

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4849 of 2013

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Anil Kumar S/O Late Nityanand Pathak R/O Village- Chintamanpur, P.S.
Pipra, Town And District- East Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Education Department, Government Of Bihar, New Secretariat, Patna.
2. The Director (Secondary Education), Education Department, Government Of Bihar, New Secretariat, Patna.
3. The Regional Deputy Director Of Education, Tirhut Division, Muzaffarpur
4. The District Education Officer, West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jai Kishor Poddar, Advocate
For the Respondent/s : Mr. Md. N. Hoda Khan, Advocate

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 16-05-2018

Heard learned counsel for the parties.

2. This writ petition under Article 226 of the Constitution of India has been issued for quashing office order dated 18.05.1999 issued by District Education Officer, West Champaran, Bettiah (respondent No.4) by which services of petitioner has been terminated as being illegal.

3. Briefly stated, the case of the petitioner is that to fill up class III/IV vacant post advertisement was issued as well as requisition was made to employment exchange and pursuant to interview by the Divisional Establishment



Committee petitioner was appointed on vacant post of class III as Clerk in the pay scale of Rs. 1200-1800/- and was posted in Primary Teachers Training College, Valmiki Nagar by the Regional Deputy Director, Education, Tirhut Division, Muzaffarpur vide office memo dated 29.01.1994.

4. The joining of petitioner on the post of Clerk was not accepted in the Primary Teachers Training College, Valmiki Nagar and thereafter R.D.D.E., Tirhut Division, Muzaffarpur posted petitioner in the office of Sub-Divisional Education Officer, Bagha, West Champaran by office order dated 09.07.1996 and petitioner joined there and started performing his duty and petitioner was paid his salary.

5. A show cause was issued by the D.E.O., West Champaran dated 02.12.1998 to class III/IV employees to submit documents/records in respect of their appointment and thereafter 2nd show cause was issued with an ultimatum that if they failed to submit documents relating to their appointment, their services will be terminated and subsequently as they failed to submit documents/records relating to their appointment service of all including petitioner was terminated by office order dated 18.05.1999.

6. One of the terminated employee Shailendra



Kumar Singh challenged this termination order dated 18.05.1999 in appeal before the Director and by order dated 27.04.2000 Director stayed the order of termination. However, service of Shailendra Kumar Singh was again terminated by the R.D.D.E., Tirhut Division, Muzaffarpur by his order dated 18.12.2000 and said order was challenged by Shailendra Kumar Singh in C.W.J.C. No. 3699 of 2001 which was allowed and order of termination dated 08.12.2000 was set aside. The State of Bihar filed L.P.A. No. 199/2005 and same was dismissed and S.L.P. preferred by the State of Bihar was also dismissed and thereafter Shailendra Kumar Singh and others were reinstated. That similarly other terminated employees also filed writ petition such as Sachidanand Sharma and Pawan Kumar Ojha and they have been reinstated pursuant to order of this Court. It has been submitted on behalf of petitioner that the case of petitioner is also similarly placed as that of Shailendra Kumar Singh, Sachidanand Sharma and Pawan Kumar Ojha and in terms of State Litigation Policy petitioner is also entitled for similar relief and for reinstatement on the post of Clerk.

7. A counter affidavit has been filed on behalf of respondent No. 4 in which it has been stated that petitioner alongwith other four persons namely, Shailendra Kumar Singh,



Sachidanand Sharma and Pawan Kumar Ojha and Sunil Kumar were appointed as Clerk under class III post by R.D.D.E., Muzaffarpur vide memo dated 29.01.1994.

8. D.E.O., West Champaran directed petitioner alongwith four others to submit their appointment papers but they failed and even after 2nd show cause they did not respond then their services were terminated by D.E.O., West Champaran by memo dated 18.05.1999.

9. It has been stated in para-11 of the counter affidavit that identical cases of four other persons appointed with petitioner was allowed by this Court and they are working on class III post as Clerk. The R.D.D.E., Muzaffarpur is the competent authority to order reinstatement.

10. A counter affidavit has also been filed on behalf of respondent No. 3 in which it has been contended that writ petition is fit to be dismissed on ground of delay and laches. It has been further contended that appointment of the petitioner was illegal as without any advertisement and the names being sponsored by employment exchange appointments were made. The appointment was against the circular issued by the State Government dated 03.12.1980 and petitioner is not entitled for similar relief as granted to Shailendra Kumar Singh,



Sachidanand Sharma and Pawan Kumar Ojha. These persons had immediately approached the court against the order of termination but petitioner is approaching this Court after 14 years of his termination.

11. After hearing the parties and considering the materials available on the record it is an admitted fact that all the four persons were appointed by the R.D.D.E., Mizaffarpur by same appointment letter and were terminated by the District Education Officer, West Champaran by the same letter of termination dated 19.05.1999 and remaining three persons had approached the Court and the matter was contested upto the Apex Court and the order of reinstatement of three employees was not interfered even by the Apex Court. Petitioner claims that in view of State Litigation Policy he is also entitled for similar benefits as has been granted to the remaining three employees who had approached this Court and succeeded and they were reinstated in service. The State Litigation Policy envisages that if an employee/person has been granted relief by a court of law then all similarly placed persons have to be extended such benefit irrespective of whether they have approached court of law or not.

12. The Apex Court in recent judgment delivered



in State of Uttar Pradesh and others Vs. Arvind Kumar Srivastava and others since reported in (2015) 1 SCC 347 paragraph No. 22 has held as follows:-

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court



was judgment in rem with intention to to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma V. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

13. Accordingly the writ petition is allowed, the order of termination dated 18.05.1999 is set aside and petitioner is directed to be reinstated in service with continuity of service however, without any back wages.

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	26.05.2018
Transmission Date	N.A.

