

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12517 of 2015

1. Md. Maniruddin S/o Jainul Awadin R/v Shivpur , P.O Shivpur, P.S Sandesh, Distt. Bhojpur (Arra).
2. Siyasan Prasad S/o Muneshwar Prasad R/v Gaurahapar, P.O. Barhauna, P.S Chandi, Distt Nalanda.
3. Upendra Prasad Singh S/o Ram Suresh Singh R/v Shai Math P.S Harnaut, Distt Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna.
2. The Director in Chief ,Health Services, Govt. of Bihar, Patna.
3. The Deputy Director, T.B.D.C. Health Services, Government of Bihar, Patna.
4. The Deputy Director, Health Services, Government of Bihar, patna.
5. Ramautar Prasad, B.C.G. Technician cum Typist, T.B.D.C Headquarter, Agam Kuan, Patna-7, Posted as a B.C.J. Technician cum Typist, Dharbhanga Medical College and Hospital, Laheriya Sarai, Dharbhanga.
6. Ratindra Prasad Yadav, Lab Technician T.B.D.C. Headquarter, Agam Kuan Patna -7, Posted as a Lab Technician T.B.D.C. Sub-Divisional Hospital, Danapur, Patna.
7. Ram Narayan Mistri S/o Jawahar Mistri R/v Chiraiyatar, Postal Part Road, No. 3B, P.S Jakkanpur Distt -Patna Posted as a Male ward Attendent at Section -4, Headquarter, Health Services ,New Secretariate, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vijay Kumar Sinha, Advocate
For the Respondent/s : Dr. Mankeshwar Tiwari, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 18-03-2024

Heard learned counsel for the petitioners and learned
counsel appearing on behalf of the State.



2. The present writ petition has been filed for a direction to the respondents to reinstate the petitioner in service when the respondent nos. 5 to 7 have already been reinstated in the service vide letter no. 11/T-4-46/95-337 (II) dated 31.08.1998 issued the Annexure-9 of the petition, the letter no. 11/T-5-57/95-435(II) dated 26.05.1997, the Annexure 18(a) of the petition and the letter no. 4/A7-23/94 839 (4) dated 10.09.2001 the Annexure-23 of the petition without notification when their appointment authority was the same person.

3. Learned counsel for the petitioners submits that the petitioners were appointed and were working as a B.C.J. Technicians at District Tuberculosis Center, Motihari and both the petitioners were appointed by Dr. A.A. Mallick, the then Deputy Director of Health Services, Government of Bihar, Patna. Learned counsel for the petitioners submits that the petitioners have filed their representations before the concerned authority.

4. Learned counsel for the State submits that the petitioners were appointed as B.C.J. Technicians under Tuberculosis wing of Health Department, Government of Bihar by one Dr. A.A. Mallick, the then Deputy Director (T.B.) Health Services, Bihar, Patna and petitioners were posted in the office of the District Tuberculosis Centre, Motihari and they were continued



till their termination and petitioners were terminated from service along with many others by a common order of Health Department, Bihar, Patna vide letter no. 528 (11), dated 30.04.1993 issued under the signature of Commissioner-cum-Secretary, Health Department, Government of Bihar, Patna.

5. Learned counsel for the State further submits that the matter pertaining to the appointment made by Dr. A.A. Mallick travelled up to the Hon'ble Supreme Court and the Hon'ble Supreme Court in its judgment in the case of Ashwani Kumar and Others Vs. State of Bihar and Others, reported in (1997) 2 SCC 1, referring to paragraph-19 which is as follows:

“19. However there is one human aspect which calls for our attention on the facts of the present cases. These 6000 employees got employed by Dr. Mallick over at least a decade. Many of them served for number of years and got confirmed. They would naturally have their families to support. For no fault of theirs they found themselves stranded in life midstream. Many might have got over aged. As Dr. Dhavan pointed out, many of them also got trained under the second phase of the Programme, as he would like to style it, pursuant to the Government Order dated 31.1.1987 referred to by us earlier. Under these circumstances justice would require that some effort to salvage their situation if possible may be made when the State undertakes a fresh exercise to fill up the sanctioned posts under the Tuberculosis



Eradication Programme which has come to stay. We are informed that tuberculosis is still not eradicated in the State of Bihar and the Programme is to last for couple of more years and may be it may assume a semi-permanent status. It was also not disputed that there are 2250 sanctioned posts or it may be that some more sanctioned posts may see the light of the day in near future. Shri Singh learned counsel for the respondent-State informed us that the State proposes to start on a clean slate and after following due procedure of recruitment would certainly recruit Class III and Class IV employees on the sanctioned vacancies and posts which will have to be filled up for making the Tuberculosis Eradication Scheme effective and fully operative. When that is the need of the day, it would be appropriate to direct the State to undertake that exercise at the earliest and while doing so after following the due procedure of recruitment and the rules governing the same, given an opportunity to these 6000 unfortunate creatures of Dr. Mallick to compete for the said posts in the future recruitment that may be undertaken by the State and in the process because of the experience which they have gathered in their past service under the Tuberculosis Programme and the training which they might have received pursuant to the Government Order dated 31.1.1987, due weight age also be given to them while considering their eligibility for being recruited in service as and when such future exercise is undertaken. Consequently we deem it fit to issue the following directions to the respondent State of Bihar in this connection :



1. Respondent-State of Bihar may start at the earliest a fresh exercise for recruiting Class III and Class IV employees in the Tuberculosis Eradication Programme undertaken by the State as a part of 20-Point Programme on the available 2250 vacancies or even more vacancies, as the case may be, preferably within three months from the receipt of a copy of this order.

2. Towards the said exercise the State will publish a notice in all the newspapers having circulation in the State inviting applications for direct recruitment to Class III and Class IV posts for filling up these vacancies in the said Programme.

