

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12019 of 2012

1. Prabhu Nath Rai S/O Sri Ram Govind Rai Resident Of Village Sheopur, P.S. Gheghata, District Saran.
2. Rabindra Rai S/O Sri Rameshwar Rai At Present Posted As Peon In Rajkiya Zila School, Chapra.
3. Deo Kumar Manjhi S/O Sri Ramagya Manjhi Resident Of Village Dhoopnagar, Jalalpur, District Saran, At Present Posted As Peon In The Office Of Block Education Extension Officer, Jalalpur-I, Chapra.
4. Rahmuddin Mian S/O Kalamuddin Mian Resident Of Village & P.O. Khairwar, P.S. Rivilganj, District Saran, At Present Posted As Peon In The Office Of The District Education Officer, Saran.
5. Ramjee Pandit S/O Sri Durga Pandit Resident Of Mohalla Shyamachak Nayatola, P.O. Chapra, P.S. Bhagwan Bazar, District Chapra.
6. Ram Balak Ram S/O Late Nagina Ram At Present Working As Peon, Office Of The District Superintendent Of Education, Saran, Chapra.
7. Allauddin Mansoor S/O Vakil Mian Resident Of Village Mobarakpur, Via Khodaibagh, District Saran, At Present Working As Peon In Primary Teacher's Training School, Bangara, Saran.
8. Shambhu Nath Verma S/O Late Ram Pd. Verma Resident Of Village Bara Telpa, P.O. Chapra, District Chapra At Present Posted As Peon In The Office Of Sub Divisional Education Officer, Chapra (north), Chapra.
9. Krishna Kumar Manjhi S/O Sri Nityanand Manjhi Resident Of Village Gudri Main Road, Bahri Sarak, P.O. Bhagwan Bazar, District Saran At Present Posted As Peon In The Office Of The District Superintendent Of Education Chapra.
10. Surendra Prasad S/O Sri Vishwanath Pd. Rai Resident Of Village Ratanpura Chatradhari Bazar, P.O. & P.S. Bhagwan Bazar, District Chapra At Present Posted As Peon In The Office Of The District Superintendent Of Education, Chapra.

... .. Petitioners

Versus

1. The State of Bihar through Home Secretary Secretariat Patna, Bihar.
2. The Commissioner and Secretary, Human Resources Development Department (Primary Education) Govt. of Bihar, Patna.
3. The Director, Secondary Education, Secondary, Primary and Adult Education Department, Govt. of Bihar, Patna.
4. The Deputy Director, Secondary Education, Govt. of Bihar, Patna.
5. The Regional Deputy Director of Education, Saran, Chapra.
6. The Collector cum District Magistrate, Chapra.
7. The District Education Officer, Saran, Chapra.
8. The District Superintendent of Education, Saran, Chapra.
9. The Sub Divisional Education Officer, Chapra (North) Chapra.

... .. Respondents



Appearance :

For the Petitioner/s : Mr. P.K. Shahi, Sr. Advocate
Mr. Akhilesh Kumar, Advocate
For the Respondent/s : Mr. Anil Kumar Sinha, GA-1
Ms. Deepika Sharma, Advocate

=====

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
C.A.V. JUDGMENT

Date : 20-08-2018

Heard Mr. P.K. Shahi, Senior Advocate duly assisted by
Mr. Akhilesh Kumar, learned counsel for the petitioners and Mr.
Anil Kumar Sinha, learned counsel appearing for the State.

2. Petitioners seek quashing of order dated 18.04.2011 as
contained in Memo No. 11/Ni 1-38/99 824 (Vidhi) (Annexure-19)
issued by Respondent No. 3, the Director, Secondary Education,
Bihar, Patna whereby the representation filed by petitioner no. 1 in
the light of the order dated 04.12.2009, passed in C.W.J.C. No.
15522 of 2009 has been rejected.

3. The short facts giving rise to the present writ
application is that the State Government through letter of the Chief
Secretary dated 3rd December, 1980 took a policy decision for
appointment of Class-IV posts. It contemplated preparation of a
joint panel in each district. The said letter specifically provided
that the panel so prepared shall be valid for a period of one year. A
panel was so prepared in the year 1984-85 in which names of 310
persons figured. From the said panel 45 persons were appointed in
two phases i.e. 38 persons were appointed vide letter dated
16.08.1985 and 7 vide letter dated 01.08.1985. However, those



appointments were cancelled in the light of the letter of the Finance Department dated 12.06.1985. The matter of cancellation of appointment was examined by a Committee of the State Legislature and on its recommendation all 45 candidates appointed earlier were again appointed vide letter dated 03.03.1989.

4. A meeting of the Establishment Committee was held on 20.10.1990 which decided to treat the panel of the year 1984-85 to be the panel for the year 1990. The petitioners claimed that their names find place in the said panel prepared for the year 1984-85 and the same having been treated as a panel for the year 1990, the petitioners were appointed by letters dated 12.02.1991, 09.05.1991, 27.06.1991 and 31.03.1991 as contained in Annexure-4 series. Petitioners' posting orders were issued by Respondent No. 5, the Regional Deputy Director of Education, Saran, Chapra and the services of the petitioners were absorbed against vacant posts and they were posted in different offices of Saran Division. On 30.11.1998, as contained in Annexure-8, the Respondent No. 3, the Director, Secondary Education, Primary, Secondary and Adult Education Department, Government of Bihar, Patna wrote a letter to the Regional Deputy Director of Education, Saran, Chapra with direction to terminate the services of the petitioners. By letter dated 30.01.1999 services of all the petitioners were terminated by



the Regional Deputy Director of Education in the light of the order dated 30th November, 1998. The petitioners challenged their termination orders by filing writ application being C.W.J.C. No. 2564 of 1999(Ram Balak Ram and others vs. State of Bihar and others). However, petitioner no. 5 Ramji Pandit challenged the termination order in separate writ application being C.W.J.C. No. 2934 of 1999. C.W.J.C. No. 2564 of 1999 was allowed by this Court and orders of termination were quashed on the ground that the said order was passed without affording an opportunity of hearing to the petitioners. C.W.J.C. No. 2934 of 1999 preferred by the petitioner no. 5 was also allowed by this Court vide order dated 07.04.1999 on the same terms.

