

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 10913 of 2015

Ashok Kumar Ojha S/o Late Ramnandan Ojha, Resident of village- Khabra,
P.S.- Sadar, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. Civil Surgeon cum Chief Medical Officer, Muzaffarpur.
3. Additional Chief Medical Officer cum Drawing and Disbursing Officer, Muzaffarpur.
4. In-charge Medical Officer, Primary Health Centre, Kurhani Muzaffarpur.
5. In-charge Medical Officer, Additional Primary Health Centre, Chandrahathi (Kurhani) Muzaffarpur.
6. The District Treasury Officer, Muzaffarpur.

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Shiv Kumar, Adv.
For the State : Mr. Manish Kumar, GP-4

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 19-10-2023

The present writ petition has been filed for directing the Respondent authorities to pay arrears of salary to the petitioner from the date of termination of his services i.e. 08.07.2003 upto the date of his reinstatement in service i.e. 29.12.2008.

2. The brief facts of the case, according to the petitioner, are that an advertisement was published by the Civil Surgeon-cum-Chief Medical Officer, Muzaffarpur, inviting applications for appointment on different posts lying vacant in the Muzaffarpur Surgency including the post of Computer, in response whereof,



the petitioner had applied and was selected, whereafter, he was appointed, vide order dated 29.11.1984 and was posted at the Primary Health Centre, Gaighat, where he submitted his joining on 01.12.1984. It is the further case of the petitioner that after about 18 years of appointment, suddenly, the petitioner received a letter dated 21.02.2003, issued by the Civil Surgeon-cum-Chief Medical Officer, Muzaffarpur, asking 26 persons including the petitioner to file their explanation as to why their services be not terminated, to which the petitioner had filed his reply on 27.02.2003, clearly stating therein that he has been appointed by the Civil Surgeon-cum-Chief Medical Officer, Muzaffarpur, who is the competent authority for making appointment on the Class III & Class IV posts in the district and he has already worked for 18 years, hence equity demands that his services be not terminated. Thereafter, the petitioner & others had received another letter dt. 23.6.2003, asking them to submit all the relevant documents with regard to the validity of their appointment. Immediately, thereafter, the Civil Surgeon-cum-Chief Medical Officer, Muzaffarpur, vide letter dt. 25.6.2003, had directed the petitioner to file his show cause as to why First Information Report be not lodged against him since his appointment letter has been found to be forged, to which the petitioner had



submitted his show cause reply on 04.07.2003, wherein he had stated that he was appointed by one Dr. Dharamdeo Choudhary, the then Civil Surgeon-cum-Chief Medical Officer, Muzaffarpur, along with others, pursuant to conduct of due selection process as also had categorically stated that his appointment letter is not forged. Nonetheless, the Civil Surgeon-cum-Chief Medical Officer, Muzaffarpur, vide memo dated 08.07.2003, had terminated the services of the petitioner along with others.

3. The aforesaid order of termination dated 08.07.2003 was challenged by the petitioner, by filing a writ petition bearing CWJC No. 7236 of 2003, which was tagged with other writ petitions bearing CWJC No. 4702 of 2003 and other analogous cases and a coordinate Bench of this Court, by a judgment dated 08.09.2003, reported in **2003 (4) PLJR 282 (Sitendra Kumar Singh & Others vs. State of Bihar & Ors.)**, had allowed the writ petition, set aside the impugned orders of termination and directed for reinstatement of the writ petitioners including the petitioner herein, however, it was also observed that the writ petitioners including the petitioner shall not be entitled to salary / remuneration for the period they have not actually worked.

4. The aforesaid order dated 08.09.2003 was challenged by



the Respondents, by filing appeals bearing L.P.A. No. 162 of 2004 & other analogous cases, which was finally heard along with one L.P.A. No. 946 of 2003, however, the learned Division Bench of this Court, by a judgment dated 26.06.2006, reported in **2006 (3) PLJR 386**, had directed the authorities of the Health Department, Government of Bihar, Patna, to consider the cases of the affected employees for their regularization, in light of paragraph no. 44 of the judgment, rendered by a Constitution Bench of the Hon'ble Apex Court in the case of *Secretary, State of Karnataka & Others vs. Umadevi & Others*, reported in **2006 (2) PLJR (SC) 363**, within a period of six weeks.

5. The learned counsel for the petitioner has further submitted that thereafter, the Civil Surgeon-cum-Chief Medical Officer, Muzaffarpur, vide memo dt. 29.12.2008, had cancelled the order of termination dt. 08.07.2003 and posted the petitioner at the Additional Primary Health Centre, Chandrahathi (Kurhani), on the vacant post of clerk, however, it was stipulated that the petitioner would not be entitled to payment of any salary for the period right from the date of termination to the date of reinstatement, on the principle of no work no pay as also in view of the affidavit submitted by the petitioner to the effect that he would not claim wages / salary for the said period in future.



