

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1485 of 2021

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Bhup Narain Dubey S/o Late Yamuna Dwivedi, resident of Ward No. 12,
Village and Po.- Tarwaliya, Via- Naraipur, P.s.- Semra, Block- Bagha-2,
District- West Champaran

... .. Petitioner/s

Versus

1. The Director (Chief Engineer) Water and Land Management Institute,
Walmi, Phulwarisharif, Patna
2. The Secretary, Irrigation, Water Resources Department, Govt. of Bihar,
Patna
3. The Superintending Engineer, (Command Area Development Circle)
combined Building, Muzaffarpur
4. The Executive Engineer, Command Area Development Division, Bettiah
5. The Area Development Commissioner-cum-Chairman, GADA, Muzaffarpur

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 1708 of 2021

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Nilu Kumar S/o Late Baidyanath Prasad Sinha Resident of Village- Mahwal,
P.O.- Mahwal, P.S.- Motipur, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The Director (Chief Engineer) Water and Land Management Institute,
Walmi, Phulwarisharif, Patna.
2. The Secretary, Water Resources Department, Govt. of Bihar, Patna.
3. The Superintending Engineer, Command Area Development Circle,
Combined Building, Muzaffarpur.
4. The Executive Engineer, Command Area Development Division, Motihari.
5. The Area Development Commissioner-cum-Chairman, GADA,
Muzaffarpur.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 1485 of 2021)

For the Petitioner/s : Mr. Dr. Uma Shankar Prasad, Sr. Advocate
Mr. Kamla Kant Tiwary, Advocate

For the Respondent/s 1,3,4 & 5 : Mr. Satish Chandra Jha No. 3

For the State : Mr. Kunal Tiwary, AC to GA 2

(In Civil Writ Jurisdiction Case No. 1708 of 2021)

For the Petitioner/s : Mr. Dr. Uma Shankar Prasad, Sr. Advocate
Mr. Kamla Kant Tiwary, Advocate

For the Respondent/s 1,3,4 & 5: Mr. Satish Chandra Jha No. 3

For the State : Mr. Kunal Tiwary, AC to GA 2



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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 06-12-2022

Heard Mr. Dr. Uma Shankar Prasad, learned senior counsel, duly assisted by Mr. Kamla Kant Tiwary, learned counsel appearing on behalf of the petitioner in both the cases, Mr. Satish Chandra Jha No. 3, learned counsel for the respondent nos. 1, 3, 4 and 5 and Mr. Kunal Tiwary, learned AC to GA 2.

2. Both the writ petitions involve similar issues based on identical facts and identical prayer made on behalf of the respective petitioners. Hence, they have heard together and being disposed of by this common order with the consent of the parties.

3. The aforesaid writ petitions have been filed for the following reliefs:-

“I. To issue a writ in the nature of mandamus commanding the Respondents No. 3 & 4 to pay post retiral benefits pertaining to (a) arrear of salary for the period 01.09.2018 to 31.01.2020, (b) entire amount of gratuity, (c) unutilized earned leave, (d) group insurance & (e) arrear of salary in lieu of implementation and recommendation of 7th Pay Revision Commission in favour of the petitioners.

II. To issue a writ in the nature of mandamus commanding the Respondents No. 3 & 4 to pay the post retiral dues in favour of the petitioners, forthwith as the petitioners were superannuated on



31.01.2020 from the post of Accounts Clerk/Correspondence Clerk.

III. To issue a writ in the nature of certiorari for quashing of the office order dated 23.01.2013 bearing Memo No. 66, issued under the signature of the Respondent No. 5, as the same is per-se illegal, unauthorized and abuse of process of law, because the same is not applicable in the case of the petitioners.

IV. To issue a writ in the nature of mandamus commanding the Respondents No. 2 to 4 to act in contemplation to the order passed by this Hon'ble Court in CWJC No. 4587 of 1989 and also in conformity to the order passed by this Hon'ble Court in LPA No. 32 of 1991."

4. The short facts which led to the filing of the writ petitions are that the petitioners were initially engaged as daily wagers, as Accounts Clerk and Correspondence Clerk cum typist, on 22.03.1982 and 11.02.1985 respectively under Gandak Command Area Development Agency Division, Bettiah (hereinafter referred to as "GADA Division"). It is contended that while they were working as daily wage employees, they along with other daily wagers moved before the Hon'ble Court for their regularization and equal pay for equal work by filing CWJC No. 4587 of 1989. The Hon'ble Court having considered the grievance of the petitioners and others has been pleased to allow the writ application vide order dated 18.02.1991 with a direction to the



agency to ensure similar salary, likewise, as are being paid to regular and permanent employee with effect from the date they were respectively employed. It has also been directed that the agency will take appropriate action to regularize the services of these petitioners, who have been in continuous employment for long four to eleven years.

5. The agency, on being aggrieved by the aforesaid order, preferred LPA No. 32 of 1991, which was dismissed by learned Division Bench of this Court vide order dated 17.02.1993, whereafter, SLP (Civil No. 13250 of 1993) was filed before the Hon'ble Supreme Court. However, the same was also resulted into dismissal.

