

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1299 of 2018**

**In**

**Civil Writ Jurisdiction Case No.16326 of 2016**

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Vijay Bhushan Prasad son of Late Laxmi Prasad, resident of Mohalla- Budha Colony, Dist- Patna

... .. Appellant/s

Versus

The Bihar State Electricity Board and Anr

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr.Sanjeev Ranjan

Mr.Ravi Bhardwaj

For the Respondent/s : Mr. Ranjit Sinha

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA**

**and**

**HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH**

**ORAL ORDER**

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)**

3      20-01-2020                      Heard learned counsel appearing for the appellant as well as learned counsel appearing for the respondents.

The appellant is aggrieved by the order dated 09.08.2018 passed by the learned Single Judge in CWJC No. 16326 of 2016 by which and whereunder the learned Single Judge dismissed the aforesaid writ petition on the ground that the relief in the aforesaid writ petition was sought after 17 years.

Petitioner was working as Electrical Executive Engineer, Electricity Supply Division, Jamshedpur in the year 1985. A vigilance Case bearing Vigilance Case No. 5 of 1989 was lodged against him for the offences punishable under the various



sections of Indian Penal Code and section 13 (2) of Prevention of Corruption Act and section 39/39A of the Electricity Act. Simultaneously, a departmental proceeding was also drawn up against the petitioner vide Boards Resolution No. 178 dated 07.09.1991 on the same and similar charges as framed under the vigilance Case no. 5 of 1989 and in the aforesaid departmental inquiry, the inquiry report was submitted in the year 1995 exonerating the appellant from all the charges. However, the disciplinary authority did not find favour with the inquiry report and issued show cause to the appellant in the year 1999 and after having received the reply to the above stated second show cause, the Board vide Resolution No. III Alleg/Ran 3656/97/733 dated 19.03.1999 withheld 5% pension and 5% gratuity of the appellant.

The appellant challenged the Boards Resolution before the appellate authority but his appeal was too dismissed in the year 2001. Thereafter, the appellant filed CWJC No. 19719 of 2015 in the year 2015 challenging the Boards Resolution and the order of the appellate court. However subsequently, the aforesaid C.W.J.C No. 19719 of 2015 was referred to Lok Adalat and the appellant as well as the concerned department agreed on certain terms and on the basis of aforesaid certain



terms, the Lok Adalat disposed of CWJC No. 19719 of 2015 vide award dated 18.05.2016. According to the aforesaid award, the admitted dues was paid to the appellant.

However, again the appellant preferred CWJC No. 16326 of 2016 praying therein for quashing the Boards Resolution dated 19.03.1999 on various grounds but the learned Single Judge dismissed the aforesaid writ petition passing the impugned judgment on the ground that the appellant challenged the Board Resolution after 17 years.

Learned counsel appearing for the appellant submits that in case of pension and other retiral benefits the cause of action continues from month to month and the claim of pensionary benefits, as well as other retiral benefits cannot be denied only on the ground of delay in making the claim. Learned counsel for the appellant relied upon the decision reported in Shiv Dass v.s Union of Indian and Ors. reported in 2007 (9) S.C.C 274 wherein at Para10 and 11 the Hon'ble Apex Court has held as follows:

“10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or



restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit the appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.

11. In the peculiar circumstances, we remit the matter to the High Court to hear the writ petition on merits. If it is found that the claim for disability pension is sustainable in law, then it would mould the relief but in no event grant any relief for a period exceeding three years from the date of presentation of the writ petition. We make it clear that we have not expressed any opinion on the merits as to whether the appellant's claim for disability pension is maintainable or not. If it is sans merit, the High Court naturally would dismiss the writ petition."

