

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4499 of 1999

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Ram Binay Roy, Son of late Ram Narain Roy, resident of Village-Salempur, P.O.-
Rupauli, P.S.-Sarai Ranjan, District-Samastipur.

.... **Petitioner**

Versus

1. The High Court of Judicature at Patna, through the Registrar General, Patna High Court, Patna.
2. The District & Sessions Judge, Madhubani, District-Madhubani.
3. The Registrar, Civil Court, Mdhubani, District-Madhubani.
4. The State of Bihar through the Secretary, Law Department, Government of Bihar, Patna.

.... **Respondents**

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Appearance :

For the Petitioner : Mr. Yogendra Mishra, Advocate
For the Respondent Nos. 1 to 3 : Mr. Satyabir Bharti, Advocate
For the Respondent No. 4 (State) : Mr. Zaki Haider, Advocate (AC to GA6)

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

C.A.V. JUDGMENT

Date: 27-04-2015

The petitioner, in the present writ application, has sought for quashing of the Office Order No. 63 of 1996 as communicated to him vide Memo No. 503-10 dated 14.02.1996, under the signature of the District and Sessions Judge, Madhubani. By the said order service of the petitioner



as Class-IV employee in the District Judgeship of Madhubani, alongwith four other persons, namely, Viscient Kacheyp, Bijendra Prasad, Tunna Kumar Singh and Rakesh Kumar Singh, came to be terminated. As a consequence to quashing of the said order dated 14.02.1996, the petitioner has sought for a direction to allow him to continue in service on the basis of his appointment as Peon under the Judgeship of Madhubani, made on 22.12.1994. There appears to be apparent typographical error in Paragraph No. 1 (iii) of the writ application, which contains the third relief sought for by the petitioner. However, it appears that the petitioner intends to seek a direction to respondent nos. 2 and 3 to give him preferential treatment, on account of service rendered by him; in the light of an order passed by this Court dated 10.03.1997 in C.W.J.C. No. 3285 of 1996.

2. This writ application was filed on 11.05.1999.

3. The main facts involved in this present writ application are not in dispute. The District Judge, Madhubani vide notice dated 20.04.1993, invited applications for making appointments against Class-IV posts in the Judgeship of Madhubani. Two posts were shown to be vacant in the



notice. It appears that prior to issuance of the said notice dated 20.04.1993, the appointments of six persons, as Class-IV employees in the Judgeship of Madhubani, were cancelled, as these appointments were found to have been made without following the extant Rules, instructions and procedure meant for appointments.

4. The petitioner was indisputably an applicant for Class-IV posts, advertised through notice dated 20.04.1993, and had participated in the process of selection, which was based on an interview held from 26.08.1993 to 26.09.1993. Though two posts were advertised, a merit list of twenty three candidates was prepared, in order of merit, in their respective categories, which was published under the signature of the then District and Sessions Judge, Madhubani, Shri C.S. Lal, on 18.10.1993. Out of total twenty three candidates, ten candidates were selected on the basis of their general merit (general category), three belonged to scheduled castes, scheduled tribes and extremely backward class each (Annexure-I) (total - nine) and the rest four belonged to the backward classes (Annexure-II). It appears that after preparation of the merit list, vacancy position of Class-IV

posts in the District Judgeship of Madhubani was worked out.

5. From the noting of the District Judge, Madhubani dated 03.01.1994, which has been brought on the record as Annexure-5 to the writ application; it appears that the total sanctioned strength of Class-IV employees in the Judgeship was found to be one hundred twenty eight. The strength of Class-IV employees as on date was one hundred fourteen, out of which, four were promoted to Class-III posts and thus, the total actual strength came out to one hundred ten. Thus, eighteen total vacancies (128 – 110) was found to be existing. From the said notings, it appears that out of eighteen, one was filled up by the appointment on compassionate ground and another candidate was earlier appointed on the basis of interview, thus, reducing the vacancies to sixteen. As has been noted above, six Peons were terminated by an order dated 12.02.1993, who had filed two writ applications before this Court challenging the order of termination. Therefore, it was decided to keep filling of six vacancies in abeyance and, thus, it was decided to fill up the rest ten vacancies of Class-IV employees on the basis of merit list prepared on 18.10.1993 pursuant to selection held in the light of notice