6. Learned senior counsel appearing on behalf of the petitioners contended that in pursuant to the order dated 18.02.1991 passed by the Hon'ble Court, the services of altogether 48 daily wage employees, who were serving under the GADA their services were regularized to the post of correspondence clerk, Accounts Clerk, Driver and Peon by virtue of order nos. 1472, 1473, 1474 and 1476 dated 07.10.1993. The petitioner (Bhup Narain Dubey) was appointed by virtue of the office order no. 1473 dated 07.10.1993 whereas, the petitioner (Nilu Kumar) was appointed vide office order no. 1472 dated 07.10.1993.



Subsequently, the Secretary GADA Division vide letter no. 1009 dated 13.08.1999 directed for opening of the service book after verification of relevant materials/documents. He further contended that after regularization some of the regular employees submitted representation before concerned authority, praying, inter alia, to sanction ordinary leave for those periods to which they have worked prior to regularization and payment has not been made to them.

7. Aforesaid representation was duly considered by Regional Development Commissioner-cum-Chairman, GADA, Muzaffarpur and vide memo no. 66 dated 23.01.2013, the claim of the daily wagers was rejected with clear stipulation that they would be entitled to the service benefits with effect from the date of actual joining as regular employees. The aforesaid order dated 23.01.2013 is under challenge in the writ applications. Learned senior counsel vehemently submits that the impugned order issued by the respondent no. 5 is without any statutory authorization and *per-se* illegal and against the purport of Rule 106 of Bihar Farmers and Rural Area Development Agency Service Condition Control and Appeal Rule, 2010. He also submits that the action of the respondents are *per-se* illegal, in view of the fact there was no break in the service rendered by the petitioner for the period of



initial appointment till the date of their respective superannuation and, as such, by any stretch of imagination the continuous service rendered by the petitioner do not come in the way of making retiral benefits after taking into consideration the entire period. He also submits that the aforesaid letter dated 23.01.2013 is, in fact, against the mandate of the judgment rendered by this Court in **CWJC No. 4587 of 1989**, which has been finally affirmed by the Hon'ble Apex Court.

8. Per contra, Mr. Satish Chandra Jha No. 3, learned counsel for the answering respondent nos. 1, 3, 4 and 5 vehemently confronted the submissions made on behalf of the learned senior counsel for the petitioners and submits that admittedly in compliance of the direction of the Hon'ble Court, the petitioners and other 46 employees were paid salary for the period they had worked as daily wage employees and further the petitioners were regularized vide letter nos. 1472 and 1473 dated 07.10.1993 and, as such, they are legally entitled to get all service benefits only with effect from the date of their joining as regular employee. He drawn the attention of this Court towards the letter nos. 1472 and 1473 dated 07.10.1993 and submits that from perusal of the respective regularization letters, especially clause 3 thereof, it would reveal that it has been clearly mentioned the period worked



as daily wage employees, i.e., initial engagement as daily wage employee till the date of their regularization with effect from 07.10.1993. He further submits, irrespective of the facts, both the petitioners anyhow managed to get service benefits from their initial date of engagement as daily wage employees, which is wholly illegal, though the representation of the petitioners and other daily wagers, for grant of ordinary leave for the period to which they worked prior to regularization and payment has not been made to them was rejected way back on 23.01.2013 itself with clear stipulation that; from the date of actual joining as regular employees, the service benefits of regular employee is admissible and payable. He submits that the aforesaid letter has never been challenged or interfered by the Hon'ble Court till date. He lastly submitted that since the petitioners had managed to receive service benefits, illegally like other regular employees, even for the period of their working as daily wagers till the date of regularization, on 06.10.1993, a detailed show-cause notice were served upon them directing them to submit their reply as to why not excess amount received by them, in view of the illegal fixation be adjusted/recovered from their retiral benefits, however, they did not choose to reply, whereafter, vide letter no. 34 dated 02.03.2021, the petitioners have been informed that payment is



being made after deducting excess amount paid to them. He lastly submits that so far the admissible retiral dues are concerned, that have already sanctioned and paid to them.

9. The petitioners on being aggrieved by the letter as contained in Memo No. 34 dated 02.03.2021 assailed the same by filing interlocutory applications, stating therein, that the petitioners were getting their monthly salaries and other benefits as per regular and permanent employees and after superannuation from their services, the initial services rendered prior to 07.10.1993 cannot be ignored for the purposes of fixation of pension and other retiral benefits, apart from the fact that impugned order dated 02.03.2021 has been issued without any show-cause notice.

10. Now, the moot question for adjudication before this Court is as to whether the services rendered by the petitioners, prior to the issuance of letter dated 07.10.1993, regularizing the services of the petitioners can be taken into account for the purposes of counting the retiral benefits.

11. Admittedly, the petitioners were engaged as daily wagers and after having worked for certain periods, when they were not taking into regular establishment, they moved before this Court along with other similarly situated persons in CWJC No.



