

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1315 of 2012

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Shambhu Kumar Singh Son of Late Awadhesh Kumar Singh, Resident Of
Village - Bashra Kaji, P.O. Jaitpur Estate, P.S. Saraiya, District Muzaffarpur

... .. Petitioner/s

Versus

1. The Indian Oil Corporation Ltd. through the General Manager, G-9, Ali Yavar Jang Marg, Bandra East, Mumbai
2. The General Manager (Marketing Division), The Indian Oil Corporation Ltd. G-9, Ali Yavar Jang Marg, Bandra East, Mumbai
3. The Deputy General Manager (H. R.), Eastern Region, The Indian Oil Corporation, Indian Oil Bhawan-2, Gariahat Road, South Kolkatta
4. The Manager, The Indian Oil Corporation Ltd., Barauni Refinery, P.O. Barauni Oil Refiner, Begusarai

... .. Respondent/s

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Appearance :

For the Petitioner/s :	Mr.Vijay Kumar Singh, Advocate
For the Indian Oil Corp. :	Mr. K.D.Chatterji, Sr. Advocate
	Mr. Amlesh Kumar Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 04-07-2024

Heard Mr. Vijay Kumar Singh, learned counsel appearing on behalf of the petitioner and Mr. K.D.Chatterji, learned Senior Counsel along with Mr. Amlesh Kumar Verma, learned counsel appearing on behalf of the Indian Oil Corporation Ltd.

2. The petitioner in paragraph no. 1 of the present writ petition has sought *inter alia* following relief(s), which is reproduced hereinafter:-

*“For issuance of an appropriate writ in the nature of **Certiorari** for quashing the order dated 08.08.2011 passed by the Respondent*



No. 3 and contained in his Ref. No. P&A/1331/SPF/ER dated 08.08.2011, whereby and where under the Respondent No. 3 has been pleased to communicate that R-3 Option under the SABF Scheme is not admissible to a married child and directed the petitioner to exercise option R-1 under the SABF Scheme.

*(ii) For issuance of an appropriate writ in the nature of **Mandamus**, commanding and directing the Respondent Authorities to provide a suitable appointment to the petitioner on compassionate grounds whose father died in harness on 05.11.2007, while he was in services of the respondents.*

(iii) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

3. The facts, in brief, giving rise to the present writ petition are as under :

(i) The father of the petitioner had died on 06.11.2007.

(ii) The petitioner claiming to be the eldest son of the deceased employee had filed an application (undated) opting R-3 Option under the “Superannuation Benefit Fund Scheme”, (hereinafter to be referred as the “SABF Scheme”) for considering his case for being appointed on compassionate ground.

(iii) The petitioner has admitted in the writ petition that he was married on the date he had filed the application but



no clear date has been mentioned anywhere in the writ petition.

4. The claim of the petitioner has been rejected on the ground as stated in the counter affidavit that the respondents having found that Option R-3 under SABF Scheme is not admissible to a married child and had directed the petitioner to exercise Option R-1 under SABF Scheme considering his entitlement for Option R-1, which relates to grant of terminal benefit to the petitioner. The petitioner in this regard was communicated the Board of Trust's decision held on 06.12.2006, as contained in **Annexure R/2** to the Counter Affidavit filed on behalf of the respondents. In pursuance of the said communication, after waiting for some time, the respondents released an amount of Rs. 7.57 lacs, Rs.7.45 lacs and Rs. 7.45 lacs respectively in the year 2008 and 2011 in favour of Sambhu Kumar Singh, Rohit Kumar and Raj Kumar Singh , sons of the deceased employee, on account of settlement of terminal benefits.

5. Mr. K.D. Chatterji, learned Senior Counsel appearing on behalf of the respondents (Indian Oil Corporation Ltd.) informs that at the relevant point of time, the deceased employee had left behind him three sons and the petitioner being the eldest son placed his choice for Option R-3 of SABF



Scheme, which was rejected considering his marital status. He further clarified that in respect of other two sons of the deceased employee including the petitioner, the respondents took decision to grant Option R-1 of SABF Scheme and communicated to all the three sons of the deceased employee vide letter no. P&A/1331/SBF/ER dated 22.11.2007, pursuant to the 33rd meeting of the Board of Trust held on 06.12.2006. The decision was followed by the Inter Office Memo dated 03.04.2007 in marketing division, wherein it was clearly stated that Option R-3 is inadmissible to the married children of the deceased employee. All the three sons being entitled to their share of terminal benefits were accordingly paid.

