

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10331 of 1998

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1. Nagendra Mohan Jha S/o Late Jai Bhadra Jha resident of Police Colony, Ashiana Road, Patna 25, at present posted as Dy S.P. BMP, 16 Nausa Phulwarisharif, Patna
 2. Rajya Prakash Verma S/o Sri Uma Nath Verma, resident of 61/D, S.K. Puri, Patna at present posted as Dy S.P. (Admn) Railway Office of DIG (Rail), Patna
- Petitioners

Versus

1. The State of Bihar
 2. The Secretary, Department of Home, Government of Bihar
 3. The Director General of Police, Patna
 4. Sri Shashi Bhushan Rai (Sergeant Major Cadre) C/o DGP, Patna
 5. Sri Rameshwar Singh, (Sergeant Major Cadre) C/o DGP, Patna
 6. Sri Awadh Bihari Pandey, (Sergeant Major Cadre) C/o DGP, Patna
 7. Sri Maheshwar Jha, (Subedar Cadre) C/o DGP, Patna
 8. Sri Kedar Nath Singh, (Subedar Cadre) C/o DGP, Patna
 9. Sri Lakshi Chandra Rai, (Subedar Cadre) C/o DGP, Patna
- Respondents

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Appearance :

For the Petitioners : M/s. Umesh Pd. Singh, Sr. Advocate
Rajendra Kr. & Nilanjan Chatterjee, Advocates

For the Respondents: Mr. Roy Shivaji Nath (AAG 3)
Mr. S. K. Ravi, AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 31-03-2015

When this writ application was filed nearly 16 and half years ago, 17 years had already elapsed from the date when cause of action had arisen. How casually this writ application was pursued even after institution will be evident from the fact that it was dismissed thrice for non prosecution.

2. Since I am satisfied, in the facts and circumstances of the case, that claim of the petitioners was belated, even on the date of institution of the writ application on 25.11.1998, and no tangible reason for such delay has been tendered, I am not



inclined to entertain this writ application under Article 226 of the Constitution of India. I have, therefore, in the present judgement, not dealt with rival submissions of the parties touching the merits of the case as to whether the petitioners' date of confirmation in service should be revised from 1981 to 1977 as Sergeant Majors and whether the petitioners are entitled for a direction to revise the dates of their promotion order as Dy S.P. from 1987 to 31.12.1981. I have, however, referred to such facts which are essential for coming to a conclusion, whether this writ application can be entertained at all, instituted nearly 17 years after the date of accrual of cause of action.

3. This writ application was filed on 25.11.1998 seeking following relief:-

“(I) To issue a writ of mandamus commanding the respondents to revise the confirmation order of the petitioners in the rank of Sergeant Major from 1981 to 1977 in terms of the Bihar Police Manual Rule 668 read with Appendix 41 of the Bihar Police Manual Part III after the expiry of two years' probation period with effect from the date of promotion; and further for a direction to revise the promotion order of the petitioners in the rank of Dy S.P. from 1987 to the date prior to 31.12.1981 i.e. from the date when the persons confirmed in the year 1977 as Sergeant Major have been promoted with all consequential benefits, such as seniority I the rank of Dy S.P. as Junior Selection Grade, Senior Selection Grade and arrears of salary which has been provided to the persons junior to the petitioners.”

4. On 11.02.2004 when the matter was taken up,



there was no representation on behalf of the petitioners and accordingly the writ application was dismissed. Subsequently, vide order dated 03.11.2004 passed in MJC No. 1615/2004 by this court, the writ application was restored to its original file. Again on 25.11.2004 when the matter was taken up, in the absence of any representation, the writ application was dismissed. Again by an order dated 16.03.2005 passed in MJC No. 211 of 2005, this writ application was restored to its original file. Till 07.04.2005, the persons whose seniority would have been adversely affected, in case the relief sought for in the writ application were granted, were not impleaded as party respondents. An application for addition of parties was filed in the year 2005 and by an order dated 29.04.2005, private respondents were allowed to be impleaded as parties. The matter was, thereafter, taken up on 04.12.2006 but again for non representation, the writ application stood dismissed for default. It was again restored by an order dated 26.11.2007 passed in MJC No. 3186 of 2006 by this court. By an order dated 02.07.2009, this writ application was admitted for hearing. Subsequently also on 21.12.2011 and 04.04.2014, the matter had to be adjourned because of non representation.

5. It has been stated at the Bar that petitioner No.3 died during the pendency of the writ application. There is no

application for substitution of his legal heirs and representatives. Respondents Nos. 7 and 9 also are said to have died and their names have been expunged, but they too have not been substituted by their legal heirs.

6. Briefly stated the facts are that the petitioners were appointed as Sergeant in the year 1966. Petitioner No.1 was promoted to the post of Sergeant Major on 08.03.1975 whereas petitioner No.2 was promoted as Sergeant Major on 08.05.1975. They have been confirmed as Sergeant Majors with effect from 08.02.1981. They have a grievance that they should have been confirmed as Sergeant Majors on completion of two years of service in the year 1977 itself.