He also relied upon the decision of S.K. Mastan Bee General Manager, South Central Railway and Anr. reported in 03(1) S.C.C 184 wherein at Para-6 the Hon'ble Apex Court has held as follows:-

6. "We notice that the appellant's husband was working as a Gangman who died while in service. It is on record that the appellant is an illiterate who at that time did not know of her legal right and had to access to any information as to her right to family pension and to enforce her such right. On the death of the husband of the appellant, it was obligatory for her husband's employer viz the Railways, in this case to have computed the family pension payable to the appellant and offered the same to



her without her having to make a claim or without driving her to a litigation. The very denial of her right to family pension as held by the learned Single Judge as well as the Division Bench is an erroneous decision on the part of the Railways and in fact amounting to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. The factum of the appellant's lack of resources to approach the legal forum timely is not disputed by the Railways. The question then arises on facts and circumstance of this case, was the Appellate Bench justified in restricting the past arrears of pension to a period much subsequent to the death of the appellant's husband on which date she had legally become entitled to the grant of pension. In this case as noticed by us hereinabove, the learned Single Judge had rejected the contention of delay put forth by the Railways and taking note of the appellants's right to pension and the denial of the same by the Railways illegally considered it appropriate to grant the pension with retrospective effect from the date on which it became due to her. The Division Bench also while agreeing with the learned Single Judge observed that the delay in approaching the Railways by the appellant for the grant of family pension was not fatal, in spite of the same it restricted the payment of family pension from a date on which the appellant issued a legal notice to the Railways i.e on 1.4.1992. We think on the facts of this case inasmuch as it was an obligation of the Railways to have computed the family pension and offered the same to the widow of its employee as soon as it became due to her and also in view of the fact that her husband was only a Gangman in the Railways who might not



have left behind sufficient resources for the appellant to agitate her rights and also in view of the fact that the appellant is an illiterate, the learned Single Judge, in our opinion, was justified in granting the relief to the appellant from the date from which it became due to her, that is the date of the death of her husband. Consequently, we are of the considered opinion that the Division Bench fell in error in restricting that period to a date subsequent to 1.4.1992.”

Learned counsel of the appellant further submits that no doubt, Lok Adalat passed the award in CWJC No. 19719 of 2015 but as a matter of fact, the question regarding the validity of impugned Boards Resolution was never considered nor the validity of the aforesaid impugned Boards Resolution was ever raised before the Lok Adalat as the Lok Adalat had got no power to adjudicate the aforesaid dispute.

On the other hand, learned counsel appearing for the respondent submits that since the dispute of the parties have already been considered by the Lok Adalat and with consent of both the parties Lok Adalat passed the award in the year 2016 and, therefore, the appellant cannot again raise the question in respect of validity of Boards Resolution. He further submits that the claim of the appellant is barred by order 2 Rule 2 of C.P.C and moreover, according to section 21(2) of the Legal Services Authority Act 1987, the award passed in CWJC No. 19719 of



2015 is final and binding upon the parties.

Having heard the above stated submission of the parties, we went through the record as well as record of writ court. Admittedly, the appellant earlier filed CWJC No. 19719 of 2015 for same relief and with consent of the parties Lok Adalat passed the award on 18.05.2016 in the aforesaid CWJC No. 19719 of 2015. No doubt, the Apex Court has held in the above stated referred decisions that the cause of action in respect of pensionary and retiral benefits continues from month to month but admittedly, in the said decisions, the Hon'ble Apex Court has held that the aforesaid dictum shall vary case to case. Admittedly, in CWJC No. 19719 of 2015 the parties agreed to resolve their dispute by taking aid of Lok Adalat and on the basis of terms and conditions arrived at between the parties before the Lok Adalat, the aforesaid writ petition was disposed off by the Lok Adalat resolving the dispute of the parties for ever passing award dated 18.05.2016 and the aforesaid award is binding upon the parties. Therefore, in the aforesaid circumstance, we do agree with the submissions of learned counsel for the respondent that the appellant has no right to raise his grievance again before this court.

Accordingly, in view of the aforesaid facts and



circumstances as well as submissions, this appeal stands  
dismissed.

**(Hemant Kumar Srivastava, J)**

N.K/-

**( Prabhat Kumar Singh, J)**

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