

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8824 of 2019

Priyanka Kumari D/o Shri Umesh Pathak, Resident of Mohalla- Bahuar Chaura, P.S. Bishnupad, District- Gaya at Present Assistant Head Master, Ram Binod Sanskrit Prathmik Vidyalaya, Uttar Manas, Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Joint Secretary of Education Department, Government of Bihar, Patna.
4. The Special Director(Sanskrit), Secondary Primary and Adult Education Department, Government of Bihar, Patna.
5. The Deputy Secretary of Education Department, Government of Bihar, Patna.
6. The Chairman, Bihar Sanskrit Board, Patna.
7. The Secretary, Bihar Sanskrit Board, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Hemant Kumar Jha
For the Respondent/s : Smt. Shilpa Singh (Ga12)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 23-04-2019

The present writ petition has been filed at the behest of a so-called teacher of Ram Binod Sanskrit Prathmik Vidyalaya, Uttar Manas, Gaya seeking quashing of Memo No. 287 dated 5.3.2012, as far as it relates to the petitioner, whereby and whereunder it has been decided not to grant recognition to the school in question due to lack of infrastructure facility like room, library etc. The decision of the State Government dated 21.7.2008 whereby and whereunder the approval/ recognition of 86 Sanskrit



Schools has been withdrawn is also under challenge apart from the challenge having been made to the letter dated 15.6.2002 issued by the Chairman, Bihar Sanskrit Shiksha Board, Patna whereby the approval/ recognition of the schools in question along with other schools have been withdrawn.

2. The only issue raised in the present writ petition by the petitioner is that the present writ petition is squarely covered by a judgment dated 12.5.2010 passed in LPA No. 366 of 2009 whereby and whereunder the impugned orders dated 15.6.2002 and 21.7.2008 have been quashed qua the appellants school of that case.

3. I have heard the learned counsel for the parties and I find that firstly the present writ petition is barred by the principles of delay and laches inasmuch as an order of the year 2002 has been sought to be assailed in the year 2019 i.e. after a lapse of about 17 years. Even the order of the State Government dated 21.7.2008 has been challenged by the petitioner after a lapse of about 11 years, hence, on this score as well, the present writ petition is barred by the principles of delay and laches. True it may be that the impugned orders dated 15.6.2002 and 21.7.2008 have been quashed by the learned Division Bench by the aforesaid judgment dated 12.5.2010 passed in the case one Anand Sanskrit



Uchchya Vidhyalaya, Mirjapur, Raj Nagar, Madhubani, but then there is more to it as far as the present case is concerned inasmuch as after passing of the aforesaid judgment by the learned Division Bench, the case of the petitioner was examined by the authorities and the Joint Secretary to the Government, whereafter the impugned order dated 5.3.2012 has been passed wherein it has been mentioned that the school in question in the present case is not in existence, hence, recognition cannot be granted to the said school. At this juncture, it would be relevant to state the well settled principles of law to the effect that in case of a person, who is not vigilant of his rights and acquiescence to the situation, his writ petition cannot be entertained after a long delay even on the ground that some relief was granted to the person similar circumstanced, who was vigilant enough about his rights and had challenged the action without any unnecessary wastage of time. In this regard, it would be useful to quote paragraph no. 29 of a judgment reported in **(2010) 12 SCC 471 (Shiba Shankar Mohapatra and others v. State of Orissa and others)** hereinbelow :-

"29. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the



grounds for refusing relief is that the person approaching the court is guilty of delay and the laches. The court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallizes in the interregnum. (vide Aflatoon v. Lt. Governor of Delhi; (1975) 4 SCC 285; State of Mysore v. V.K.Kangan; (1976) 2 SCC 895; Municipal Council, Amhednagar v. Shah Hyder Beig; (2000) 2 SCC 48; Inder Jit Gupta v. Union of India; (2001) 6 SCC 637; Shiv Dass v. Union of India; (2007) 9 SCC 274; A.P. SRTC v. N. Satyanarayana; (2008) 1 SCC 210 and City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla; (2009) 1 SCC 168)."

4. Though, the aforesaid observations were made by the Supreme Court in the matter of a dispute pertaining to seniority which had become final, yet, by way of analogy, what was held by the Supreme Court in the aforementioned case is also applicable to the facts of the present case.

