in the objection of learned counsel for the J.P. University with regard to maintainability of the present writ petition. The petitioner had filed a suit against his termination order for declaring the order to be null and void and when he got *ad interim* injunction on 17.01.1978, it is immaterial as to whether the authorities implemented the order or not, but in law the order having been stayed, the petitioner automatically stood reinstated in service and was entitled to salary. The Court would pause here and further indicate that right to salary does not depend from a person either joining or being allowed to work. It is contingent upon his status as an employee. Once the order of termination has been stayed, his status as employee stood revived and he is entitled to salary irrespective of whether the employer assigns or takes any work from him, which is of no consequence in the eyes of law. The petitioner, thus, had a cause of action soon after 17.01.1978, when the order of termination was stayed by the Munsif Ist, Chapra in the Title Suit and him not having agitated or raised the claim for salary before any authority or forum or Court since then, clearly now, cannot be



allowed to do so. Moreover, when admittedly after having joined on 19.03.2002, him again remaining silent and in fact raising this issue before the Execution Court, which has been negated in the order dated 13.12.2004 by the concerned Court, moving before the High Court in the present case under Article 226 of the Constitution of India is clearly misconceived. The fact that the petitioner was aware that he had a claim for salary and had also raised the same, is reflected from the letter written by the principal of the college to the Registrar of the then Bihar University dated 19.01.1982. Thus, the petitioner having raised his claim before the college for salary then itself and upon the same not being granted choosing not to file suit or an amendment in the original Title Suit or even before the High Court or the Hon'ble Supreme Court, has clearly given up his claim and, thus, at this highly belated stage, cannot be allowed to revive the same. Further, an attempt was also made by him to claim salary before the Execution Court, which though has been negated, clearly indicates that the petitioner was fully aware that he had to claim for salary which was denied to him and, thus, he had raised such claim, way back in the year 1982 before the college and also later before the Execution Court. Thus, the petitioner being aware that his salary was being denied and him having moved the authorities at the relevant time itself and them not paying salary to him, the petitioner thereafter



not moving the Court including the High Court under Article 226 of the Constitution of India, is a clear pointer to the laches on his part which under law can be construed as waiver and estoppel against such cause and bars him now from claiming payment of salary for the said period. It is not in dispute that upon his joining, he has been paid his due salary. At this stage, learned counsel for the J.P. University was not in a position to controvert or dispute the legal position that in terms of the order staying the dismissal of the petitioner from service by final decree of the suit, which has been affirmed till the Hon'ble Supreme Court, the petitioner would be entitled to continuity in service right from the beginning, though notionally, for the purposes of other benefits including post retiral, but actual payment of salary etc. cannot be given to him.

8. For reasons aforesaid, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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