dated 20.04.1993, inviting applications. The merit list has been brought on the record by way of Annexure-4 to the writ application. The petitioner's position stood at Serial No. 9 among general candidates. By Order No. 1/G of 1994 dated 04.01.1994, on the basis of merit list, so prepared after interview, Sri C.S. Lal, the District Judge, Madhubani appointed ten persons against all the ten vacancies found to be existing, as discussed above. Out of these ten persons, so appointed, five were general candidates selected on the basis of merit and five belonged to various reserved categories. From the merit list of unreserved candidates, the aspirants, whose names figured up to Serial No. 6, were appointed against five unreserved posts by Order No. 1/G of 1994. As has been noted above, one person, namely, Lalan Kumar Jha, was already appointed, whose name subsequently also figured in the merit list dated 18.10.1993. Therefore, the persons, whose names figured from Serial Nos. 2 to 6 in the merit list, were appointed against unreserved seats by Order No. 1/G of 1994. The District Judge, Madhubani vide Order No. 2/N of 1994 dated 04.01.1994, prepared a wait-list for appointments in Class-IV category in the district Judgeship,

which contained altogether twelve names in different categories. The petitioner's name figured at Serial No. 3 amongst general candidates.

6. It appears that the writ applications, challenging the validity of Order No. 11 of 1993, whereby, the services/appointments of six persons against Class-IV posts in the district of Madhubani, were cancelled/were dismissed. As would be evident from what has been recorded above that these appointments were cancelled before issuance of the notice dated 20.04.1993, inviting applications. In view of the pendency of those writ applications, six posts which were vacant were not filled up on the basis of merit list prepared on 18.10.1993, awaiting the decision of this Court in the writ applications. After the writ applications having been dismissed, Sri C.S. Lal, the then District Judge, Madhubani, issued another Order No. 136/N of 1994 dated 01.09.1994, appointing six Class-IV employees in the Civil Courts, Madhubani from the wait-list dated 04.01.1994. From the general list, the persons, whose names figured up to Serial No. 2 in the wait-list, were appointed by the said Office Order No. 136/N of 1994.



7. Up to this stage, there is no controversy and the controversy arose thereafter with issuance of the Office Order No. 151 of 1994 dated 22.12.1994 by the District and Sessions Judge, Madhubani, which has been brought on the record by way of Annexure-7 to the writ application.

8. From the perusal of said Order No. 151 of 1994 dated 22.12.1994, it appears that the Law Department, Government of Bihar had sanctioned three posts of Drivers for staff cars of Madhubani Judgeship vide letter dated 24.09.1994. The District Judge, without adopting any procedure in consonance with Articles 14 and 16 of the Constitution of India and the Rules framed by the High Court under Article 235 of the Constitution of India, decided to fill up these posts from amongst the persons already working against Class-IV posts and further to fill up the vacancy of Class-IV posts created because of adjustment of such Class-IV employee as Drivers. In his opinion, one Jai Kishore Thakur, working as Class-IV employees, was a good driver and, therefore, he appointed him as Driver in the Scale of Rs.950/- to 1,500/-. Vacancy created in Class-IV posts due to the appointment of said Jai Kishore Thakur, as driver, was



filled up by the petitioner on the basis of the said wait-list dated 04.01.1994. One Ajay Kishore Thakur was next to the petitioner in the said wait-list amongst general candidates. It appears from Order No. 151 of 1994 (Annexure-7) that it was reported to the District Judge that said Ajay Kishore Thakur was a good Driver and, accordingly, he was appointed as a Driver of the Civil Court in the Scale of Rs.950/- to 1,500/-.

