

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 11638 of 2021

1. Raj Kishore Prasad Yadav @ Raj Kishore Rai Son of Mandev Rai @ Mandeo Prasad Yadav Resident of vill.- Rupchap Drug Motiharian, P.s.- Bishambharpur, District- gopalganj
2. Ashok Kumar Singh Son of Singhasan Singh Resident of Village- Chatursal Ganj, P.s.- Dumraon, District- Buxar
3. Binod Kumar Sharma Son of Sri Yogendra Sharma R/o Village and Post- Sipahia Kuchaikot, P.s.- Bishambharpur, District- Gopalganj

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Animal Husbandry and Fisheries resources Department, Govt. of Bihar, Patna
2. Director, Animal Husbandry and Fisheries Department, Bihar, Patna
3. Regional Director, Veterinary, Saran Range, Chapra
4. District Veterinary Officer, Gopalganj
5. Dy. Director, Animal Husbandry and Fisheries Department, Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr Ram Hriday Prasad, Advocate

For the Respondent/s : Mr Raj Kishore Roy, GP XVIII

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 15-09-2022

Heard learned counsel for the petitioners and the respondents.

2 The brief case of the petitioners is that they were discharging duties as casual labourers on temporary basis.



Thereafter, they were regularized in and around June, 1993 and later terminated by an order dated 10.02.1994.

3 Other similarly situated persons approached this Court in CWJC No 5042 of 1994 which was disposed of on 05.07.1995 with some observations which reads as follows:

“The Director, Animal Husbandry, however, is directed to consider the question of making appointments against vacancies available in the districts of Saran, Siwan and Gopalganj and in case appointments are proposed to be made, to advertise the posts. At that stage, the case of the petitioners will be considered if they also apply giving them benefit of past satisfactory work experience. They will also be entitled to relaxation of age bar to the extent of services rendered by them. An appropriate decision in the matter should be taken within four months of the receipt or a copy of this order.”

4 Learned counsel for the petitioners submits that since the petitioners are similarly situated, they are also entitled to the same benefits, or at least an opportunity to make a representation for similar consideration.

5 This court would find that petitioners of CWJC No. 5042 of 1994, with whom the petitioners are claiming parity have thereafter been appointed under order of the Director, Animal Husbandry Department dated 10.09.1997. The instant writ petition, however, has been filed in the year, 2021.



6 This Court would observe that this is a glaring example of a case being barred by delay and laches. The petitioners are nothing more than *fence sitters* and have slept over the matter for more than 27 years after their termination by order dated 10.02.1994.

7 This Court would refer to decision of the Hon'ble Apex Court in the case of *State of Uttar Pradesh & Others -Versus- Arvind Kumar Srivastava & Others*, reported in (2015) 1 *Supreme Court Cases* 347. The respondents therein had challenged the orders dated 22.06.1987 cancelling their appointments after 9 years before the Tribunal in the year 1996. They had filed their claim relying upon orders passed in favour of others similarly situated. The Uttar Pradesh Public Services Tribunal as well as the High Court had given the respondents benefit of the order passed by the Court earlier, in favour of others similarly situated. The Hon'ble Apex Court thus held that in view of delay it would be unjust to direct the appellants to grant appointment.

8 The legal principles in this regard have been summarized by the Hon'ble Apex Court, which read as follows:

22. 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.



22.1. The 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.

22.2. However, this principle is subject to well-recognised 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.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons.



Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India³). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

23. Viewed from this angle, in the present case, we find that the selection process took place in the year 1986. Appointment orders were issued in the year 1987, but were also cancelled vide orders dated 22-6-1987. The respondents before us did not challenge these cancellation orders till the year 1996 i.e. for a period of 9 years. It means that they had accepted the cancellation of their appointments. They woke up in the year 1996 only after finding that some other persons whose appointment orders were also cancelled got the relief. By that time, nine years had passed. The earlier judgment had granted the relief to the parties before the Court. It would also be pertinent to highlight that these respondents have not joined service nor working like the employees who succeeded in earlier case before the Tribunal. As of today, 27 years have passed after the issuance of cancellation orders. Therefore, not only was there unexplained delay and laches in filing the claim petition after a period of 9 years, it would be totally unjust to direct the appellants to give them appointment as of today i.e. after a period of 27 years when most of these respondents would be almost 50 years of age or above.



24. For all the foregoing reasons, we allow the appeal and set aside the order of the High Court [State of U.P. v. Arvind Kumar Srivastava, Service Bench No. 1988 of 2011, decided on 1-2-2012 (All)] as well as that of the Tribunal. There shall, however, be no order as to costs.

9 Having regard to the legal principles stated by the Apex Court, in the case of *Arvind Kumar Srivastava (supra)*, which needless to say, are binding on this Court; are also applicable to the facts and circumstances of this case where the petitioners have approached this Court after more than 27 years claiming parity with other who had availed legal remedy diligently.

10 This Court would find that no case is made out by the petitioners for exercise of equitable and discretionary writ jurisdiction in their favour.

11 This writ petition is accordingly dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
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