

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1087 of 2019

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1. Dr. Krishna Kant Ojha Son of Late Pandit Chhedi Ojha, Resident of Mohalla Friends Colony, Bimal Utsav Palace, Pakari, P.S. Nawada, District Bhojpur at Ara
 2. Saroj Tiwary Wife of Late Kamla Kant Tiwari Resident of Neelkanthpuram Colony, Chunar Road, Kandwa, Chitaipur, Kandwa, Varanasi (U.P.).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal, Department of Health, Family Welfare, Government of Bihar, Patna.
2. The Joint Secretary-Cum-Director, Indigenous Medicine, Government of Bihar, Patna.
3. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
4. The Deputy Secretary, Department of Finance, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shiv Kumar
For the Respondent/s : Mr. Binod Kr. Yadav

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

4 10-07-2024

I.A. No. 01 of 2024.

Initially, learned counsel for the petitioners submit that present interlocutory application has been filed for amendment in the prayer portion of the present writ petition with a prayer to quash the order contained in Memo No. 333 dated 28.03.2024 passed by the Deputy Secretary, Department of Health, Government of Bihar by which the representation of the petitioners requesting for enhancement of their age of superannuation from 60 years to 62 years at par with the



similarly situated person has been rejected.

2. Counsel for the State submits that such development has taken place during the pendency of this case, therefore, the State has no objection in allowing the same.

3. In the light of the said circumstances, *I.A. No. 01 of 2024* is hereby allowed and the prayer made in the above-mentioned Interlocutory application for quashing of the Memo No. 333 dated 28.03.2024 shall now be treated as the part and parcel of the prayer of the writ petition.

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4. Heard learned counsel for the petitioner and learned counsel on behalf of the State.

5. The present writ petition has been filed for directing the respondent authorities to allow the petitioners to work till the completion of age of 62 years as per the notification issued vide Memo No. 8549 dated 23.11.2007 passed by the Deputy Secretary, Department of Finance, Government of Bihar, by which the doctors in Allopathic Cadre has been ordered to retire after completion of the age of 62 years but in the case of the Ayurvedic, Homeopathic and Unani although, they are similarly situated, the decision formally has not been taken into consideration and further prayer has been



made to quash the order contained in Memo No. 333 dated 28.03.2024 passed by the Deputy Secretary, Department of Health, Government of Bihar which has been inserted by the I.A. No. 01 of 2024.

6. Counsel for the petitioner submits that the similarly situated persons as like that of the petitioner has moved earlier before this Court C.W.J.C. No. 12144/2008 vide order dated 21.09.2017 in which the petitioner has filed an interlocutory application bearing I.A. No. 7397 of 2008, and subsequently, got knowledge that other similarly situated persons have been granted relief. Thereafter, he filed representation before the Principle Secretary, Health Department and requested that his services may be treated for 62 years. He submits that no order has been passed on the said representation. Therefore, he has filed the present writ petition. Counsel for the petitioner further submits that during the pendency of the writ petition order has been passed in which the claim of the petitioner has been rejected on the ground being time barred.

7. Learned counsel for the State on the other has submits that a counter affidavit has been filed. He submits that in the operative part of the order dated 28.03.2024, It has been categorically mentioned that the petitioner has joined the service



on 13.07.1975 and retired on 31.07.2008. In the year 2009, the retirement age has been extended from 60 to 62 years and petitioner has completed 62 years in 2009 but petitioner has not filed any representation prior to his retirement rather he filed his representation in 2013 i.e. after completion of his 62 years of age. Hence, he has no case and it has rightly been rejected by the authority.

8. Learned counsel for the respondent further relied on the Judgment which he has annexed as Annexure R/B in the counter affidavit i.e. order dated 23.06.2023 passed in the case of ***Dr. Jaswant Singh Vs. the State of Bihar and Ors.*** contained in *C.W.J.C. No. 13 of 2022* in which it has been held that the application of the petitioner to be hopelessly barred by delay and laches, and therefore, the same has been dismissed.

9. Upon hearing the parties, and going through the documents, it transpires to this Court that petitioner has filed his interlocutory application prior to his age of retirement and in this regard he has mentioned in his representation about the said Interlocutory Application that being I.A. No. 7397 of 2008 in C.W.J.C. No. 12144/2008. He submits that it is true that no order has been passed on the said Interlocutory application but due to oral observation made in the interlocutory application, he



filed the present writ petition in the year 2018 which was numbered in the year 2019. Counsel for the respondent further submits that the case has been covered under Section 4 (C).1 of the Bihar State Litigation Policy, 2011 but in transpires to this Court that *Section 11 Explanation (V)* of the Code of Civil Procedure states as follows:-

“Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.”

10. Meaning thereby when a situation, no order has been passed on any petition, then it shall be assumed that Court has rejected the prayer of the petitioner and petitioner ought to take further steps, but petitioner has filed his representation in the year 2013 i.e. after his date of retirement which is admittedly in the year 2009 and particularly in the light of the judgment of this Hon'ble Court in the case of ***Dr. Jaswant Singh Vs. the State of Bihar and Ors.*** Whose operative part is as follows:

“The petitioner retired on attaining the age of 60 years on 31.12.2008. He claims to have retired from the post of Professor from the Government Ayurvedic College, Patna.

The writ application has been filed after 14 years seeking a direction that his age for retirement should be declared to be 62 years instead of 60 years.

The petitioner places reliance on decision passed in the year 2017 on a writ petition filed by the petitioners therein who had asserted their rights way back in the year 2008 itself, in CWJC No. 9667 of 2008 with analogous cases.



The claim of the petitioner is clearly barred by delay and laches.

The law is very clear. A person, who is not diligent about his rights and sleeps over his right inordinately, cannot be permitted to wake up from his deep slumber and approach this Court as and when he pleases, as is evident from decision of the Hon'ble Apex Court in the case of State of Uttaranchal & Anr. v. Shiv Charan Singh Bhandari & Ors. reported in (2013) 12 SCC 179.

The application appears to be hopelessly barred by delay and laches and the same is dismissed.”

11. This Court is of the firm view that in the light of the reasons mentioned above petitioner's claim has become barred by delay and laches and relief prayed by him cannot be considered.

12. As such, the writ application is dismissed.

(Dr. Anshuman, J)

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