

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4905 of 2011

=====

Sushil Kumar, S/O Late Kailash Prasad, Resident of Mohalla, East Ashok Nagar,
Road No. 14, Kankarbagh, Patna retired as Account Assistant, Bihar School
Examination Board.

.... Petitioner

Versus

1. Bihar School Examination Board through Chairman.
2. Secretary, Bihar School Examination Board, Having Its Office Located At Patna.

.... Respondent/s

=====

Appearance:

For the Petitioner/s : Mr. Ashok Kumar Choudhary,
Mr. Anil Kumar Tiwary and
Mr. Akshansh Ankit, Advocates.

For the Respondent/s : Mr. Gyan Shankar, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 19-01-2018

Heard learned counsel for the petitioner and learned
counsel representing the Bihar School Examination Board.

2. Petitioner in the present case is seeking the following
reliefs:-

“(a) To quash the office order, issued under the pen and
signature of respondent no. 2, as contained in memo no.
4412 dated 28.6.02, whereby and whereunder without
assigning any reason and without any application of
independent mind minor punishment has been inflicted
to the effect that two annual increments has been with
held without any cumulative effect and no further salary
was payable to him for the period of suspension
(ranging from 17.11.00 to 28.6.02).



(b) To award and grant the petitioner all consequential relief to which he may be deemed legally and genuinely entitled to, in shape of revising his pensionary amount and pay the entire salary admissible to the petitioner for the entire period of suspension.”

3. Learned counsel for the petitioner while assailing the impugned order as contained in Memo no. 4412 dated 26.06.2002 (Annexure-5 to the Writ Application) submits that the order imposing minor punishment upon the petitioner has been passed in complete violation of the principles of natural justice. It is submitted that the petitioner retired with effect from 30.06.2002 and only two days prior to his retirement he was inflicted with the punishment (i) stoppage of two annual increments without cumulative effect and (ii) during the period of suspension he would not be paid more than the subsistence allowance.

4. So far as the first punishment is concerned, learned counsel for the petitioner understands that because the petitioner retired only two days after the imposition of the punishment there will be no effect of this punishment as he was not in service and so there was no question of any increment falling due in the next year. As regards the second punishment, learned counsel, however, submits that before imposing this punishment it was incumbent upon the



authorities of the Bihar School Examination Board (in short, 'the Board') to serve a show cause in terms of Rule 97(3) of the Bihar Service Code.

5. On the other hand learned counsel representing the Board and its authorities submits that this Writ Application is highly belated inasmuch as the Writ Application has been filed after about nine years from the date of passing of the impugned order. It is also submitted that in these kind of cases the normal rule that the Writ Application is fit to be rejected on the ground of delay and laches would be fully applicable. Learned counsel for the Board submits that in view of the huge delay in knocking the doors of this Court under Article 226 of the Constitution of India, the submission raised on behalf of the petitioner in the present Writ Application need not be entertained.

6. Contesting this stand of the respondent-Board learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of **State of Madhya Pradesh & Ors. Vs. Yogendra Shrivastava**, reported in (2010) 12 SCC 538. A reference has been made to Para 18 of the said judgment whereunder the Hon'ble Supreme Court has in the facts of the said case held:-

“Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of



benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. ...”

7. Learned counsel further relied upon the judgment of the Hon’ble Supreme Court in the case of **Asger Ibrahim Amin vs. Life Insurance Corporation of India**, reported in (2016) 13 SCC 797. Para 4 of the said judgment refers the earlier judgment of the Hon’ble Supreme Court in the case of **Union of India Vs. Tarsem Singh**, reported in (2008) 8 SCC 648, and Para 7 of the said judgment has been quoted which has been relied upon by the learned counsel for the petitioner and, therefore, this Court would take note of the same as under:-