6. Learned counsel further proceeded to clarify the fact that the petitioner can not take benefit of the decision of the Board in respect of Option R-3 under the scheme of employment, which came on a later date i.e. in the year 2012 vide Inter Office Memo No.DP/3/21/83 dated 15.11.2012 whereas the petitioner's father had died on 06.11.2007. The petitioner at the belated stage can not claim to be considered for appointment on compassionate ground also on the ground of delay and laches and his family had not faced any financial hardship. The entire terminal benefits were given to all the sons



of the deceased employee, which was released in the year 2008 and 2011 and specific statement in this regard is made in paragraph no.16 of the supplementary counter affidavit.

7. Learned counsel further submitted that the writ petition itself fails on the point of delay and laches considering the fact that the petitioner's father had died on 06.11.2007 and the writ petition has been filed after much delay in the year 2012.

8. Learned counsel further submitted that the law in this regard is no more *res integra* and has relied upon the decision of the Apex Court in the case of (i) **Director of Education & Anr. vs Pushpendra Kumar & Ors.** reported in (1998) 5 SCC 192, (ii) **Umesh Kumar Nagpal vs. State of Haryana** reported in (1994) 4 SCC 138 and (iii) **Sanjay Kumar vs. State of Bihar & Ors.** reported in (2000) 7 SCC 192.

9. Learned counsel has also relied upon Paragraph nos.4 and 5 of decision of the Hon'ble Division Bench of this Court passed in the case of **Santosh Kumar Vs. The State of Bihar** reported in (2015) 3 PLJR 42, which is *inter alia* reproduced hereinafter as follows : -

*“4. We agree with the learned Single Judge.
Further it appears that at the time of death of*



late Ram Sohawan Sharma the appellant was already married having wife and two children.

5. We are not inclined to believe that the appellant, a grown up man, having his family, was still a dependent on his father at the time of the death of his father late Ram Sohawan Sharma.”

10. Before I proceed to decide the writ petition on merit, preliminary question arises - whether the writ petition, which has been filed after delay of nearly five years after the death of his father can it be entertained? It is well settled law laid down by the Apex Court that if it is found that the writ petitioner is guilty of delay and laches, the High Court should dismiss it at the threshold. Close to the facts of this case, the Apex Court in **“C. Jacob Versus Director of Geology and Mining and Other** reported in **(2008) 10 SCC 115**, having found that the employee suddenly brought up a challenge to the order of termination of his services after 20 years and claimed all consequential benefits, held that the relief sought for was inadmissible. The legal position in this regard was laid out in the following terms:-

“10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be



replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. *When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action."*

12. Reiterating the aspect of delay and laches would dis-entitle the discretionary relief being granted, the Apex Court in the case of **Chennai Metropolitan Water Supply & Sewerage board V. T.T. Murali Babu**, reported in **(2014) 4 SCC 108** has held in paragraph no.16 which is reproduced hereinafter :-

"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 scrutinize 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”

14. It is reflected from the records that the petitioner had not challenged the scheme, as well as, the decision of the Board of Trust dated 06.12.2006, as well as, the terminal benefit granted to the petitioner’s family including his two brothers. The record also reveals that vide letter dated 22.11.2007 addressed to three children, namely, Sambhu Kumar Singh, Raj Kumar Singh and Rohit Kumar, they were informed that they are entitled to opt Option R-1 of SABF Scheme and the said communication has also not been challenged by any of the sons of the deceased employee.

15. Learned counsel further submitted that there cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief and in this regard, the learned counsel has relied upon the law laid down by the Apex Court in the case of **Director of Education & Anr. Vs. Pushendra Kumar & Ors.** reported in (1998) 5 SCC 192. The learned counsel has further submitted that the object of making compassionate appointment, which is



exception, is to provide immediate financial assistance to the family of a government servant, who died in harness when there is no other earning member in the family. In this regard he has relied upon (i) **Director of Education** (supra), (ii) **Umesh Kumar Nagpal** (supra) and (iii) **Sanjay Kumar** (supra)

16.The law regarding compassionate appointment is no more *res integra* and as on date, it has been crystallized holding that the purposes of providing employment to a dependent of a government servant dieing in harness, preference to anybody else is to mitigate the hardship caused to the family of the employee on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are rules providing for such appointment. None of the consideration can operate in the case of the petitioner, who had not made application soon after the death of the employee also considering the fact that he was married and was supporting his family independently. The reason for making compassionate appointment, which is exceptional, is to provide immediate financial assistance to the family of a government servant, who dies in harness, when there is other no earning member in the family.



17.The petitioner is otherwise also not entitled for any relief taking into consideration the ratio laid down in the case of **Santosh Kumar** (supra) considering his marital status as he was able to support his family, therefore, he can not be considered to be a dependent on his father at the time of death of his father.

18. The writ petition is accordingly dismissed in the above terms.

19. There shall be no order as to costs, pending application, if any, shall stand disposed of.

(Purnendu Singh, J)

chn/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11.07.2024
Transmission Date	NA