5. In the light of the aforesaid orders show cause notices were issued to the petitioners and simultaneously the District Magistrate was also called upon to certify appointment of the petitioners and submit report about the procedure followed in appointment but the District Magistrate neither certified the appointment nor submitted any report as to the procedure followed stating therein that the records were not available. Petitioners filed their show cause reply and on consideration of the materials on record it was found that the petitioners were illegally appointed, hence, by orders dated 20.06.2000 and 26.06.2000, as contained in



Annexure-12 series, their services were terminated. Petitioners challenged the termination orders before this Court in C.W.J.C. No. 7354 of 2000, which was allowed by this Court in terms of similar order passed in C.W.J.C. Nos. 6410 and 7720 of 2000 on the ground that the District Magistrate did not submit his report and the report submitted by the District Magistrate subsequently, supports the claim of the petitioners. The State of Bihar preferred L.P.A. No. 868 of 2002 against the order dated 02.08.2001, passed by the learned Single Judge in C.W.J.C. No. 7354 of 2000. The Division Bench of this Court found that the panel of the year 1984-85 was valid for a period of one year and does not confer powers of any authority to extend the life of the panel. It was also observed that since out of 310 persons 45 persons were appointed from 1984-85 panel and if appointments had to be made from 1984-85 panel then it should have been made according to the position of the persons in the panel but the names of the petitioners find place at different places in the panel. Hence, because of all these infirmities the Letters Patent Appeal filed by the State of Bihar was allowed under order dated 17.10.2008 holding that the appointment of the petitioners are illegal and their services were rightly terminated, against which petitioners preferred S.L.A. (Civil)..../2009 CC 8419/2009, but the Special Leave to Appeal



was rejected at the threshold vide order dated 13.07.2009. Petitioners then filed an application under the Right to Information Act on 15.11.2008 and 26.12.2008 seeking information whether persons appointed on Class-IV post under Saran Division from the panel of 1984-85 are still working and received information that they are still working. Petitioners then again moved this Court in C.W.J.C. No. 15522 of 2009 on the ground of discrimination, which was withdrawn with the leave to pursue departmental remedies, but while disposing of the writ application vide order dated 04.12.2009 the authorities were directed to pass orders in the light of the order passed by the Hon'ble Apex Court in the case of ***C. Jacob vs. Director of Geology and Mining and another*** since reported in ***(2008) 10 SCC 115***. The petitioners filed representation before Respondent No. 3, the Director, Secondary Education, Government of Bihar, Patna, which was rejected by order dated 18.04.2011, as contained in Annexure-19, which is under challenge in the present writ application.

6. On perusal of the long history of litigation, it appears that the petitioners were offered appointment in the year 1991. Their services were terminated in the year 1999, against which they moved this Court in C.W.J.C. No. 2564 of 1999 and 2934 of 1999, which was allowed directing the authorities to pass order



after affording an opportunity of hearing to the petitioners. Again in the year 2000, their services were terminated on the ground of illegality and irregularity, which was again challenged in C.W.J.C. No. 7354 of 2000, which was again allowed and termination order quashed. L.P.A. No. 868 of 2002 was allowed holding the petitioners' appointment illegal and termination orders rightly issued. The S.L.P. preferred before the Hon'ble Supreme Court by the petitioners was also rejected. Petitioners again moved this Court on information gathered under the Right to Information Act, which was permitted to be withdrawn and the authorities were directed to take a decision in the light of the order passed by the Hon'ble Apex Court in the case of C. Jacob (supra). Relevant paragraphs 9, 10 and 14 are extracted hereinbelow :

“9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any “decision” on rights and obligations of parties. Little do they realise the consequences of such a direction to “consider”. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to “consider”. If the representation is considered and rejected, the ex-employee files an application/writ



petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

10. *Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.*

14. *We are constrained to refer to the several facets of the issue only to emphasise the need for circumspection and care in issuing directions for “consideration”. If the representation on the face of it is stale, or does not*



contain particulars to show that it is regarding a live claim, courts should desist from directing “consideration” of such claims.

7. The order passed by the Hon’ble Supreme Court in the case of C. Jacob (supra) is of no avail to the petitioners as the claim of the petitioners has become a stale claim as the termination order dated 30.01.1999 has been affirmed right up to the Apex Court. The view held in the case of C. Jacob (supra) is that such representation if on the face of it is stale, as in the present case, the petitioners having lost right up to the Apex Court then no new cause of action would arise on merely filing of a representation, as held in the case of C. Jacob (supra). Thus, the order dated 18.04.2011, as contained in Annexure-19, calls for no interference.

8. Thus, the writ application is devoid of merit. It is dismissed.

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	13.08.2018
Uploading Date	20.08.2018
Transmission Date	NA