9. This is not in dispute that Sri C.S. Lal, the then District and Sessions Judge, Madhubani was on the verge of his retirement on the date when he issued Order No. 151 of 1994 dated 22.12.1994. He superannuated, nearly one month after he had passed the order dated 22.12.1994, on 31.01.1995. There is a decision of the High Court communicated to all Judgeships of Bihar vide Letter No. 4231-65 P.F.-IV-10-88 dated 22.12.1988, which puts an embargo on any appointment to any post by the District Judge, in case he is going to retire from service within six months. Shri C.S. Lal, however, made appointments of five persons, vide orders dated 04.01.1994 and 22.12.1994 as noted above.

10. It is obvious from the facts above that the basis



for petitioner's appointment against Class-IV posts by order dated 22.12.1994 was vacancy purportedly created by adjusting Class-IV employees, i.e., Jai Kishore Thakur, against the post of Driver, which was sanctioned by the Government after the selection process for appointment against Class-IV posts was over.

11. After Sri C.S. Lal, the District and Sessions Judge, Madhubani, demitted his office upon attaining the age of his superannuation, irregularities committed by him in the matter of appointments to Class-IV employees, were detected by this Court. A report was sought for by this Court from the successor District and Sessions Judge, Madhubani, who informed this Court, the factual details as regards appointments made by Sri C.S. Lal. It was indicated specifically in one of the reports, with respect to petitioner's appointment, that he was appointed in the chain of vacancy which was illegally created due to illegal shifting of Jai Kishore Thakur to the post of Driver.

12. Accordingly, a show cause notice was issued to the petitioner on 24.06.1995 to the effect that he was wrongly appointed against Class-IV post, which was already occupied



by said Jai Kishore Thakur and, thus, there was no vacancy against which the petitioner could be appointed. He was asked to reply to the show cause notice, as to why his appointment be terminated, being illegal having been made against no vacant post. The petitioner had submitted his reply to the said show cause notice on 14.07.1995, which is Annexure-9/1 to the writ application. In his reply, he took a plea that a vacancy came to be created because of deputation of Jai Kishore Thakur as Driver. The two persons, above him in the wait-list from the general category, namely, Tunna Kumar Singh and Rakesh Kumar Singh, were already appointed as Peons and he was the first in the said wait-list after these two persons in the general category and, therefore, he was rightly appointed against the post which became vacant because of deputation of said Jai Kishore Thakur. Another show cause notice was also issued to the petitioner on 20.07.1995 that the appointment of the petitioner on 22.12.1994 was also illegal as having been made by Sri C.S. Lal, the District Judge, Madhubani, as he was going to be retired on 31.01.1995 and he could not have made any appointment within six months of his retirement. The



petitioner submitted his response to this notice also on 08.08.1995, justifying his appointment as Peon. It appears that similar notice dated 20.07.1995 were issued to other persons, namely, Viscient Kacheyp, Bijendra Prasad, Tunna Kumar Singh and Rakesh Kumar Singh, who were appointed as Class-IV employees by Sri C.S. Lal on 04.01.1994. I must notice here that there is a distinguishing feature between appointments of these four persons and the present petitioner. Other four persons were appointed against those posts which were kept vacant, awaiting order of this Court, in which termination of services of six Class-IV employees prior to issuance of notice inviting application dated 20.04.1993, were under challenge and they were appointed from the panel so prepared, as this Court had subsequently dismissed the writ application, justifying cancellation of the appointments of those six persons. By notice dated 28.08.1995, those four persons and this petitioner were given an opportunity of personal hearing. By Order No. 90/N of 1995 dated 28.08.1995, the District and Sessions Judge, Madhubani cancelled the appointment of Jai Kishore Thakur, as Driver and sent him back to his original substantive Class-IV post of



Peon. The service of Ajay Kishore Thakur, who was appointed as Driver from the wait-list prepared on 04.01.1994, was cancelled. This is also to be noted that the name of said Ajay Kishore Thakur had figured below the petitioner in the wait-list, which was prepared on the basis of merit. By order No. 63 of 1996, issued under the signature of District and Sessions Judge, Madhubani, the services of the petitioner and four other persons, namely, Viscent Kacheyp, Bijendra Prasad, Tunna Kumar Singh and Rakesh Kumar Singh, came to be terminated with immediate effect.

