

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2264 of 2019

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Vidya Sagar Singh, aged about 66 years, son of Late Ram Kumar Singh, Retd. Teacher (TGT), Maths, Kendriya Vidyalaya, Danapur Cant, Resident of House No., 202 Ramgriham Appartment, Road No. 3 Vijay Nagar Patna, Police Station - Rajiv Nagar, Patna District- Patna.

... .. Petitioner/s

Versus

1. The Union of India through the Commissioner, Kendriya Vidyalya Sangathan, New Delhi-16
2. The Commissioner, Kendriya Vidyalya Sangathan, 18, Institutional Area, Sahidjeet Singh Marg, New Delhi- 16
3. The Joint Commissioner, 18, Institutional Area, Sahidjeet Singh Marg, New Delhi- 16
4. The Deputy Commissioner (Administration), 18, Institutional Area, Sahidjeet Singh Marg, New Delhi- 16
5. The Principal, Kendriya Vidyalaya, Danapur Cant, Danapur, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jitendra Kumar Roy, Advocate
For the Respondent/s	:	Mr. Gopal Krishna Agrawal, Advocate
		Mr. Kumar Ramesh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-02-2019

Heard learned counsel for the petitioner as well as the learned counsel for the Union of India.

The challenge is to the impugned judgment of the Central Administrative Tribunal dated 26th May, 2015 in OA/050/00398/2015 on the ground that this was not an issue of delay and the Tribunal committed an error in not entertaining the application on account of delay and laches.



Learned counsel for the petitioner submits that the petitioner is entitled to the payment of salary for the period during which his consideration of promotion was withheld without there being any fault on the part of the petitioner.

From the record, we find that the petitioner had filed Original Application No.275 of 2009 which was withdrawn by him as it appears that the petitioner wanted to seek some other remedy. The application was allowed to be withdrawn without entering into the issue of laches etc. inasmuch as the application had been filed in the year 2009 in respect of the claim of promotion and arrears of salary of the year 2003-2004.

The petitioner thereafter filed a second O.A. No. 788 of 2012 that was decided on 3rd July, 2013 recording the aforesaid fact and also observing that there was no reasonable explanation for the delay in the filing of the first original application in the year 2009 as well as the second application which was filed in the year 2012. In the penultimate paragraph, the Tribunal made an observation that the claim of the petitioner be considered in accordance with law and an order be passed in that regard.

As a consequence thereof, the Commissioner of Kendriya Vidyalaya Sangathan passed an order on 16th of January, 2014 to the effect that the petitioner would be entitled to



all notional benefits from the date his juniors have been extended the same, but on the issue of payment of arrears of salary it was observed that since he had not actually performed the duties on the promoted post, he would not be entitled to any actual payment.

The petitioner again approached the Tribunal by filing a fresh O.A. No.398 of 2015 that has been dismissed on the ground of *res-judicata* and in view of the aforesaid factual backdrop of the controversy that had already witnessed three rounds of litigation before the Tribunal.

We have considered the submissions raised and we find that the petitioner approached the Tribunal almost after five years in the year 2009 after the cause of action is stated to have arisen. Thereafter, he again filed a second petition before the Tribunal in 2012 and it is then that certain observations were made even though the same was unwarranted in our opinion. The authorities taking notice of the same have passed a reasoned order on 16th January, 2014 and the Commissioner has categorically found that since the petitioner had not actually worked and had performed the duties against the promotional post, payments cannot be made even though the notional benefits were admissible to him.

We do not find any error in the aforesaid order and therefore, apart from the reasons given by the Tribunal in the



impugned order, we are satisfied that the order of the Commissioner does not suffer from any infirmity.

Rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.02.2019
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