

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.86 of 2018

In
Civil Writ Jurisdiction Case No.16254 of 2016

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Ashok Kumar Jha, S/o Late Shambhunath Jha, Resident of Village-Kharahara,
P.S.-Barahat, District-Banka at Present Working as Head Clerk & Posted at
Design Division No.-1 Department of Water Resources, Bhagalpur.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Water Resources, Sinchai Bhawan, Old Secretariat Compound, Bihar, Patna.
2. The Secretary, Finance Department, Old Secretariat, Bihar, Patna.
3. The Joint Secretary to the Government, Finance Department, Old Secretariat, Bihar, Patna.
4. The Chief Engineer, Department of Water Resources, Barari, Bhagalpur.
5. The Superintending Engineer, Design Circle, Department of Water Resources, Bhagalpur.
6. The Executive Engineer, Design Division No.-1, Department of Water Resources, Bhagalpur.
7. The District Accounts Officer, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Kalika Nand Jha, Advocate
For the Respondent/s : Mr. Sanjay Prasad AC to AAG-4

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE Mr. JUSTICE S. KUMAR)

Date : 10-08-2018

Heard the parties.

2. This letters Patent Appeal has been filed by writ petitioner against the judgment and order dated 19.12.2017 passed by learned Single Judge of this Court by which writ petition of petitioner was dismissed on ground of gross laches and unexplained delay of 22 years.

3. Petitioner has filed writ petition to quash the office



order No. 58 (letter No. 399) dated 09.08.1995 issued by Executive Engineer, Department of Water Resources, Bhagalpur by which 1st Time Promotion granted to petitioner with effect from 09.05.1990 was cancelled due to non passing of the Accounts Examination and pay scale of petitioner from Rs. 1400-2300/- was reduced to Rs. 1200-1800/- .

4. Writ petitioner was appointed as Corresponding Clerk on 09.05.1980 and was granted 1st Time Bound Promotion with effect from 09.05.1990 vide memo No. 4679 dated 29.12.1990 on the recommendation of Establishment Committee, however, 1st Time Bound Promotion of petitioner was cancelled due to non passing of the Accounts Examination by letter No. 399 dated 09.08.1995 and his pay scale was reduced.

5. Petitioner filed several representations against cancellation of his 1st Time Bound Promotion and represented authorities that similarly placed employees who also did not pass Accounts Examination have been granted 1st Time Bound Promotion but 1st Time Bound Promotion granted to him has been cancelled after five years. The petitioner also produced several Government's decision and order passed by this Court where it has been held that passing of Accounts Examination is



not necessary for grant of 1st Time Bound Promotion and also enclosed letter No. 2064 dated 10.07.2012 issued pursuant to High Court order passed in C.W.J.C. No. 2425 of 2011 on 26.04.2012 in which department had granted 1st Time Promotion to writ petitioner of said case on basis of decision taken by State Government and several orders passed by this Court and writ petitioner had prayed extension of said benefit to him which has been granted to all similarly placed employees.

6. The Apex Court in the case of State of Uttar Pradesh and Others Vs Arvind Kumar Srivastava and Others since reported in (2015) 1 SCC 347 has held as follows:-

“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.”

7. It has been submitted on behalf of petitioner that the order passed by this Court with respect to grant of Time Bound Promotion even in non passing of Accounts Examination is



applicable to all similarly placed employees and same cannot be confined to employees who had approached the High Court. It has been submitted that pursuant to different orders passed by this Court, the State Government had taken a decision to grant 1st time Bound Promotion to all employees although they have not passed the Accounts Examination. The Judgment and order passed by this Hon'ble Court was judgment in rem and not judgment in personam, as such, it was incumbent upon State Government to grant him 1st Time Bound Promotion and withdraw the impugned letter by which his 1st Time Bound Promotion was cancelled.

8. It has been further argued that the order by which his pay scale has been reduced resulting in lower pay scale is a continuing wrong and as such writ petition could not have been dismissed on ground of delay and laches.

9. The Apex Court in the case of State of Madhya Pradesh and Others Vs Yogendra Shrivastava since reported in (2010) 12 SCC 538 has held as follows:-

“18. We cannot agree. 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. Though the lesser



payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application.”

10. After considering the rival submissions, this Court finds that the office order No. 58 letter No. 399 dated 09.08.1995 issued by Executive Engineer, Water Resources Department, Bhagalpur by which 1st Time Promotion granted to petitioner has been cancelled and his pay scale has been reduced from 1400-2300 to 1200-1800/- is not sustainable and is accordingly quashed. However, since petitioner has approached this Court in the year 2016 as such he is entitled for monetary benefit from last three years of filing of writ petition i.e. from 01.04.2013. The salary of the petitioner has to be notionally fixed considering the pay scale of petitioner to be 1400-2300/- and all subsequent pay scale to be revised notionally and actual monetary benefit of salary fixed on revised pay scale is to be granted from 01.04.2013.



11. The Apex Court in the case of Union of India and Others Vs Tarsem Singh since reported in (2008) 8 SCC 648 has held as follows:-

“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 reopening 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 refixation 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. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the 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.”

12. As a result the order passed by learned Single



Judge is set aside. The Letters Patent Appeal is allowed to the extent as indicated above. The respondent authorities to comply the order in terms of direction issued by this Court and all consequential benefits of revision of pay scale/revision of pension with arrears to be paid to petitioner within 3 months from date of receipt/production of a copy of order passed by this Court.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

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AFR/NAFR	NAFR
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