

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13980 of 2021

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Surendra Ram Son of Late Ram Chandra Ram @ Ram Chandra Mallick,
Resident at Mohalla-South Mandiri, Police Station-Kotwali, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through, the Principal Secretary,
2. The Principal Secreary, Health Department, Bihar, Patna.
3. The Director-In-Chief Health Services, Govt. of Bihar, Patna.
4. The Chief Secretary, General Administration Department, Bihar, Patna.
5. The District Magistrate, Patna District-Patna.
6. The Superintendent, Patna Medical College and Hospital, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rabindra Prasad Singh, Advocate
For the Respondent/s : Mr. Kamlesh Kishore, AC to SC-12

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 13-12-2023

1. The present writ petition has been filed for setting aside the termination of the services of the petitioner from Class-4 post at Patna Medical College and Hospital, Patna (hereinafter referred to as the “PMCH”) and for directing the respondents to regularize the services of the petitioner as a 4th Grade employee at PMCH.

2. The brief facts of the case, according to the petitioner, are that the petitioner was appointed on the post of Kakshpal at PMCH, in the year 1978, however, he was suddenly terminated from service in the year 1990, whereafter he had filed a writ



petition, bearing CWJC No. 6580 of 1995, however, the same had stood dismissed but with an observation that in case any appointments are made, the petitioner along-with other eligible candidates shall be considered for appointment on the post of Kakshpal. It is submitted by the learned counsel for the petitioner that thereafter, the petitioner had filed several representations before the District Magistrate, Patna and the Superintendent, PMCH, Patna, however, his service has not been regularized till date, thus the respondents be directed to regularize the services of the petitioner.

3. Per contra, the learned counsel for the respondent-State has submitted by referring to the counter affidavit, filed by the respondent no. 05 and 06 that the present writ petition is not only barred by the principles of res-judicata but also marred by the principles of delay and laches. Nonetheless, it is submitted that the petitioner had filed a writ petition, bearing CWJC No.6580 of 1995, inter alia praying therein for regularization of his services as a sweeper in PMCH, Patna, however, the said writ petition was dismissed by an order dated 21.05.1996, with an observation that no positive direction can be given to the authorities, including PMCH to make appointments without proper advertisement and without adopting the proper procedure



for such appointments, hence in case regular appointments are made in PMCH, after following the procedure, in accordance with law, the petitioner along-with other eligible candidates shall be entitled for consideration. The relevant portion of the aforesaid order dated 21.05.1996 is reproduced herein below:-

“A counter affidavit has been filed in this case on behalf of the respondents. From the counter affidavit, it appears that following the directions given by this court in C.W.J.C.No. 2214/90 the State Government constituted a committee to examine the cases of all the Awaj Karamcharies for regularization of their services. In the counter affidavit it is further stated that the petitioner's claim that he had worked in the Patna Medical College & Hospital from 1984 to 1990 was not borne out from the records and the Committee which had examined and processed the cases of Awaj Karamcharies had not found the petitioner working in the Hospital as one of them. It is further stated that on the basis of the recommendations of that committee the services of a number of Awaj Karamcharies were regularized. It is also stated that the Health Department vide its letter, dated 4.11.1986 had put a total ban on the system of Awaj Karamcharies and had directed the Superintendent, Patna Medical College & Hospital not to keep any person as Awaj Karamchari. In view of the categorical and definite assertions made in the counter affidavit, no relief can be granted to the



petitioner in this application. However, before parting with the records of this case it may be noted that this court, in two cases, namely C.M.J.C. No. 4637/91 (date of disposal 3.7.1995) and C.W.J.C. No. 9536/94 (date of disposal 21.08.1995) gave positive directions to the authorities that no appointments in the government establishments, including the Hospital, could be made without proper advertisement and without adopting the proper procedure for such appointments.

Following those, directions, it is observed that regular appointments may be made in the Patna Medical College and Hospital after following the procedure in accordance with law and in case any appointments are made the petitioner along-with other eligible candidates will be entitled for consideration.

In the result, this application is dismissed with the above observations and directions.”

4. The Ld. counsel for the respondents has further submitted that no appointment of 4th Grade Staff has been made by the Superintendent, PMCH, till date.

5. I have heard the learned counsels for the parties and perused the materials on record from which it is apparent that the petitioner had earlier approached this Court, by filing a writ petition bearing CWJC No.6580 of 1995, for regularization of



his services as also for appointment as sweeper/Awaj Karamchari in PMCH, Patna, however, the same was dismissed by an order dated 21.05.1996, as aforesaid, hence this Court finds that the present writ petition is not only barred by the principles of res-judicata but also by the principles of Constructive Res Judicata inasmuch as in the garb of the present writ petition, the petitioner is again seeking regularization of his services since at the time of filing of the previous writ petition i.e CWJC No.6580 of 1995 also he was not in service. Reference in this connection be had to the judgments, rendered by the Hon'ble Apex Court in the case of **Devilal Modi v. STO**, reported in **AIR 1965 SC 1150**, the one rendered in the case of **State of U.P. v. Nawab Hussain**, reported in **(1977) 2 SCC 806**, the one rendered in the case of **Central Bank of India v. Dragendra Singh Jadon**, reported in **(2022) 8 SCC 378**, the one rendered in the case of **Beerbal Singh v. State of U.P.**, reported in **(2018) 13 SCC 675**, and the one rendered in the case of **Orissa Power Transmission Corpn. Ltd. v. Asian School of Business Management Trust**, reported in **(2013) 8 SCC 738**.

6. In fact, the Hon'ble Apex Court has even deprecated the practice of filing repeated writ petitions for same and similar relief. Reference in this regard be had to the judgments reported



in *AIR 1968 SC 111 (Hular Rai Baijnath Firm v. K.B. Das and Company)*, the one reported in *AIR 1999 SC 509 (Upadhyay and Company v. State of U.P.)*, the one reported in *(1996) 4 SCC 378 (Staff Association and others v. State Bank of India and others)* and the one reported in *(1997) 2 SCC 534 (Avinash Nagra v. Navodaya Vidyalaya Samiti and others)*.

7. Yet another aspect of the matter is that the petitioner has approached this Court belatedly after a lapse of about 31 years or at least 27 years, if counted from the date of disposal of the earlier writ petition, filed by the petitioner, thus the present writ petition is also barred by the principles of delay and laches. 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, it would be gainful to refer 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. Having regard to the facts and circumstances of the case, this Court finds that the present writ petition is not maintainable being barred by the principles of res judicata as also marred by the principles of delay and laches, apart from being devoid of any merit, for the reasons mentioned herein above, thus the same stands dismissed.

(Mohit Kumar Shah, J)

Saurav/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.12.2023
Transmission Date	NA

