

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11208 of 2019

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Suresh Prasad Yadav Son of Late Dev Sharan Yadav @ Late Dev Sharan Ray
Resident of Police Station-Bajpatti, District-Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The District, Primary Education department, Govt. of Bihar, Patna.
3. The District Magistrate-Cum-Collector-Cum-District Officer, Sitamarhi.
4. The District Education Officer, Sitamarhi.
5. The District Programme Officer (Esbalishment), Sitamarhi.
6. The Block Development Officer, Bokhra, Prakhand-Bokhra, District-Sitamarhi.
7. The Mukhiya, Gram Panchayat Bokhra, P.S.-Bajipatti, Sitamarhi.
8. The Panchayat Secretary, Gram Panchayat Bokhra, P.S.-Bajpatti, Sitamarhi

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Pramod Kumar Singh
For the Respondent/s : Mr.Madhaw Pd. Yadaw (GP-23)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 18.06.2019

1. The present writ petition has been filed for setting aside the order dated 29.06.2017 passed by the District Appellate Authority, Sitamarhi in Appeal Case No. 40 of 2015 as well as the order dated 20.02.2019 in Appeal Case No. 81 of 2019 by the State Appellate Authority, Bihar, Patna.

2. The brief facts of the case are that the petitioner is said to have filed an application for his appointment on the post of Physical Teacher on 01.11.2008 in Gram Panchayat, Bokhra, District, Sitamarhi, however, his appointment could not be



made, compelling him to file an appeal before the District Appellate Authority in the year 2015 i.e. after a lapse of about seven years. The District Appellate Authority, Sitamarhi by an order dated 29.06.2017 had rejected the appeal of the petitioner herein on the ground that as per the letter of the Education Department, Government of Bihar, issued under the signature of the Principal Secretary dated 04.12.2010, the last date for appointment of Panchayat Teachers was fixed as 30.12.2010 and in the event of appointments not being made up to the said cut off date, it had been postulated that the appointment unit cannot make appointments thereafter and the selection process shall stand closed. Hence, the District Appellate Authority, Sitamarhi had come to a conclusion that no directions can be given for making appointment pertaining to teachers appointment of the year 2008. The learned District Appellate Authority had further stated that with effect from 03.04.2012, the Bihar Panchayat Primary Teachers (Appointment and Service Condition) Rules, 2012 have come into force and clause 18(i) of the said Rules provide that with effect from the date of coming into force of the said Rules, the earlier Appointment Rules, 2006 and connected resolutions/orders/instructions etc. shall stand cancelled, hence no appointment can be made under the old



Rules, 2006. Aggrieved by the aforesaid order dated 29.06.2017, the petitioner had filed an appeal before the State Appellate Authority, Bihar, Patna, however, the same has been dismissed by the impugned order dated 20.02.2019.

3. I have heard the learned counsel for the parties and gone through the materials on record and I find no illegality in the order dated 29.06.2017, passed by the District Appellate Authority, Sitamarhi as also in the order dated 20.02.2019 passed by the State Appellate Authority, Bihar, Patna inasmuch as admittedly the petitioner has sought to move the District Appellate Authority, Sitamarhi, according to his whims and conveniences, after a delay of about seven years which in service matters is fatal and cannot be condoned. The position, as existing in law, in this regard, is now well settled. It has now conclusively been held that when a person who is not vigilant of his right and acquiesces to the situation, his writ petition cannot be entertained after a long delay.

4. 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 laches held that in such like cases, the Court should be very slow in granting relief to the



incumbent specially 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 laches and delays,



and/or the acquiescence, would be a valid ground to dismiss their claim.”

5. 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.”

6. 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 latches 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 latches. 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.”

7. It is a well settled principle of law that stale claims should not be adjudicated by the writ courts, especially in cases where third party rights have already crystallized. In this connection, reference be had to a judgment reported in **(2015) 15 SCC 602 (State of Jammu and Kashmir vs. R.K. Zalpuri & Others)**, paragraph nos. 26 to 28 whereof are reproduced herein below:-

“26. In the case at hand, the employee was dismissed from service in the year 1999, but he chose not to avail any departmental remedy. He woke up from his slumber to knock at the doors of the High Court after a lapse of five years. The staleness of the claim remained stale and



it could not have been allowed to rise like a phoenix by the writ court.

27. The grievance agitated by the respondent did not deserve to be addressed on merits, for doctrine of delay and laches had already visited his claim like the chill of death which does not spare anyone even the one who fosters the idea and nurtures the attitude that he can sleep to avoid death and eventually proclaim “deo gratias” – ‘thanks to God’.

28. Another aspect needs to be stated. A writ court while deciding a writ petition is required to remain alive to the nature of the claim and the unexplained delay on the part of the writ petitioner. Stale claims are not to be adjudicated unless non-interference would cause grave injustice. The present case, needless to emphasise, did not justify adjudication. It deserved to be thrown overboard at the very threshold, for the writ petitioner had accepted the order of dismissal for half a decade and cultivated the feeling that he could freeze time and forever remain in the realm of constant present.”

8. In a judgment reported in **1986(4) SCC 566** (**State of M.P. & Ors. vs. Nandlal Jaiswal & Ors.**), it has been held by the Hon’ble Apex Court that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner, the Court may decline to intervene and grant relief inasmuch as entertaining such a belated claim would have not only the effect of inflicting hardship and inconvenience but also injustice on third parties and creation of third party rights during the interregnum



period, is a matter to be considered while exercising discretionary writ jurisdiction.”

9. Admittedly in the present case the petitioner had approached the District Forum, after a lapse of almost seven years, with a prayer to direct the respondent State authorities for appointing the petitioner against the selection process of the year 2008, hence the case of the petitioner is hopelessly barred by the principles of delay and laches, thus the District Appellate Authority, Sitamarhi has rightly rejected the appeal of the petitioner herein. There is yet another aspect of the matter i.e. the new Bihar Panchayat Primary Teachers (Appointment & Service Condition) Rules, 2012 have come into force with effect from 03.04.2012 and the old Rules of the year 2006, have been repealed as also there is a bar under the letter dated 04.12.2010 issued by the Principal Secretary, Education Department, Government of Bihar, Patna regarding making appointments after the cut off date i.e. 30.12.2010, pertaining to the selection process initiated under the old Rules, which has admittedly not been challenged by the petitioner herein, hence the petitioner has got no case at all so as to warrant any interference by this Court. Moreover, with the coming into force of the Bihar Panchayat Primary Teachers (Appointment & Service



Condition) Rules, 2012 w.e.f. 03.04.2012, the earlier appointment Rules & connected resolutions/orders/instructions etc. have stood cancelled, hence no appointment can be made under the old Rules, 2006.

10. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not find any merit in the present writ petition, accordingly, the same is dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	13.10.2019
Transmission Date	

