

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1410 of 2014

IN

Civil Writ Jurisdiction Case No. 15536 of 2012

- =====
1. Rajesh Kumar Son Of Late Dinesh Prasad Ambastha Resident Of Umapati Kutir, New Purandarpur, P.S. - Jakkanpur, District - Patna.
 2. Shambhu Prasad Son Of Sri Raghubit Singh Resident Of Kalayanpur, P.S. - Aathmalgola, District - Patna.
 3. Rai Praful Chand Son Of Late Rai Ramesh Chand Resident Of H/No/ 159, C.D. Colony, Shastri Nagar, District - Patna.
 4. Amit Kumar Son Of Late Surendra Kishore Sinha Resident Of Mitramandal Colony, Saket Vihar, Anisabad, P.S. - Gardanibagh, District - Patna.
 5. Shishir Kumar Jaiswal Son Of Late Dharendra Prasad Jaiswal Resident Of Mohalla Yarpur D.V.C. Road, P.S. - Jakkanpur, District - Patna
 34. Ashok Kumar Son Of Sri Pramod Singh Resident Of Jamaludi Chak, District - Patna.
 6. Vinay Kumar Sinha Son Of Sri Ashok Narayan Sinha Resident Of Chandmari Road, Near Water Tank, District - Patna
 7. Jyoti Son Of Baheshwar Prasad Resident Of Chandmari Road, Sheo Mandir Lane Near Mahesh Pandey, Kankarbagh, District - Patna

.... Appellant/s

Versus

1. The State of Bihar.
2. Resident Of Chandmari Road, Sheo Mandir Lane Near Mahesh Pandey, Kankarbagh, District - Patna.
3. The Secretary, Revenue Department, Govt. Of Bihar, Patna
4. The Secretary, Road Construction Department, Government Of Bihar, Patna.
5. The Secretary, Water Resources Department, Govt. Of Bihar, Patna.
6. The Secretary, Department Of Planning, Govt. Of Bihar, Patna
7. The Secretary, Department Of Home (Special), Government Of Bihar, Patna.
8. The Director, Special Welfare, Govt. Of Bihar, Patna.
9. Sri Krishna Kumar S/O Name Not Known To The Petitioner Resident Of Village - Moh :- Jakkanpur, P.S. Jakkanpur, District - Patna
10. Sri Bindo Kumar Partihashtha S/O Name Not Known To The Petitioner Resident Of Village - Parsa Bazar, P.S. Parsa, District - Patna
11. Sri Bathu Prasad S/O Name Not Known To The Petitioner Resident Of Village - Moh:- Sastrinagar, P.S Shastrinagar, District - Patna.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ram Narayan Mahto

For the Respondent/s : Mr. Lalit Kishore, PAAG

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 21-09-2015

1. The appellants, seven in number, have preferred the present appeal under Clause 10 of the Letters Patent of this High Court, aggrieved by an order, dated 04.07.2013, passed in CWJC No. 15536 of 2012, whereby the writ application, filed on their behalf under Article 226 of the Constitution of India, has been dismissed on the ground of unexplained delay of almost twenty years in approaching this Court.

2. For the purpose of considering the correctness of the order under appeal, facts of the case, as pleaded in the writ application, need to be noticed, which are as follows:-

(i) The Bihar State Subordinate Service Selection Board, Patna, came out, on 02.01.1988,



with advertisement No.21/1987 inviting applications for filling up of the vacant and sanctioned posts of Routine Clerk and Temporary Clerk in the offices of the different Departments under the State Government. Written examination was held by the Board, wherein the appellants claim to have participated.

From the pleadings, it transpires that later on, Bihar Public Service Commission took over the process of selection and made recommendations.

3. There is absolutely no averment, in the writ application, as to what the petitioners or the appellants did after publication of the result, though there are averments with respect to filing of a writ application in this Court, being CWJC No. 1412 of 1992, by some other persons and communication, dated 30.11.1992, made by the Deputy Secretary, Revenue and Land Reforms Department, Government of Bihar, addressed to the Commission regarding the vacant posts, which existed in various Departments, the communication



dated 30.11.1992, aforementioned having been issued in compliance of certain directions given by this Court in CWJC No. 1412 of 1992 aforesaid. Nineteen years thereafter, appellant No.1 appears to have invoked the provisions of Right to Information Act, 2005, seeking details regarding persons appointed on the basis of Advertisement No. 21 of 1987.

4. With a case that the vacancies advertised through Advertisement No. 21 of 1987 were still in existence, the appellants filed the said writ application, under Article 226 of the Constitution of India, on 27.08.2012. There is absolutely no explanation, much less a plausible one, to justify the delay, on the part of the appellants, in invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

5. Learned single Judge, dismissed the writ application, by the order under appeal on the ground that it suffered from the defect of inordinate delay and laches on the part of the appellants.

6. In our considered view, which has been the consistent view of the Supreme Court and this Court also, in a series of decisions that if a person wants to invoke extraordinary remedy available under Article 226 of the Constitution of India, it is imperative that he should come to the Court at the earliest reasonably possible opportunity.

