

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19461 of 2016

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Gajendra Prasad Yadav Son of Chhathu Lal Yadav. Resident of Village Aaini
Post Bhavadeva, Police Station Simari Bakhtiyarpur, District Saharsa.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director Primary Education, Government of Bihar, Patna.
3. The District Magistrate, Saharsa.
4. The Deputy Development Commissioner Saharsa.
5. Regional Deputy Director, Education, Koshi Division Saharsa.
6. The District Education Officer, Saharsa.
7. The District Program Officer, Establishment, Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Satish Kumar Singh
	:	Mr. Dinesh Maharaj
For the Respondent/s	:	Smt. Shilpa Singh- Ga12
	:	Ms. Abhanjalli
	:	Mr. R.V.P. Singh

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 12-09-2024 1. The petitioner has claimed payment of arrears of salary with effect from the date, the counterpart of the petitioner was given salary by the respondent/authority. The date from which the petitioner's counterpart was given salary is 24.12.1989 whereas the petitioner has been given salary with effect from 18.04.1995.

2. Brief facts of the case are that the petitioner was appointed in the primary school Sabaila by the Managing Committee on 26.11.1970. At the time of his appointment, the



petitioner was non-matric. However, as per the terms of the appointment letter, the petitioner completed his matriculation within two years in 1972 and continued to work in the school. The school was taken over on 09.07.1973 but the service of teachers like petitioner, including one Suresh Prasad Yadav and another were not absorbed due to restriction imposed upon absorption of the services of the untrained teacher in the light of the circular of the department, dated 31.07.1969. However, in 1981, the Government recommended for absorption of the services of the petitioner and similarly situated Teacher/Suresh Prasad Yadav *vide* letter no. 178, dated 13.01.1981. The petitioner and similarly situated Teacher/Suresh Prasad Yadav was regularized from the date of issuance of the letter on 17.12.1988.

3. After the absorption of the services of the petitioner, the salary was not being paid for which a representation was filed by the petitioner and similarly situated persons but the respondent/authority by a letter, dated 07.07.1995, started the salary of Suresh Prasad Yadav ignoring the claim of the petitioner. By another letter, dated 05.10.2004, the letter, dated 07.07.1995, was modified and the respondent decided to pay the salary to Suresh Prasad Yadav with effect



from 24.12.1989. Subsequently, by letter, dated 17.01.2006, the Regional Deputy Director of Education directed for payment of salary of the petitioner with effect from 18.04.1995.

4. Learned counsel for the petitioner submits that the petitioner has been discriminated by the respondent/authority inasmuch as the similarly situated teacher was paid salary with effect from 24.12.1989 by virtue of *Annexure 7*, dated 05.10.2004, whereas the petitioner has been paid the salary with effect from 18.04.1995. There is complete similarity between the petitioner and counterpart of the petitioner/Suresh Prasad Yadav as both were appointed by the Managing Committee in 1970 and were non-matric at the time of their appointment. The services of the petitioner and similarly situated teacher was also absorbed by a common letter, dated 17.12.1988.

5. On the other hand, learned counsel for the State argued that the petitioner has approached this Court after much delay inasmuch as the order, for payment of salary to the similarly situated person, was passed in 2004 and the petitioner approached this Court after twelve years and that too after the retirement of the petitioner in 2012. Learned counsel further relied upon a judgment of this Court, passed in C.W.J.C. No. 6945 of 2012, and submits that the claim of salary of the



petitioner in the writ application for the period 06.01.1981 to 07.03.1995 has been rejected by this Court on the ground of delay and latches.

6. I have heard learned counsel for the parties. The petitioner is claiming arrear of salary for the period of 1989 to 1995 on the ground that similarly situated teacher was paid the salary with effect from 1989 whereas the petitioner has been paid the salary from 1995. The order for payment of salary to similarity situated teacher was issued in 2004 while the petitioner was very much in service. The cause of action, as such, for the claim of salary arose in favour of the petitioner in 2004. The petitioner did not approach this Court in 2004. Subsequently, thereafter, in 2006, the order was passed for payment of salary to the petitioner with effect from 18.12.1995. At that stage also, the petitioner did not approach this Court demanding the similar treatment which was given to the similarity situated Teacher/Suresh Prasad Yadav, who was given salary with effect from 24.12.1989. The petitioner retired in 2012. Just after retirement also, petitioner did not approach this Court. However, after lapse of four years, from the date of retirement, the petitioner filed the present writ application claiming the salary with effect from 24.12.1989, the date the



salary was given to the counterpart of the petitioner.

7. In a judgment reported in **2015 1 SCC 347 The State of Uttar Pradesh and Others v. Arvind Kumar Shrivastava and Others**, the Hon'ble Supreme Court has held that normal rule is that when a particular set of employee is given relief by the Court, all other identically situated persons need to be treated alike by extending the benefit. However, this principle is subject to well recognized exceptions in the form of latches and delay 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 reasons that similarity situated persons who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of judgment rendered in the case of similarity situated persons be extended to them. They would be treated as fence sitters and latches and delay and or acquiescence would be valid ground to dismiss their claim.

8. Assuming that the petitioner kept on filing representation, no copy of representation has been brought on record after 2006 except the representation filed by the petitioner in 2005. The filing of representation after



representation does not extend the period of limitation and the writ application is fit to be dismissed on the ground of delay and latches. The delay and latches is one of the factors which is borne in mind by the Courts while exercising the discretionary jurisdiction under Article 226 of the Constitution of India.

9. In view of the fact that the petitioner approached the Court after much delay i.e., at least twelve years from the date of cause of action which had arisen in 2004 itself, I am of the view that no direction can be issued to respondents for shifting back the date of payment of salary to the petitioner from 1995 to 1989.

10. This writ application stands dismissed.

(Anil Kumar Sinha, J)

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