

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7549 of 2021

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Binoy Krishna Jha @ Binay Krishna Jha Son of Late Jai Krishna Jha resident
of village and Post- Kharahara, Police station, Barahat, District- Banka

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna
2. The Commissioner-cum-Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna
3. The Deputy Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna
4. The Divisional Commissioner, Bhagalpur Division, Bhagalpur
5. The Collector -cum-District Magistrate, Bhagalpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kundan Kumar Sinha, Advocate
For the Respondent/s : Mr. Subash Chandra Yadav (GP 15)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 24-02-2022

Heard learned counsel for respective parties.

Learned State counsel accepts notice for respondents.

Learned counsel for the petitioner is hereby directed to
furnish a copy of the petition to learned counsel for the State if it
not already furnished.



In the instant petition, petitioner has prayed for the following relief(s):-

“For directions to the respondent authorities: the petitioner be treated to be appointed as Class-Ill employee in the establishment of Bhagalpur Collectorate from 24.3.2001 instead of from 31.12.2002 (notionally) for the purpose of metting/completing required qualifying period for pension. Since the appointment letter of this petitioner was issued on 31.12.2002 after a delay of 1 year 9 month as a result of such delay the petitioner could not qualify the required length of service for minimum pension, which is of ten years. The short fall is of 1 year 4 months and 9 days.”

The petitioner is seeking for alteration of date of his initial appointment from 31.12.2002 to 24.03.2001 pursuant to the order of appointment issued on 31.12.2002 in the guise of treating the intervening period for the purpose of pension to the petitioner.

The date of appointment of the petitioner was 31.12.2002 as and when the cause of action accrued. Petitioner is not entitled to alter the date of appointment from 31.12.2002 to that of 24.03.2001 at this belated stage, in the light of Hon’ble Apex Court decision in the case of ***Jammu and Kashmir V. R.K. Zalpuri*** repored in ***AIR 2016 SC 3006*** at para 20 held as under:-



“20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation V. Dosu Aardeshir Bhiwandiwalla and Others, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

“The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.”

And also Hon’ble Apex Court decision in the case of ***State of Rajasthan Vs. Surji Devi*** reported in ***(2022) 1 SCC 17*** at para 6 to 9 held as under:-

“6. The facts which emerged are that the late husband of the respondent was removed/dismissed from service by order dated 16-12-1996. He preferred an appeal which was pending before the appellate authority. During the pendency of the appeal, the late husband of the respondent - employee died/passed away in the



year 2009. If the late husband of the respondent would not have been terminated/dismissed he would have attained the age of superannuation in the year 1999. After the death of the employee – late husband of the respondent she did not pursue the appeal, may be she might not be aware of filing/pendency of the appeal. That thereafter the respondent – widow of the employee filed a writ petition before the High Court in the year 2012. Thus, by the time the respondent preferred a writ petition before the High Court, 15 years had passed from the date of termination and even approximately 13 years from the date on which the employee would have attained the age of superannuation i.e. from the year 1999.

7. Considering the aforesaid facts and circumstances, as such, the learned Single Judge ought not to have entertained the writ petition in the year 2012, challenging the order of termination passed on 16-12-1996, on the ground of delay and laches alone. At this stage, it is required to be noted that even despite the fact that it was specifically prayed by the respondent in writ petition before the learned Single Judge to direct the authority to decide the appeal preferred by her husband, the learned Single Judge despite the above prayer and the pending appeal, entered into the merits of the case and quashed and set aside the order of termination dated 16-12-1996.

8. The submission on behalf of the respondent is that the termination on 16-12-1996 was absolutely illegal and against the principles of natural justice is concerned, once we hold



that the writ petition was barred by delay and laches, thereafter the merits are not required to be considered. As observed hereinabove, the learned Single Judge erred in entertaining the petition in the year 2012 challenging the order of termination passed in the year 1996, on the ground of delay and laches and more particularly when even otherwise if the termination order would not have been passed the deceased employee would have retired on attaining the age of superannuation in the year 1999.

9. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order dated 1-3-2019 passed by the Division Bench of the High Court as well as the judgment and order dated 17-1-2017 passed by the learned Single Judge are hereby quashed and set aside. In the facts and circumstances of the case, there shall be no order as to costs."

Accordingly, the present petition stands dismissed.

(P. B. Bajanthri, J)

Vikash/-

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