13. Four persons, out of the five, whose services came to be terminated by an order dated 14.02.1996, other than the petitioner, filed writ application before this Court, being C.W.J.C. No. 3285 of 1996 (Bijendra Prasad & Others. vs. The High Court of Judicature at Patna and Others.). The petitioner did not raise any grievance against termination of his service, by said Order No. 63 of 1996. This Court disposed of the said writ application by an order dated 10.03.1997, in view of the stand taken by the respondents in their counter affidavits, stating that two Class-IV posts were vacant, against which two, out of four, petitioners of that case



could be accommodated. From the order dated 10.03.1997, it will appear that it was also decided to accommodate two other petitioners against future vacancies and, accordingly, in view of the stand taken by the respondents in C.W.J.C. No. 3285 of 1996, the writ application was disposed of by an order dated 10.03.1997. The petitioner did not take any step even thereafter till filing of the present writ application on 11.05.1999. Counter affidavit and supplementary affidavit have been filed on behalf of the respondent nos. 1, 2 and 3. At the very outset in the counter affidavit filed on behalf of the respondent no. 1, objection as to the maintainability of the present writ application has been taken on the ground of delay and laches on the part of the petitioner, inasmuch as, he approached this Court more than three years after passing of the impugned order of termination dated 14.02.1996. Similar plea over maintainability of the writ application has been taken on behalf of the respondent nos. 2 and 3.

14. Mr. Yogendra Mishra, learned counsel appearing on behalf of the petitioner, has submitted that the Rules have been framed under Article 235 of the Constitution of India, namely, Bihar Civil Court Staff (Class-III and Class-IV)



Rules, 1992. He has contended that the said Rules empowers the District and Sessions Judge to make appointment against Class-IV posts and do not put any embargo upon him from making appointment within six months from the date of his superannuation. He has further contended that the earlier letter dated 22.12.1988 which proscribed, the District Judge from making appointment within six months of his superannuation, lost its force after coming into force of 1992 Rules, framed under the constitutional provisions. He also contended that the appointments in the present case cannot be said to have been made within six months of retirement of the then District and Sessions Judge, Sri C.S. Lal, in view of the fact that the advertisement was issued way back on 20.04.1993 and interview was held by him on 04.01.1994 and the panel was also prepared on the same day itself. He has contended that the vacancy status was duly scrutinized by the then District Judge prior to preparation of the merit list and the appointments having been made on the basis of panel already existed, such appointment cannot be said to be in breach of the High Court direction issued on 22.12.1988. Mr. Mishra has, with all vehemence, contended that the statutory



power conferred upon the District Judge under 1992 Rules cannot be controlled by the High Court by an executive instruction. He has also submitted that the District Judge in his judicial capacity discharges sovereign function of the State and is a very responsible position, it would denigrating the status of the posts of District Judge by putting embargo on his executive power, to make appointment within six months of his superannuation. He has submitted that the sole reason for termination of the petitioner's service is his appointment having been made within six months of the date of retirement of the then District and Sessions Judge, Sri C.S. Lal. He has also contended that in any view of the matter, the petitioner ought to have been given similar treatment as was given to the petitioners of C.W.J.C. No. 3285 of 1996, whose services were also terminated alongwith the petitioner. He submits that out of five persons, whose services came to be terminated by the impugned order dated 14.02.1996, two came to be appointed immediately after the disposal of C.W.J.C. No. 3285 of 1996 by an order dated 10.03.1997 and two others subsequently been appointed in the year 2000/2001 against subsequent vacancies. He submitted that

petitioner should also be directed to be appointed against Class-IV posts as the vacancies still exist.

