

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.206 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 7401 of 2014
Along with
Interlocutory Application No.807 of 2016**

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Chhotu Singh, son of Rajendra Prasad Singh, resident of Village + Post Office
Sultanpur East, Police Station- Mohiuddin Nagar, District- Samastipur.

.... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Director General of Police cum I.G., Govt. Bihar, Patna.
3. The Chairman, Central Recruitment Board cum Additional Inspector General
of Police (S.C.R.B.) Bihar, Patna.
4. The Deputy Inspector General of Police, Muzaffarpur Range, Muzaffarpur
5. The Superintendent of Police, Muzaffarpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nawal Kishore Singh, Advocate
Mr. Alok Kr. Singh, Advocate

For the Respondent/s : Mr. Gajendra Pd. Yadav, S. C.-17
Mr. Jainendra Kr. Sinha, A.C. to S.C.-17

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE VIKASH JAIN**

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 08-12-2016

Re.: Interlocutory Application No.807 of 2016

The application is for condonation of delay of 166 days in
filing of the present Letters Patent Appeal.

For the reasons mentioned in the application, we find that
sufficient cause is made out for condonation of delay. Consequently,
we condone the delay in filing of the present Letters Patent Appeal.

Interlocutory Application stands allowed accordingly.



Re.: Letters Patent Appeal No.206 of 2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 20th January, 2015 whereby the writ application filed by the appellant was dismissed on the ground of delay and laches as the appellant sought appointment on the basis of Advertisement No.01 of 2004 in a writ petition filed in the year 2014.

The appellant claimed a direction for appointment on the post of Constable on the ground that he was declared fit in a physical test conducted on 19th September, 2007, but he has not been appointed on the said post. We do not find that mere appearing in the physical test confer any right of appointment. Even if the appellant was one of the selected candidates, though there is no such averment, there is no right to seek appointment. It has been held by the Hon'ble Supreme Court in Kulwinder Pal Singh and another v. State of Punjab and others, A.I.R. 2016 Supreme Court 2281, wherein it was 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.”

Still further, the right, if any, accrued to the appellant in the year 2007 when he claimed to have been declared physically fit, but he invoked the writ jurisdiction in the year 2014. Such a writ petition has rightly been dismissed on the ground of delay and laches.

We do not find any error in the order passed by the learned Single Bench which may warrant interference in the present intra-court appeal. The same is, thus, dismissed.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

Sunil

AFR/NAFR	A. F. R.
CAV DATE	N. A.
Uploading Date	13.12.2016
Transmission Date	