It is also submitted that there is no delay and laches on the part of the petitioner in approaching this Court since he has a recurring cause of action on account of salary having not been paid to him for the aforesaid period. In this connection, reliance has been placed on a judgment, rendered by the Hon'ble Apex Court in the case of *State of Madhya Pradesh & Ors. vs. Yogendra Srivastava*, reported in **2009 (4) PLJR (SC) 221**.

6. The learned counsel for the petitioner has next submitted that since the case of the petitioner is a case of wrongful termination, he is entitled to payment of the salary for the period he was forced to remain unemployed. Reliance has been placed on a judgment, rendered by the Hon'ble Apex Court in the case of *Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) & Others*, reported in **(2013) 10 SCC 324**, to submit that in case of wrongful termination, upon reinstatement, full back wages should be paid.

7. Per contra, the learned counsel for the Respondent-State has raised a preliminary objection with regard to the maintainability of the present writ petition, inasmuch as the present writ petition has been filed belatedly, after a great delay of about seven years. The learned counsel for the Respondent-State has submitted that the Hon'ble Apex Court, in a catena of



judgments, has held that while exercising extraordinary and equitable jurisdiction under Article 226 of the Constitution of India, the Constitutional Court, while protecting the rights of citizens, should simultaneously keep itself alive to primary principle that when an aggrieved person, without adequate reason, approaches the Court belatedly, at his own leisure or pleasure, the writ Court is not required to grant any indulgence to such indolent person and on the ground of delay and laches alone, the writ Court ought to throw the petition overboard at the very threshold. In this regard, the learned counsel for the Respondent-State has referred to the following judgments:-

- “(i). ***Chennai Metropolitan Water Supply & Sewerage Board & Others vs. T.T.Murali Babu***, reported in (2014) 4 SCC 108.
- (ii). ***State of Uttranchal & Anr. vs. Shiv Charan Singh Bhandari & Ors.***, reported in 2013 AIR SCW 6627.
- (iii). ***C. Jacob vs. Director of Geology & Mining & Anr.***, reported in AIR 2009 SC 264.
- (iv). ***State of Jammu & Kashmir vs. R.K. Zalpuri & Others***, reported in AIR 2016 SC 3006.
- (v). ***State of Tamil Nadu vs. Seshachalam***, reported in (2007) 10 SCC 137.

8. Now coming to the merits of the case, the learned counsel for the Respondent-State has submitted that even on merits, the petitioner does not have any case. Firstly, though the writ petition, filed by the petitioner and others, were allowed, by a



coordinate Bench of this Court, by a judgment rendered in the case of *Sitendra Kumar Singh & Others (supra)* and the impugned orders were set aside as also the petitioner was directed to be reinstated in service, however, it had also been directed by the learned Single Judge that the petitioner shall not be entitled to salary / remuneration for the period he has not actually worked and secondly, after the cases of the affected persons including the petitioner herein was remanded by the learned Division Bench of this Court and liberty was granted to the respondent-State, by the learned Division Bench of this Court, vide judgment dated 26.06.2006, to consider the case of the petitioner and other affected employees in view of the law laid down in paragraph no. 44 of the judgment, rendered by the Hon'ble Apex Court in the case of *Umadevi & Others (supra)* for regularization as a one-time measure, it was nowhere postulated that any back wages / salary shall be paid to the employees upon regularization of their services. Secondly, after the judgment was rendered by the learned Single Judge as also by the learned Division Bench of this hon'ble Court, as aforesaid, in the case of the petitioner and others, the petitioner had filed a representation on 24.12.2008, wherein he had requested the respondents to reinstate him and in lieu thereof, he



had undertaken not only to withdraw the case filed by him but had also assured that he would not claim any pay for the period right from the date of dismissal upto the date of reinstatement. In fact, the petitioner had also filed an affidavit before the respondents dt. 27.11.2008 to the effect that he would withdraw the case filed by him and shall not claim any pay for the period he was not in service. Consequently, the petitioner was reinstated, vide letter dated 29.12.2008, issued by the Civil Surgeon-cum-Chief Medical Officer, Muzaffarpur, mentioning therein that the petitioner shall not be paid any wages / salary for the period right from the date of termination upto the date of reinstatement / joining, on the basis of no work no pay as also in light of the undertaking furnished by the petitioner, as aforesaid. Thus, it is submitted that the claim of the petitioner for payment of back wages is neither legally tenable nor requires any consideration.