15. Mr. Mishra has also submitted that this is not a case which deserves to be dismissed on the ground of the delay and laches. He has extraneously urged that the writ application was admitted on 20.08.2004 for hearing and, therefore, at this stage, the preliminary objection to dismiss the application on technical ground should not be entertained. He has gone to the extent of making submission that admission of the writ application by order dated 20.08.2004 by necessary implication would mean that the case was required to be heard on its merit and, apart from merit the petitioner's claim against order of termination, nothing else can be gone into. Mr. Mishra has placed reliance upon Supreme Court judgment, reported in "*AIR 1988 SC 686*" (*K.I. Shephard and Others vs. Union of India and Others*) and has contended that all persons aggrieved by administrative action are not required to approach this Court and if some relief has been granted to one similarly situated person, same relief must be granted to other persons. He has submitted that there is no hard and fast rule to dismiss a writ application on the



ground of it having been filed belatedly and a claim belatedly made in the writ application can be turned down, only if third party right came to be created, before filing of the writ application. He has submitted that admittedly no third party right has been created before the writ application was filed. He, in addition, has submitted that the validity of an order has to be tested on the basis of the contents of the said order and nothing can be read into the order on the basis of affidavit or other circumstance, for the purpose of testing its validity.

16. Mr. Satyabir Bharti, learned counsel representing the Patna High Court, has opposed the prayer made in the writ application and has contended that the petitioner, after issuance of the impugned order terminating his services, did not raise any grievance before any authority. The conduct of the petitioner amounts to having accepted the order passed by the competent authority, terminating his service by an order dated 04.02.1996. He has further submitted that though other persons approached this Court by filing writ application, the petitioner did not do so and even after disposal of the writ application in the year 1997, he did not take any step against termination of his service. He has further contended that the



case of this petitioner cannot be equated with those four persons, who had approached this Court by filing C.W.J.C. No. 3285 of 1996. According to him, the petitioner's appointment as Peon was based on an illegal appointment/shifting of Peon, Jai Kishore Thakur, against the post of Driver, which was subsequently created by the State Government subsequent to completion of process of appointment as per notice dated 20.04.1993. He has submitted that as a matter of fact, there was no vacant post of Peon existing on the date when the petitioner was appointed. So far as other four persons are concerned, as noted above, they were appointed against vacancies which existed, filling of which was kept in abeyance, awaiting order of this Court in writ applications challenging termination of six other employees, with respect to whom the termination orders were issued, prior to issuance of notice inviting applications for appointment. He has, accordingly, submitted that whereas the appointment of the petitioner was illegal and void *ab initio* having been made against non-sanctioned posts, his case is distinguishable from the cases of other four persons, as noted above. He has further contended that despite coming

into force of 1992 Rules, the High Court has general supervisory jurisdiction over all the Courts subordinate to it and it can issue guidelines/orders for proper, effective and just administration at the level of subordinate Courts.

17. In support of his plea that the present writ does not deserve to be entertained, the claim being belated and the petitioner having not come to this Court with due diligence, he has placed reliance upon following judgments of the Supreme Court:-

- (i) “(2009) 3 SCC 281” (*Yunus (Baboobhai) A. Hamid Padvekar vs. State of Maharashtra through its Secretary and Others*),
- (ii) “1969 (1) SCC AIR 185” (*Durga Prashad vs. Chief Controller of Imports and Exports*) and (iii) “2009 (1) SCC 768 (*Tridip Kumar Dingal and Others vs. State of West Bengal and Others*)”.

He has also placed reliance upon another Supreme Court decision, reported in “(2013) 2 SCC 516” in case of “*Bhupendra Nath Hazarika and Another vs. State of Assam and Others*” and has contended that the appointment of the petitioner as Peon was illegal. He has also relied upon a Division Bench decision of this Court, reported in “2012 (2) PLJR 647” in case of “*Subodh Kumar vs. The State of Bihar*”, in



order to contend that the panel stood exhausted after all the persons, who were appointed against such vacancies which were found to be existing on the date of preparation of merit list and the petitioner could not be adjusted against any future vacancy, occurring subsequent thereto.