7. The Constitution Bench of the Supreme Court ***State of M.P. Vs. Bhai Lal Bhai, (1964) 6 SCR 261***), elaborately dealing with the effect of unexplained delay by a party in approaching the Court, seeking remedy under Article 226 of the Constitution of India, has laid down the law as follows:-

"At the same time we cannot lose sight of the fact that the special remedy provided in Art. 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defences legitimately open in such actions. It has been made clear more than once that the power to give relief under Art. 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it."

8. The Constitution Bench stated as a general rule that if there has been unreasonable delay, the Court should not, ordinarily, lend its aid to a party by extraordinary remedy of mandamus under Article 226 of the Constitution of India.

9. In case of ***S.S. Ballu and another Vs. State of Kerala and others (2009) 2 SCC 479***, the Supreme Court, dealing with the issue of effect of delay in moving a High Court under Article 226 of the Constitution of India, held that delay defeats equity and laid down, at paragraph 17, as follows:-

"17. It is also well settled principle of law that "delay defeats equity". The Government Order was issued on 15.01.2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal there against, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage. In NDMC V. Pan Singh this Court held: (SCC p. 283, para 16)

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a

long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction."

10. In case of ***Yunus (Baboobhai) A.Hamid vs. State of Maharashtra through its secretary and others (2009) 3 SCC 281***), considering, in detail, the deleterious effects of delay and laches on the part of a person in approaching High Court under Article 226 of the Constitution of India, raising belated claim, the Apex Court, referring to various previous judicial pronouncements, held at paragraph 10, as follows:-

"10. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to 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 5 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."

11. The view, earlier taken in case of **State of M.P. vs. Bhai Lal Bhai (supra)**, came to be reiterated by the Supreme Court in its decision, reported in (2012) 5 SCC 297 (*State of Jharkhand and others vs. K. N. Farms and Industries Private Limited*) and (2012) 5 SCC 412 (*Delhi Administration and others v. Kaushilya Thakur and another*), holding that the High Court can not entertain the belated claim in exercise of power under Article 226 of the Constitution of India.

12. In case of **Chennai Metropolitan Water Supply and Sewerage Board and others vs. T.T. Murali Babu reported in (2014) 4 SCC 108**, the Supreme Court, once again, dealing with the relevant factors of delay in approaching Court seeking extraordinary remedy of issuance of various writs, has held as follows:-

"13. First, we shall deal with the facet of delay. In Maharashtra SRT C V. Balwant Regular Motor Service 7 the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. V. Hurd 8, which is as follows: (Balwant Regular Motor Service case 7, AIR pp. 335-36, para 11)

"11..... 'Now the doctrine of laches in Courts of Equity is not an arbitrary or a 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 not material. But in every case, if an argument against relief, which otherwise would be just, is founded upon merely delay, that delay of course not amounting to a bar by any statute of limitations, 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 relates to the remedy.' (*Lindsay Petroleum C. Case 8, PC pp.239-40*)"

14. In *State of Maharashtra V. Digambar 9*, while dealing with exercise of power of the High Court under Article 226 of the Constitution, the Court observed that: (SCC p. 692, para 19)

"19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the Court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct."

15. In *State of M.P. V. Nandlal Jaiswal 10* the Court observed that: (SCC p. 594, para 24)

"24..... it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic."

It has been further stated therein that: (*Nand Lal Jaiswal Case 10, SCC p. 594, para 24*)

"24..... If there is inordinate delay on the part of the petitioner in filing a writ petition and such is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction.:

Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

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."

13. In the said decision, the Supreme Court found four years delay in approaching the Court, seeking prerogative writ under Article 226 of the Constitution of India to be in the absence of any plausible explanation, enormous, which could not be ignored.



14. As is evident in the present case, there has been delay of nearly 20 years by the appellants in approaching this Court without any justification at all, let alone a plausible one, and, therefore, there could not have been any judicial reason of entering into the merits of appellants' case.

15. A Division Bench of this Court, in ***Surajdeo Lal Vs. State of Bihar & ors.*** reported ***2015 (2) PLJR 793***, upheld the rejection of the writ application on the ground of unexplained and unreasonable delay in raising claim for salary after 13 years.

16. In view of the discussion and the judicial pronouncements as noted above, in the background of the facts pleaded and brought on record, we are of the considered view that the appellants failed to account for delay of nearly 20 years in approaching this Court. The appellants, thus, acquiesced to the alleged wrong done, if any, against them as they allowed their claims to become stale without any excuse for the delay. It is trite that the aggrieved party must move the Court, if

he intends to invoke extraordinary remedy available under Article 226 of the Constitution of India, at the *earliest reasonable opportunity*.

17. We are satisfied, on the basis of materials on record, that the appellants have failed to explain the delay, which, in our opinion, was not condonable.

18. Learned single Judge, in the facts and circumstances of the case, rightly dismissed the writ application on the ground of delay and laches. The said order does not warrant any interference by this Court in the present *intra* Court appeal.

16. This appeal is, accordingly, dismissed. The Interlocutory applications stand disposed of.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

ArunKumar/-

U			
---	--	--	--