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-



opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

8. Having heard learned counsel for the parties and upon perusal of the records I am of the considered opinion that this Writ Application is fit to be rejected on the ground of delay and laches alone. The petitioner in the present case was working as an Assistant in the Bihar School Examination Board, Patna. He was posted in Accounts Establishment where during the period December, 1997 to May, 1998 he had recommended the pay bill of one K.K. Mishra, who was engaged on contract basis on the piece rate to write the certificate @ Rs. 0.50 per certificate for the period December, 1997 to May, 1998, i.e., a total period of 143 days. He prepared a bill @ Rs. 44.90 per working day and not at the piece rate. This petitioner, as per the



allegation / charge against him, had recommended the payment. This recommendation was again made for the period May, 1997 to September, 1997 for a period of 230 days and then for the period October, 1997 to November, 1997 and June, 1998 at the same rate of Rs. 44.90 per day. Sri K.K. Mishra was never appointed as daily wager but this petitioner had wrongly recommended the payment, therefore, a show cause notice was issued to him vide Annexure-1 dated 16.11.2000 as to why a departmental proceeding be not initiated against him. He was placed under suspension w.e.f. 17.11.2000 in terms of Office Order dated 17.11.2000 which is Annexure-2 to the Writ Application. Again vide Annexure-3 dated 11.12.2000, the Secretary, Bihar School Examination Board called upon the petitioner to submit his reply to the charges failing which it will be assumed that the petitioner had nothing to say in his defence. Vide Annexure-4 the Chief Vigilance Officer was appointed as Enquiry Officer to conduct the enquiry on the charges against the petitioner.

9. It appears that during pendency of the departmental enquiry the petitioner was due to retire on 30.06.2002. At this stage on 28.06.2002 the petitioner was served with the order of punishment which is in the nature of minor punishment as contained in Annexure-5 to the Writ Application. In the Writ Application there is no statement claiming that the petitioner had submitted any reply to the



show cause notice served upon him.

10. This Court specifically enquired this fact from the learned counsel representing the petitioner to show it from the Writ Application but it has been categorically stated that there is no such statement. Despite this being the position, a ground has been taken in the Writ Application that the impugned order has been passed without considering his show cause / explanation.

11. Learned counsel has relied upon the two judgments of the Hon'ble Apex Court. On a careful reading of the judgments in the case of **Yogendra Shrivastava** (Supra) it would appear that in the said case there was a rule framed by the State Government whereunder the scales of pay and Non Practicing Allowance (NPA) payable to different categories of medical officers, other than the Director of the Service, were provided. The letters of appointment issued to the respondents specified that NPA payable to them would be a fixed lump sum approximately equal to 25% of the initial (minimum) pay in the pay scale applicable to them but the State Government was revising the fixed lump sum NPA when there were revisions in the pay scales by issuing executive orders. The respondents claimed that NPA should be paid to them at 25% of the pay in accordance with the rules and represented to the State Government which led to the dispute in question. It is in that context



the Hon'ble Supreme Court held that it was in the nature of denial of benefit which was occurring every month when the salary was being paid. In that context of the matter, the plea of delay and laches was not agreed to by the Hon'ble Apex Court. Apparently, the ratio of the judgment in the case of **Yogendra Shrivastava** (Supra) does not support the contention of the learned counsel representing the petitioner.

12. The next reliance on the judgment of the Hon'ble Apex Court in the case of **Asger Imrahim Amin** (Supra) is equally misplaced inasmuch as it appears to this Court that what has been quoted from Para 7 of the judgment of the Hon'ble Apex Court in **Tarsem Singh** (Supra) is virtually against the petitioner. In the very opening line the Hon'ble Supreme Court has said that normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). The exception to the said normal rule was found only when it is relating to a continuing wrong.

13. In the present case, the petitioner was facing a departmental enquiry for the charges in the nature of financial irregularities, however, as he was going to retire on 30.06.2006 and the enquiry was not completed, the respondent-Board imposed a



minor punishment. The said punishment was not challenged for about nine years and, at this stage, learned counsel for the petitioner is unable to show that how it is in the nature of a continuing wrong. The extra-ordinary writ jurisdiction of this Court cannot be allowed to be invoked after such a huge delay of nine years in the facts of this case.

14. This application has no merit. It is accordingly dismissed.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	23.01.2018
Transmission Date	N/A