18. After having heard learned counsel, appearing on behalf of the parties and having considered rival submissions and pleadings on record, I am of the considered view that the writ application deserves to be dismissed on the sole ground that the petitioner raised a belated claim before this Court after more than three years of passing of the order of termination. Mr. Mishra, learned counsel appearing on behalf of the petitioner, may be right in his submission that there is no hard and fast rule that writ application, under Article 226 of the Constitution of India, should not be entertained on the ground of the claim being belated one. This principle, which says that the superior Courts exercising inherent extraordinary writ jurisdiction may not into belated claim rule of practice and prudence based on soundprie and proper exercise of discretion and there is inviolable rule that whenever there is delay, the Court must necessarily to entertain the



application. The Supreme Court in case of “*State of Madhya Pradesh vs. Bhailal Bhai*” (“*AIR 1964 SC 1006*”), held that the maximum period fixed by the Legislature as the time within which relief by a suit in a Civil Court must ordinarily be taken to as reasonable standard by which delay in seeking relief under Article 226 of the Constitution of India can be measured. The Court, however, hasten to add that the Court may find a delay unreasonable even if it less than the period of limitation prescribed in civil action for the remedy, but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable.

19. I find, in the present facts and circumstances of the case, the delay by the petitioner in approaching this Court against the impugned action is fatal not only because he filed the writ application more than three years after the cause of action accrued but also for the reason that impugned action in the present case is termination from service but he did not approach any appropriate forum including this Court, immediately thereafter or within a reasonable time. Mr. Bharti, learned counsel appearing on behalf of the respondents, has rightly relied upon the Supreme Court

decision in case of *Yunus (Baboobhai) A. Hamid Padvekar (Supra)* in support of his submission that the present application deserves to be dismissed on the ground of delay and laches. Paragraph 10 of the said decision is relevant and is, accordingly, being quoted hereinbelow:-

“10. “6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution of India. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad v. Controller of Imports and Exports. Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Company v. Prosper Armstrong Hurd (PC at pp. 239-40 221 was approved by this Court in Moon Mills Ltd. v. Industrial Courts and Maharashtra SRTC v. Balwant Regular Motor Service. Sir Barnes had stated: (Lindsay case, PC pp. 239-40)

'Now the doctrine of laches in Courts of equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, if founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval, which might affect either party

and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.'

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation with Article 32 of the Constitution. It is apparent that what has been stated as regards that Article would apply, a fortiori, to Article 226. It was observed in Rabindranath Bose v. Union of India that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in State of M.P. v. Nandlal that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the



extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its trail new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.”

20. This is the consistent approach which the superior Courts have consistently adopted while considering a belated claim under writ jurisdiction.

21. In absence of any convincing explanation from the persons seeking relief under Article 226 of the Constitution of India, the High Court under Article 226 of the Constitution of India may refuse to grant relief. An aggrieved party must approach the High Court under Article 226 of the Constitution of India within a reasonable time failing which, no relief can be granted to him.

22. The plea that since other four persons, whose



services were terminated by the same impugned order, have been reinstated and, thereafter, similar relief should be granted to this petitioner is also not convincing in the present facts and circumstances of the case as not only that the petitioner did not approach this Court immediately after the order of termination was passed, he did not take any effective step even after disposed of C.W.J.C. No. 3285 of 1996 by order dated 10.03.1997. I also find that said writ application being C.W.J.C. No. 3285 of 1996 was not decided on merits but was disposed of in the facts and circumstances of the case in view of particular stand taken on behalf of the respondents. The said order cannot be a ground for grant of any relief in favour of the petitioner in view of the Supreme Court decision in case of **“M/s Rup Diamonds and Others vs. Union of India”**, reported in **“(1989) 2 SCC 356”**. Paragraph Nos. 8 and 9 of the said judgment are relevant and are being extracted hereinbelow:-

“8. Apart altogether from the merits of the grounds for rejection – on which it cannot be said that the mere rejection of the special leave petitions in the cases of M/s Ripal Kumar & Co., and M/s H. Patel & Co., could, but itself, be construed as the imprimatur of this Court on the correctness



of the decisions sought to be appealed against – there is one more ground which basically sets the present case apart. Petitioners are re-agitating claims which they had not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate delay in preferring this writ petition which is brought after almost an year after the first rejection. From the orders in M/s Ripal Kumar & Co.'s case and M/s H. Patel & Co.'s case it is seen that in the former case the application for revalidation and endorsement was made on March 12, 1984 within four months of the date of the redemption certificate dated November 16, 1983 and in the latter case the application for revalidation was filed on June 20, 1984 in about three months from the Redemption Certificate dated March 9, 1984.