5. The Apex Court in the case of **State of Uttar Pradesh & ors. Vs. Arvind Kumar Srivastava & ors.** (Civil Appeal No.9849 of 2014) decided on 17.10.2014, while dealing with the question of delay and latches, held that in such like cases, the Court should be very slow in granting relief to the incumbent



especially when the claimants lost time and did not rise to the occasion in time for filing the writ petitions, by holding that :-

“(23) The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) 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.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the



judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and latches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

6. Similarly, the observations of the Single Bench of the Calcutta High Court in the case of **Mithi Mukherjee Vs. State of West Bengal and ors.** (W.P. No. 14028 of 2013) and other connected petitions decided on 20.01.2014 are most relevant:-

“The inviolable conclusion deducible from the above noted decisions are that the stale and dead claims should not be encouraged in exercise of the discretionary relief under Article 226 of the Constitution of India. A line of distinction is to be drawn between a vigilant and a non-vigilant litigant and they cannot be equated on the same footing. A litigant who was sitting on a fence and waiting for the result of the litigation initiated by other litigant promptly and after the favourable result approaches the Court to seek equality, should not be encouraged. Delay and latches is one of the important factor to push away the recalcitrant or invariable litigant who was watching the proceeding of the other and ventilated the grievance only after a favourable decision is obtained by the other litigant. The plea of inordinate delay is not applicable in case of an infringement of the fundamental rights. The



proceeding may attract dismissal, more so, when a third parties' right are created in interregnum. It is not an inflexible rule but depends upon the rational and satisfactory explanation and, therefore, varies from case to case.”

7. Even, in the case of **Ex. Capt. Harish Uppal vs.**

Union of India, reported in 1994 SCC, Supl. (2) 195 the Apex Court in para 8 held that :

“8.The petitioner sought to contend that because of laches on his part, no third party rights have intervened and that by granting relief to the petitioner no other person's rights are going to be affected. He also cited certain decisions to that effect. This plea ignores the fact that the said consideration is only one of the considerations which the court will take into account while determining whether a writ petition suffers from laches. It is not the only consideration. It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of the Constitution of India and that is what precisely the Delhi High Court has done. We



cannot say that the High Court was not entitled to say so in its discretion.”

8. In the present case also the petitioner has approached this Court after a lapse of about 10 years of passing of the judgment dated 12.5.2010, by the learned Division Bench of this Court, hence, the petitioner cannot be granted the same relief in view of the delay and laches on her part in approaching this Court and having not taken up the litigation at the appropriate time when the matter was decided by this Court. It is a well settled law that delay dis-entitles the party to discretionary relief under Article 226 of the Constitution of India.

9. Now, coming to the judgment of this Court dated 10.04.2012 passed in CWJC No. 1727 of 2009 (Sarswati Bhawan Jai Kant Madhyamic Sanskrit Vidyalaya vs. State of Bihar & Ors.) by a co-ordinate Bench of this Court, relied upon by the learned Single Judge while passing order dated 26.10.2018 in CWJC No. 20679 of 2018 (Annexure 5 to the writ petition),as also relied upon by the petitioner herein, it may be relevant to point out that only the broad contours of law, for the purpose of reconsidering the case of the said schools afresh by strongly applying the provisions of Rule 6 of the Bihar Non-Government Sanskrit School (Recognition and Terms) Rules, 1993 [**Bihar Arajkiya Sanskrit Vidyalay (Parswikriti Awam Sharthey**



Niyamawali,1993] have been laid down. In the said judgment dated 10.4.2012 it was directed that as far as the non-petitioners' school are concerned, the teaching and non-teaching staffs of the said schools shall not become entitled for payment of their salary on the strength of the said order of this Court dated 10.4.2012 unless a fresh proceeding is initiated and a decision is taken by the Bihar Sanskrit Board/ State Government. The aforesaid judgment dated 10.4.2012 was challenged in LPA No. 946 of 2015 and a learned Division Bench of this Court by a judgment dated 9.1.2019 modified the aforesaid judgment of this Court dated 10.4.2012 to the extent that since the Sanskrit Siksha Board has already undertaken exercise in light of the said direction contained in the order dated 10.4.2012, passed by the learned Single Judge passed in CWJC No. 1727 of 2009 and other analogous cases, it would be appropriate to grant liberty to the writ petitioner to move the appropriate forum in case the decision taken by the Court runs counter to their interest. Thus, the aforesaid judgment dated 10.4.2012 passed by a co-ordinate Bench of this Court as also the judgment dated 9.1.2019 passed in LPA No. 946 of 2015 are of no use to the petitioner herein.

10. Another aspect of the matter is that in the year 2012 itself, the State Government had come to the conclusion that the



school in question was not in existence and now after a lapse of about 7 years the whereabouts of the school as also pleadings regarding its existence is missing and nothing has been stated to the said extent in the present writ petition, hence, no writ can be issued merely on surmises and conjectures and on a hypothetical basis, hence on this ground as well the writ petition is fit to be dismissed.

11. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, there is no merit in the present writ petition, accordingly, the present writ petition is dismissed, however, without any order as to costs.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	30.05.2019
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