7. 50% posts of Dy S.P. in the State of Bihar are admittedly to be filled up by promotion from three cadres, namely, (i) Inspector of Police of Bihar Police, (ii) Subedar of Bihar Military Police and (iii) Sergeant Majors. For the purpose of promotion to the post of Dy S.P. a joint seniority list was prepared of Inspectors of Bihar Police, Subedars of Bihar Military Police and Sergeant Majors. The date of confirmation of the respective officers on the posts of Inspector of Police/ Subedar/ Sergeant Major was the basis for determination of seniority.

8. In the background of these two short facts, it is



plea of the petitioners that had they been confirmed as Sergeant Majors in the year 1977 by operation of Rule 668 read with Appendix 41 of Bihar Police Manual, they would have ranked higher in the seniority list. It is their second plea on which much emphasis has been laid in course of submission that the date of confirmation was wrongly taken as criteria for determination of seniority and the date of actual promotion ought to have been the criteria for preparation of seniority list.

9. According to the petitioners, certain persons including the private respondents, who were though promoted to the rank of Subedar after petitioners were promoted to the post of Sergeant Majors, were placed above the petitioners merely because their dates of confirmation as Subedar was prior to the dates of confirmation of these petitioners as Sergeant Majors.

10. This is not in dispute that the promotions were granted to such Subedars, which is the subject matter of the present writ application, with effect from 31.12.1981 vide notification issued on 22.09.1987, which is annexure-1 to the present writ application.

11. Mr. Umesh Prasad Singh, learned senior counsel appearing on behalf of the petitioners, heavily relying upon Supreme Court judgement in the case of *S. B. Patwardhan & anr. V. State of Maharashtra* reported in *AIR 1977 SC 2051*,

has contended that the date of officiation is relevant for determination of seniority which should have been followed by the State respondents while preparing the seniority list.

12. From the pleadings in the writ application and other materials on record, I find that there is no explanation why the petitioners did not approach this court immediately after the cause of action arose in the year 1977 with effect from the date they claimed that they should have been confirmed as Sergeant Majors or in the year 1981 when the petitioners were confirmed as Sergeant Majors with effect from 18.02.1981, asserting their right that they should have been confirmed as Sergeant Majors in the year 1977 itself. In such circumstance, it is difficult for this court to entertain the present writ application instituted more than a decade when the cause of action accrued. This is not in dispute that the petitioners have been allowed promotion to the post of Dy S.P. with effect from 22.09.1987 but they did not raise any grievance that their dates of promotions should have been earlier date with effect from which certain Subedars, who were junior to the petitioners, as per the date of officiation, were allowed such promotion.

13. Mr. Umesh Prasad Singh, learned senior counsel, has submitted that at this stage the writ application should not be dismissed on the ground of delay and laches as this would

amount to reviewing the order admitting the writ application. He has submitted that the petitioners have complained violation of fundamental right under Articles 14 and 16 of the Constitution of India and have sought for relief in terms of the Supreme Court decision and they have been wrongly given the benefit of promotion with effect from 22.09.1987 which should have been given to them with effect from 31.12.1981.

14. I am not convinced with the submission made by Mr. Singh, learned senior counsel. Admission of the writ application will certainly not amount to condoning the inordinate delay in approaching this court under writ jurisdiction. At the stage of final hearing the court is called upon to deal with each and every aspect involved as the High Court exercises the jurisdiction of issuance of prerogative of writs in a proceeding under Article 226 of the Constitution of India, issuance of which can be denied for various reasons including inordinate delay in approaching this court.

15. The Supreme Court has repeatedly held that belated claim cannot be entertained by the High Court under Article 226 of the Constitution of India, unless tangible explanation is tendered. Reference may be made in this regard to paragraphs 10, 11 and 14 of the judgement in the case of *Delhi Administration v. Kaushilya Thakur* reported in (2012) 5

SCC 412. Reference may also be made in this regard to the Apex Court judgements reported in the case of **C. Jacob v. Director of Geology & Mining, (2008) 10 SCC 115, Naresh Kumar v. Department of Atomic Energy, (2010) 7 SCC 525** as well as **S. S. Balu & anr. v. State of Kerala & anr, (2009) 2 SCC 479.**

16. Mr. Roy Shivaji Nath, learned AAG 3, is right in his submission while relying upon Supreme Court judgement in case of **Govt. of A. P. v. M. A. Kareem** reported in **(1991) Supp. II SCC 183** (paragraphs 11 and 16) and **Bimlesh Tanveer v. the State of Haryana & Ors** reported in **AIR 2003 SC 2000.**

17. I, accordingly, refuse to entertain this writ application on the ground that the relief sought for is belated one and such prayer cannot be entertained in a proceeding under Article 226 of the Constitution of India.

This writ application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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