9. On a consideration of the matter we think that, apart altogether from the merits of the other grounds for rejection, the inordinate delay in preferring the claim before the authorities as also the delay in

filing the writ petition before this Court should, by themselves, persuade us to decline to interfere.”

23. This is a well accepted principle that delay in approaching the Court defeats equity and the High Court which exercising equitable jurisdiction under Article 226 of the Constitution of India, would certainly refuse to entertain a belated claim unless a tangible explanation is tendered by a person aggrieved for approaching the Court belatedly.

24. I do not find any merit in the submission made on behalf of the petitioner that the appointment of the petitioner was terminated only on account of the fact that it was made within six months of the date of superannuation of the then District Judge, Sri C.S. Lal. It is evident and established that petitioner was appointed against post which was not vacant and was shown to be vacant by the then District Judge by illegally shifting of a working Class-IV employee to the post of Driver. The manner in which the then District Judge, shifted said Jai Kishore Thakur to the posts of Driver is unknown in service jurisprudence. His action was totally illegal and arbitrary. I reject the submission made on behalf of the petitioner that the impugned order of termination was



issued at the dictate of the High Court on its administrative side. I find valid reasons behind the order terminating the services of the petitioner by the impugned order dated 14.12.1996. The Supreme Court decision in case of *“Mohinder Singh Gill and Another vs. The Chief Election Commissioner, New Delhi and Others”*, reported in *“AIR 1978 SC 851”*, relied upon by learned counsel for the petitioner has no application in view of the facts and circumstances of the present case, which I have noticed hereinabove. Since I am of the view that the writ application does not deserve to be entertained, suffers from delay and laches and since the illegality in petitioner’s appointment as a Class-IV employee in the year 1994 was totally illegal, the ratio of the Supreme Court decision in case of *Mohinder Singh Gill and Another (Supra)* need not be applied.

25. Mr. Mishra has laid much emphasis on his plea that after having come into force 1992 Rules, the executive instructions or directions issued by the High Court again have no force regulating the power of the District Judge as an appointing authority to make selection and appointments. The contention, in my opinion, is completely misconceived. I



find from Annexures-I and J of the counter affidavit filed on behalf of the Patna High Court by Letter No. 4321-65 dated 22.12.1998 addressed to the all District and Sessions Judges of Bihar, that it was specifically pointed out and reiterated that the earlier direction issued on 15.04.1982 and 27.09.1983 to the effect that no appointment of Class-III and Class-IV staff should be made by the District and Sessions Judges, who were due to retire from service within six months, except with the prior permission of the Court. The circular dated 15.04.1982 was subsequently amended and it was clarified that no appointment should be made by the District Judges, who were due to retire within six months except where it was very urgent and in which case the appointment should be made with the prior permission of the Standing Committee in consultation with Hon'ble Inspecting Judge. These instructions and directions are the guidelines for the District and Sessions Judges which are required to be followed strictly and without demur, while making any such appointment even under the 1992 Rules. These instructions, though issued prior to 1992, in my opinion, have not lost their significance and have been issued to ensure that the selections

and appointments are made not only in conformity with the procedure prescribed and Rules framed therefore, but also for the purpose that the District Judges while acting as appointing authority discharge their functions with all fairness. I hold, therefore, that the instructions issued vide Letter No. 11012-40 dated 15.04.1982, Letter No. 4231-65 dated 22.12.1988 and Letter No. 2579-613 dated 21.07.1989 or any other instruction issued by the High Court in its behalf are required to be strictly followed, while making a selection or appointment in terms of 1992 Rules.

26. This writ application is, accordingly, dismissed with the observations as above.

27. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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