IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14108 of 2014

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Navin Kumar Son of Sukdeo Mandal Resident of village - Rekabganj, Police Station - Tatarpur, District - Bhagalpur.

... ... Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The District Magistrate, Bhagalpur.
3. The Establishment, Deputy Collector, Bhagalpur.
4. The Circle Officer, Shahkund, District - Bhagalpur.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Diwakar Yadav
For the Respondent/s : Mr.SC 7-Kumar Alok

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

3 13-08-2019 Heard counsel for the petitioner and counsel for the respondents-State.

Petitioner was appointed as assistant/clerk. Joining was submitted on 27.03.2003. At this juncture, respondents realized that Modified Reservation Rule had come into force in the year 2002 itself. The new rule contained in communication dated 30.09.2002 of the Personnel and Administrative Reforms was overlooked. As per the same roster was worked out afresh in the year 2003. This time 19 of the candidates who have been appointed, including the petitioner could not be adjusted. Pursuant to their joining on 27.03.2003 since new roster was prepared as per Modified Reservation Rule contained in

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communication dated 30.09.2002, 19 candidates including petitioner were thus sent back to BPSC with a request that they may be appointed in any other departments, by communication dated 08.04.2003.

The said event delayed the petitioner's joining. After entire exercises were completed, this petitioner along with 18 others joined on 15.12.2003, without any objection/protest.

Petitioner had earlier filed CWJC no.4708/2007 for being granted pay scale of Rs. 4000-6000/-. The claim of the petitioner was disposed of on 07.12.2009 with a direction to Collector, Bhagalpur district to treat the petitioner similarly to those 33 clerks to whom benefits have been given in respect of their claim for grant of revised pay scale. In compliance to the order passed in CWJC no.4708/2007, annexure 11 dated 06.01.2010 has been issued granting benefit of admissible pay scale to the petitioner. All of this has been done treating the petitioner's date of joining to be 15.12.2003 even in earlier writ proceedings arising out of CWJC no.4708/2007, petitioner did not claim any benefit treating his earlier date of joining (27.03.2003) to be the date of joining of the petitioner.

All of a sudden writ petition has been filed in the year 2014. This time seeking a direction for placing the petitioner

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seniority in the cadre of clerk of Bhagalpur Collectoriate treating his date of joining as 27.03.2003 instead of 15.12.2003. Benefit has also been claimed in respect of the period between 27.03.2003 to 15.12.2003 since petitioner has been appointed pursuant to common selection process conducted by the Bihar Public Service Commission.

It is submitted that the petitioner along with 18 others could not have been treated differently from other appointed pursuant to the same selection process. It is thus submitted that their delayed joining cannot be attributed to the petitioner since their joining had been delayed by the respondents-authorities, petitioner cannot be made to suffer and would be entitled to counting the period of service in between 27.03.2003 to 15.12.2003 with all consequential benefits.

Per contra, State counsel submits that having regard to the change in reservation rule, bifurcation of the State and preparation of new roster, petitioner had submitted joining afresh on 15.12.2003. The joining of the petitioner (Annexure 9) is without any objection and with open eyes even in the proceedings arising out of CWJC no.4708/2007 when the petitioner claimed revised scale, no claim was made for revision by treating petitioner's services with effect from 27.03.2003.

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Benefit pursuant to earlier writ proceedings and in compliance of the order passed in the writ proceedings is treating petitioner's service with effect from 15.12.2003. These benefits were also accepted by the petitioner without any objection.

Having considered rival submissions, this court is also of the opinion that for the reasons indicated by the State authorities in their counter affidavit exercise of joining was delayed on account of bonafide reason. All 19 candidates were uniformly affected by the delay. Petitioner did not perform any duty in between 27.03.2003 to 14.12.2003 and on 15.12.2003 he has submitted his joining pursuant to fresh joining letter and there is no such claim for shifting back to the date either in earlier writ proceedings or at the time of grant of benefit under office order dated 06.01.2010. No case is made out for shifting back of such date. Such belated claim in respect of seniority with effect from an earlier date i.e. 27.03.2003 is clearly barred by delay and latches. Such a relief would have the effect of unsettling settled issue of seniority of others who had joined in the clerical cadre at the Collectoriate in between 27.03.2003 to 15.12.2003 who are not before this court. The relief claimed by the petitioner is, therefore, found to be untenable in the eye of law in view of the aforesaid consideration.

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Writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

s.hassan/-

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