

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2874 of 2020

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Munni Devi Wife of Late Gupteshwar Prasad Resident of Turha Toli, P.S.-
Buxar, District- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, New Secretariat, Patna.
2. The Vice Chancellor Veer Kunwar Singh University, Ara (Bhojpur).
3. The Registrar Veer Kunwar Singh University, Ara (Bhojpur).
4. The Principal M.V. College, Buxar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Singh, Advocate
For the Respondent/s	:	Mr. Kameshwar Kumar, GP-17
For the University	:	Mr. Kinker Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

8 30-11-2022 Heard Mr. Ashok Kumar Singh, learned counsel appearing on behalf of the petitioner, Mr. Kinker Kumar, learned counsel for the Veer Kunwar Singh University and Mr. Kameshwar Kumar, learned AC to SC 13 for the State.

The present writ application has been filed for the following reliefs;-

(i) Issuance of writ in the nature of mandamus commanding the Respondents to grant sanctioned pay scale of Assistant to the petitioner like serial no. 1 to 59 employee's list published by the V.K.S.U, Ara under the signature of Registrar, V.K.S.U, Ara dated 07.12.2013.



(ii) the Respondents further be directed to grant sanctioned pay scale of Assistant to the superannuated petitioner, who was appointed as routine Clerk as because several Routine Clerks who were Juniors to him and others have been granted sanctioned pay scale of Assistant from the date of their joining/ appointment and grant consequential benefits and pension.

(iii) The Respondents be directed grant him pay scale of Assistant having requisite qualification at the time of appointment/ joining i.e. 01.05.1982 on the post of Counter Clerk/ Routine Clerk pay scale Rs. 535-765/- superannuated on the same post as such getting less pension.

The short facts which led to be filing of the present writ petition is that the petitioner was initially appointed on 29.04.1982, on the post of Counter Clerk in M.V. College, Buxar by the Principal of the College. It is further contended that after having served for more than 32 years of satisfactory service, the petitioner superannuated from the post of Routine Clerk from M.V. College, Buxar under the Veer Kunwar Singh University, Ara.

The only point for consideration before this court is whether the case of the petitioner be treated at par with the



persons named in paragraph no. 7 of the writ application, who have been allowed the pay scale of Assistant from the date of their appointment/ joining.

He submits that other junior persons who have also appointed on the post of Routine clerk on 29.04.1982 vide letter no. 1829-1930/82-83, they have been granted sanctioned pay scale of Assistant from the date of their joining but discrimination has been caused against the petitioner. In order to buttresses his submission, he further contended that the petitioner having qualification of Intermediate was appointed as Counter clerk on 29.04.82 and several employees , who were also appointed on the same date or on the same post or even below the post, as held by the petitioner ,they have been allowed the pay scale of Assistant denying the claim of the petitioner, though he represented before the competent authority of V. K.S.University but to no effect. He next submits that while the representation of the petitioner was pending consideration before the Vice Chancellor, Veer Kunwar Singh University, Ara, in the meanwhile, the petitioner superannuated on 31.01.2014.

On the other hand Mr. Kinker , learned counsel for the university vehemently confronted the submissions, made on



behalf of the learned counsel for the petitioner and submits that the reliance placed on, by the learned counsel for the petitioner of Annexure-3, that similarly situated persons, who were also appointed as Routine Clerk, they have been allowed the benefits of Assistant, is wholly misconceived as there was some mistake in the designation of the employees mentioned in Annexure-3, which had later on corrected as an Assistant and the mistake was rectified. He further submits that since no post of Routine clerk was existing in Maharaja College, Ara. However, inadvertently, such designation was mentioned in Annexure -3 to the writ application and therefore, it was rectified vide memo no. 1380/GI/96 dated 25.05.1996.

He submits that in fact, the persons with whom, the petitioner is seeking parity, they were appointed pursuant to an advertisement, in terms of letter no. 1639/82 dated 03.12.1982 wherein the minimum qualification for the Lower Division Assistant was fixed as graduate, apart from the fact that they were appointed by the Vice-chancellor after following the proper procedure of selection, whereas the qualification for Routine clerk was Intermediate, however, due to inadvertence on that point of time, the designation was wrongly mentioned in the category to the post as advertised, therefore, it was rectified



later on. He also submits that the case of the petitioner is quite different from that of the employees, who were appointed in Maharaja College, apart from the fact that the petitioner was neither appointed by the competent authority nor approval of the university/ State government have ever taken and his absorption was also question marked by the State Government. Further submits that petitioner had superannuated way back in the year 2014 itself, and the present writ application has been filed in the year 2020 after delay of more than six years, nonetheless cause of action had already arisen in the year 2013 itself, when the persons, who were appointed as Lower Division Assistant, they were allowed all the benefits of Assistant.

At this juncture, learned counsel for the petitioner submits that issue with regard to the appointment of the petitioner by the competent authority and its approval, has already been set at rest by the learned Co-ordinate Bench of this Court in CWJC No. 6618 of 2016, vide order dated 28.02.2017 as contained in Annexure-A to the counter affidavit filed by the respondent state.

Having heard the learned counsel for the parties and considering the materials available on the record, prima facie it appears that the persons with whom the petitioner is seeking



parity, they were appointed pursuant to the advertisement no. 1639/82 dated 03.12.1982 on the post of lower Division Assistant and the minimum qualification for the said post was fixed as graduate. So far the petitioner is concerned, it is an admitted fact that the petitioner was appointed by the Principal of College as a Routine clerk having qualification of Intermediate as has been stated in Paragraph-9 of the writ application. It is further evident that the university came out with letter as contained in memo no. 1380 dated 25.05.96 making rectification of the designation of those persons, who were wrongly designated as Routine Clerk as is mentioned in Annexure-3 to the writ application.

In view of the facts, this court finds that the respondent university is able to demonstrate and differentiate the case of the petitioner with those whose names have been mentioned in Paragraph no.7 to the writ petition. Apart from the facts, there is inordinate delay in filing the present writ petition, as the cause of action, if any, arisen way back in the year 2013 itself, before superannuation of the petitioner on 31.01.2014.

Further, on the issue of delay and laches, this Court would also like to quote the observation made by the Hon'ble Apex Court in the case of **Chennai Metropolitan Water**



Supply & Sewerage Board vs. T.T.Muralibabu , reported in (2014) 4 SCC 108, Paragraph 16 and 17 whereof are quoted herein below:-

(16) Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The Court should bear in mind that it is exercising and extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not, it noted delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay



reflects inactivity and inaction on the part of a litigant- a litigant who has forgotten the basic norms, namely “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

(17) In the case at hand, though there has been four years’ delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have



impact on others ripened rights and may unnecessary drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A Court is not expected to give indulgence to such indolent persons- who complete with “ Kumbhakarna” or for that matter” Ripe Van Winkle” In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

In view of the aforesaid factual and legal back ground, apart from the apparent delay and laches on the part of the petitioner, which certainly comes in the way of equity., this court does not find any merit in the writ petition, hence, the present writ petition stands dismissed.

(Harish Kumar, J)

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