9. Having heard the Ld. counsel for the parties and having gone through the materials on record, this Court finds that the present writ petition is fit to be dismissed on the ground of delay and laches alone, inasmuch as the petitioner has though approached this Court for payment of salary for the period 08.07.2003 to 29.12.2008 but belatedly after a lapse of about 7



years, thus, considering the principles laid down by the Hon'ble Apex Court in a catena of judgments, as referred to by the Ld. counsel for the Respondent-State and recorded herein above in the preceding paragraphs, as also considering the maxim- "equity aids the vigilant and not those who slumber on their rights", this Court is of the view that since the petitioner has not filed the writ petition within a reasonable period of time, this Court is not under any legal obligation to entertain the writ petition, especially considering the fact that the petitioner has not offered any reason whatsoever, for the enormous delay which has taken place in approaching this Court, hence, the present writ petition is dismissed on the ground of delay and laches.

10. At this juncture, it would be appropriate to deal with the judgment, referred to by the learned counsel for the petitioner. As far as the judgment rendered in the case of ***Yogendra Srivastava*** (supra), is concerned, it would suffice to state that the facts and circumstances of the said case is absolutely distinguishable from the present case, inasmuch as the same pertains to non-fixation and non-payment of the non-practicing allowance, payable to certain categories of Medical Officers, which in any view of the matter is not only a recurring but also a successive wrong, inasmuch as denial of benefit occurs every



month, when the salary is paid, thereby giving rise to a fresh cause of action. However, the present case is not a case of recurring wrong, so as to give rise to fresh cause of action every month, inasmuch as the claim of the petitioner pertains to payment of salary only for a fixed period, during which he was not in employment, on account of termination of his services, apart from the fact that a coordinate Bench of this Court, by a judgment rendered in the case of **Sitendra Kumar Singh & Others** (*supra*), had though directed for reinstatement of the writ petitioners including the petitioner but had debarred them from payment of salary for the period they had not actually worked. Nonetheless, this Court finds that the Hon'ble Apex Court, in the aforesaid case of **Yogendra Srivastava** (*supra*) had restricted the consequential relief of payment of arrears to a period of three years, prior to the date of the original application.

11. In fact, in a judgment, rendered by the Hon'ble Apex Court in the case of **P. S. Sadasivaswamy vs. State of Tamil Nadu**, reported in (1975) 1 SCC 152, the Hon'ble Apex Court has held that in a service matter /promotion matter, an aggrieved person should approach the Court at least within six months or at the most a year of the arising of a cause of action and it would be a sound and wise exercise of discretion for the Courts to



refuse to exercise their extraordinary powers under Article 226 of the Constitution of India, in the case of persons who do not approach it expeditiously for relief and such petitions should be dismissed in limine, inasmuch as entertaining such petitions is a waste of time of the Court, the same clogs the work of the Court and impedes the work of the Court in considering legitimate grievances. In fact, in yet another judgment, rendered by the Hon'ble Apex Court in the case of ***Naresh Kumar vs. Department of Atomic Energy & Others***, reported in (2010) 7 SCC 525, the Hon'ble Apex Court has held that the High Court was not in error while dismissing the writ petition on the ground of unexplained delay and laches of about seven and a half years.

12. Even on merits, the petitioner has got no case, firstly for the reason that the learned Single Judge, while setting aside the termination order of the petitioner and others, by the aforesaid judgment dated 08.09.2003, had specifically held that the petitioner and similarly situated employees, upon reinstatement, would not be entitled to any back wages and secondly, on the ground that the petitioner had himself voluntarily furnished an undertaking, before reinstatement in service, vide affidavits dated 27.11.2008 and representation dated 24.12.2008 that he shall not claim any outstanding wages in future for the period



starting from the date of termination till the date of reinstatement / joining, thus, relinquishing his right to assert his claim resulting in acquiescence on his part, leading to him being estopped from claiming back wages.

13. As far as the judgment, referred to by the Ld. counsel for the petitioner, rendered in the case of *Deepali Gundu Surwase* (supra) is concerned, the same is also not applicable in the present case, inasmuch as the same postulates a situation where an order of termination has been set aside by the Court and the Court itself directs reinstatement and payment of back wages, however, in the present case, the Hon'ble Court has itself disentitled the petitioner from grant of any back wages.

14. Considering the facts and circumstances of the present case and for the reasons mentioned herein above in the preceding paragraphs, I do not find any merit in the present writ petition, hence the same stands dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	05.10.2023
Uploading Date	23.10.2023
Transmission Date	NA

