

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.432 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 16882 of 2007
Along with
Interlocutory Application No. 1868 of 2016

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1. Prem Kumar Sinha Son of late Satya Narayan Prasad Sinha Resident of Mohalla- Azad Path, House no. E/4 Kutchi Talab Saristabad PS. Gardanibagh Distt Patna.
 2. Uday Prakash Srivastav son of Sri Raj Nath Lal Resident of Savitri Sadan Adarsh vihar Colony Rukunpura Bailey Road, PS-Danapur, District Patna.
 3. Rakesh Shankar Son of Sri Uma Shankar Verma Resident of Abhiyanta Nagar West Bailey Road, PS- Rupaspur (Danapur District Patna)
 4. Pramod Kumar Bhatt son of Sri Satya Narayan Bhatt resident of Mohalla- South Mandiri, PS- Budha Colony, District Patna.

.... Appellants

Versus

1. The State of Bihar
2. Commissioner-cum Secretary, Department of Personnel & Administration Reforms, Bihar, Patna.
3. Deputy Secretary, Department of Personnel & Administration Reforms, Bihar, Patna.

.... Respondents

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Appearance:

For the Appellant/s : Mr. Tarun Kumar Sinha, Advocate.
For the Respondent/s : Mr. Md. Nasrul Huda Khan, SC-1.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 09-11-2016

Re.: Interlocutory Application No. 1868 of 2016

This application is for condonation of delay of 162 days in filing the Letters Patent Appeal.

For the reasons mentioned in the Interlocutory application, we are satisfied that the appellants have shown sufficient

cause to seek condonation of delay of 162 days in filing the present Letters Patent Appeal.

Consequently, Interlocutory Application No. 1868 of 2016 is allowed and delay of 162 days in filing the Letters Patent Appeal is condoned.

Re.: L.P.A. No. 432 of 2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 11.08.2015 whereby, the appointment to the post of Assistant in the Secretariat, Government of Bihar, Patna remained unsuccessful on the ground that the writ application suffered from delay and laches.

2. A perusal of the writ application shows that the advertisement No. 21/87 was published inviting applications for appointment to the posts of Assistant in the Secretariat, Patna, Bihar. The appellants claim to be recommended in the order of merit on 25.02.1992, but since the appellants were not appointed, therefore, the appellants invoked the writ jurisdiction of this Court in the year 2007.

3. The stand of the appellants is that they have submitted a representation for their appointment, but such representation was not decided, therefore, there is no delay in approaching the Court.



4. In the counter affidavit, the stand of the State is that 36 candidates were declared successful in the examination conducted by the Bihar State Sub-ordinate Service Selection Board, but the appellants were not in the said list. It is in pursuance of another requisition sent to the Board by the Road Construction Department, Bihar for 204 vacancies, another list was published on 16.02.1992, but the requisition for 204 posts was withdrawn on 29.08.1993. Therefore, the claim of the appellants could not be accepted.

5. Learned counsel for the appellants refers to an order passed in M.J.C. No. 1880 of 1992 on 28.06.1993, wherein one Satyendra Prasad was ordered to be included in the select list of selected candidates. Learned counsel for the appellants also refers to the communication dated 21.01.1998, wherein one Shankar Kumar Ondwar was appointed. It is, thus, contended that the candidates, who are not the part of the select list of the selected candidates, have been offered appointment, therefore, the appellants have a right to be treated fairly and not in discriminatory manner.

6. We have heard learned counsel for the parties and find no merit in the present Letters Patent Appeal. The fact is that the names of the appellants appeared in the merit list published on 16.02.1992, but such merit list was prepared in pursuance of communication made by the Road Construction Department, Bihar

on 07.02.1992 for 204 vacancies. Such requisition was withdrawn on 29.08.1993. Since the requisition for 204 vacancies stood withdrawn, the appellant cannot claim any right of appointment on the basis of merit list published in pursuance of requisition, which was later on withdrawn.

7. Still further, mere fact the name of the candidate appears in the merit list does not confer any right of appointment. Reference may be made to a recent judgment passed in the case of Kulwinder Pal Singh and another v. State of Punjab and others, A.I.R. 2016 Supreme Court 2281, wherein the Court held to the following effect:-

“11. It is fairly well-settled that merely because the name of a candidate finds place in the select list, it would not give him indefeasible right to get an appointment as well. The name of a candidate may appear in the merit list but he has no indefeasible right to an appointment (vide Food Corporation of India and Ors. v. Bhanu Lodh and Ors., (2005) 3 SCC 618 : (AIR 2005 SC 2775); All India SC & ST Employees’ Association & Anr. v. A. Arthur Jeen & Ors. (2001) 6 SCC 380 : (AIR 2001 SC 1851) and Union of Public Service Commission v. Gaurav Dwivedi and Ors. (1999) 5 SCC 180 : (AIR 1999 SC 2137).

12. This Court again in the case of State of Orissa & Anr. v. Rajkishore Nanda and Ors. (2010) 6 SCC 777 : (AIR 2010 SC 2100, paras 13, 15), held as under:

“14. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself

does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.

16. A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required...”

13. In *Manoj Manu and Anr. v. Union of India & Ors.* 2013 (10) SCALE 204: (2013) 12 SCC 171 : (AIR 2014 SC (Supp) 927), it was held that merely because the name of a candidate finds place in the select list, it would not give the candidate an indefeasible right to get an appointment as well. It is always open to the government not to fill up the vacancies, however, such decision should not be arbitrary or unreasonable. Once the decision is found to be based on some valid reason, the court would not issue any mandamus to government to fill up the vacancies. As noticed earlier, because twenty two other candidates were declared successful by the Supreme Court pertaining to the selection of the years 1998, 1999, 2000 and 2001 as Civil Judges (Junior Division), they were to be accommodated, as rightly resolved by the Administrative Committee in the meeting dated 06.07.2011. The three resultant vacancies of the year 2007- 2008 stood consumed with the joining of the said seventeen candidates and the same could not be filled up from the select list of that year. The decision of the Administrative Committee observing that the three resultant vacancies stood consumed is based on factual situation arising there and cannot be said to be arbitrary.”

8. Above all, the cause of action arose to the appellants in the year 1992, when their names were included in the select list,

but invoked the writ jurisdiction of this Court in the year 2007 i.e. more than 15 years later. The writ application suffers from gross delay and laches and has been rightly dismissed by the learned Single Bench.

9. Any offer of appointment made to any candidate in the year 1998 will not confer any enforceable cause of action to the appellants, as an illegality cannot perpetuated. Even if it is presumed to have conferred any cause of action, still the petition is grossly delayed.

10. We do not find any merit in the present Letters Patent Appeal. Accordingly, the present Letters Patent Appeal is dismissed.

(Hemant Gupta, ACJ)

(Ahsanuddin Amanullah, J)

Mishra/-

AFR/NAFR	A.F.R
CAV DATE	N.A.
Uploading Date	17.11.2016
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