3. Similarly names may also be called for from the concerned Employment Exchange for such recruitment.

4. If no statutory body composed of high-ranked officials for recruitment to Class III and Class IV employees is in vogue, the State is directed to constitute a committee consisting of three members, viz., (a) a member of the Public Service Commission; (b) a senior IAS officer, i.e., the Additional or Joint Secretary of the Health Department; and (c) a senior officer, i.e., the Director or Additional Director of Health Services, to select the candidates. The Additional or Joint Secretary of Health Department shall be the Chairman of the Committee.



5. *The respondent-State will constitute such a committee preferably within three months of the receipt of this order.*

6. *It would be open to all the appellants or those appointed by Dr. Mallick who might not have challenged their termination orders before any competent court up till now, to apply for selection to the concerned Class III and Class IV posts. The committee would in their cases as first step, verify and satisfy itself of the credentials of such candidates whether they were appointed by Dr. Mallick and had worked a least for three years continuously. The committee would also satisfy itself that such candidate or candidates honestly and meritoriously discharged their duties as Class III and Class IV appointees, at least for the said period.*

7. *The committee may fix total number of marks to be obtained by the candidates for being treated to have passed the selection test. Any relaxation in the minimum eligibility marks to be obtained by the Scheduled Casts, Scheduled Tribes and Other Backward Classes candidates as found necessary may also be decided by the committee. The committee if satisfied about the credentials and other particulars of the appellants or those appointed by Dr. Mallick as mentioned in paragraph (6) above, may allot additional marks to them for each of the three years and more for which they might have worked, at the rate of 2 marks for each completed year of continuous working, upto the maximum of 6*



marks, for each candidate. Candidates appointed by Dr. Mallick who are found to have undertaken training pursuant to the Government direction dated 31.1.1987 may be awarded 2 additional marks for the training so received. Those 2 marks will be in addition to the 6 marks which are to be awarded on completion of meritorious and honest service by the concerned employees as mentioned above.

8. If the concerned candidates who were earlier appointed by Dr. Mallick are found by the committee to be otherwise eligible for being appointed to Class III and Class IV posts as per the relevant rules and regulations and if on the basis of the marks allotted to them as aforesaid they become eligible to be appointed besides other competing candidates, then if they are found to have become age barred the condition of age for recruitment of such candidates should be relaxed appropriately so as to entitle such candidates to be considered for selection.

9. The State Government shall arrange sittings of the Selection Committee preferably within two months from the last date prescribed for submitting the applications and for completion of the preliminary scrutiny of such applications. The committee shall select all candidates on merits following the prescribed procedure in the appropriate circulars and rules and shall also follow the rules of reservation as in vogue and prepare the merit list and should submit it to the Government. While doing so the eligible candidates who were earlier



appointed by Dr. Mallick and who received the marks for their past meritorious service and training as aforesaid will be considered for selection qua the other candidates in the light of the weight age of the marks as aforesaid and in that light the committee will select all the candidates on merits and will prepare the select list of candidates found fit to be appointed to the concerned posts.

10. The committee will complete the process of selection preferably within three months from the date of its sittings for selection.

11. An appropriate authority or the government, as the case may be, will appoint preferably within three months from the date of the receipt of the merit list from the committee, the selected candidates as per roster and the merit list, on available vacancies, after due identification of the credentials of the candidates concerned as per its legally permissible procedure.

12. In the event of selection and appointment of erstwhile daily-rated employee or employees, who were inducted by Dr. Mallick, the entire proved period during which they had worked as daily wager and/or confirmed employees will be computed for the purpose of pensionary and other retrial benefits but they will not be entitled to claim any inter se higher seniority in the selection made by the committee or for any promotion on the basis of their previous service.”



6. Learned counsel for the State submits that pursuant to the direction of the Hon'ble Supreme Court, the State Government had published an Advertisement No. 01 of 1997 for appointment on the vacant post of different categories under the T.B. Programme, Health Department, Government of Bihar, Patna and the Bihar Public Service Commission, Patna had completed the selection process and furnished the list of successful candidates and the selection process has already been concluded and petitioners have not participated in the selection process and it appears that the petitioners were terminated from the post in question in the year 1993 along with other similarly situated other persons and the petitioners have approached the Hon'ble Court in the year 2015. Petitioners have not stated anywhere in the writ petition/there is no reasonable explanation in the pleadings that petitioners have challenged the termination order of the year 1993 in the year 2015. Learned counsel for the State relied upon a judgment/order of this Hon'ble Court dated 23.08.2016 passed in C.W.J.C. NO. 132 of 2016 and other analogous cases have been pleased to dismiss the writ petition of the petitioners on that grounds of suffering from gross laches and delay as well as on the principles that no fence sitter can be granted indulgence.



7. The petitioners should have approached this Court within a reasonable period of time with reference to Limitation Act i.e. three years since there is no time limit for filing the writ petition. At the same time, it is necessary to take note of laches on his part. The Hon'ble Apex Court in the case of State of Jammu and Kashmir Vs. R.K. Zalpuri and Others, reported in AIR 2016 Supreme Court 3006, referring to the paragraph-20 which is as follows :

“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 resolves;*
- (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.”*



8. Paragraph-20 of the aforesaid judgment laid down general principle before entertaining any writ petition. The writ court is duty bound to examine delay as well as laches. The present writ petition has been filed after 22 years from the date of passing of the impugned order dated 30.04.1993 is fit to be dismissed on the ground of delay and laches as the law is well settled that Court are meant who are vigilant and not for those who are indolent and sleepy.

9. There is no merit in the writ petition. It is accordingly dismissed.

(Rajesh Kumar Verma, J)

Ibrar//-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	21.03.2024
Transmission Date	N.A.