4587 of 1989 for their regularization and the salary, at par, with the other employees of the respective cadres. The Hon'ble Court having considered the case of the petitioners and others while allowing the writ application vide order dated 18.02.1991 has been pleased to direct as follows:

“to accord to these persons, who are employed by the agency and who are suitably performing the same duties as Class -III & IV employees, the same salary likewise as are being paid to regular and permanent employee w.e.f. the date they were respectively employed. In this case, it has been demonstrated that these employees were functioning against sanctioned post therefore the services of these employees shall be regularized. I regret that many employees are kept in service on a temporary daily wages basis without their services being regularized. I hope and trust that the agency will make appropriate action to regularize the services of these petitioners who have been in continuous employment for long four to eleven years”.

12. From perusal of the aforesaid order, it would reveal that the direction was to ensure same salary, likewise, as are being paid to regular and permanent employee, with effect from the date they were reportedly employed and further direction given to the agency to take appropriate action to regularize the services of those petitioners, who have been in continuous employment for long four to eleven years. It is the admitted fact that the petitioners were regularized vide letter nos. 1472 and 1473 dated 07.10.1993



and from the said letter, it is manifestly clear that the period has been duly prescribed during which they worked as a daily wager. The letter clearly shows that in the light of the order of the Hon'ble Court, they were appointed on a temporary basis. It would be also relevant to observe here that the claim of the petitioners and other similarly situated persons for payment of their earlier service, rendered as a daily wagers; and for grant of other benefits, came to be rejected way back on 23.01.2013 with a clear stipulation that the petitioners and others would be entitled to the service benefits with effect from the date of their actual joining as regular employees and the said order has never been interfered with and has been assailed after a long delay of eight years, by filing the present writ petitions.

13. First on the point of delay and laches, this Court would like to quote the observation made by the Hon'ble Apex Court in the case of **Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T. Murali Babu 2014 (4) SCC 108**, Paragraph 16 and 17 whereof are quoted, hereinbelow:-

“(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 an 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 scrutinise whether the lis at a belated stage should be entertained or not. Be 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 scrutinise whether such enormous delay is to be ignored without any justification. That part, 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 and 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 unnecessarily 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 compete with “Kumbhakarna” or for that matter “Rip 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.

14. Further, from the pleadings and the materials available on record, it is evident that the petitioners were working as a daily wagers and it is well settled that the service rendered by the person as daily wagers cannot be said to be a service for which he was paid from General revenue of the State Government from the service rendered on a substantive basis in a permanent establishment. Learned full Bench of this Court in the case of **State of Bihar Vs. Bhagwan Singh and others** reported in **2014 (4) PLJR 229** taking note of Rules 56 and 61 of the Bihar Pension Rules has been pleased to hold in paragraph nos. 11 and 14, which are as follows:

“(11) Rule 56 of the Pension Rules provides that ‘unless it be otherwise provided by special rule or contract, the service of every government servant qualifies from the date he takes the charge of the post to which he is first appointed’. Rule 58 thereof provides that the service of a Government servant does not qualify for pension unless it conforms to the following three conditions:-

(i) The service must be under Government.



(ii) The employment must be substantive and permanent.

(iii) The service must be paid by Government.

(14) Keeping in view the above provisions, we are of the opinion that the service rendered by the petitioner as daily wage Choukidar under the Executive Engineer, Tubewell Division, Gaya cannot be said to be a service for which the petitioner was paid from the general revenue of the State Government or the service rendered on a substantive post in a permanent establishment. Such service, although was followed by absorption on regular establishment, will not qualify for pension. Therefore, the service rendered by the petitioner, as daily wage employee from April 1973 to December 1978, was not a pensionable service or did not qualify for pension. On his retirement from service or his superannuation from service, he would be entitled to pension for the service rendered on a substantive post from 1st January 1979 till the date he retired from service.”

15. Further, the letters of regularization dated 07.10.1993 also do not speak that their services shall be regularized with effect from the date of their initial engagement. It would also be relevant to observe here that the Apex Court in many of the cases denied the regularization with retrospective effect. reliance may be taken of **Union of India Vs. Sheela Rani, (2007) 15 SCC 230.**

16. In view of the aforesaid discussions made, hereinabove, it would be evident that services rendered on daily wages followed by regularization would not make the person entitle to pension and other benefits for the period in which he worked as daily wagers.



It is needless to say that, prior to 07.10.1993, the petitioners have rendered their services as daily wager and their claim for service benefits had also been considered earlier way back in the year 2013 and did not find any favor and, as such, the petitioners were fully aware of the fact that their claim for past services rendered as daily wages employees have already negated by the respondent agency, apart from the fact there is unexplained delay in assailing the order, which was passed in the year 2013 itself. Hence, this Court does not find any reason to interfere with the impugned orders as contained in Memo No. 66 dated 23.01.2013 and further the order contained in Memo No. 34 dated 02.03.2021.

17. Accordingly, the writ petitions are hereby dismissed having no merit.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.12.2022.
Transmission Date	NA

