

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

R. S. A. No. 1454 of 2016 (O&M)

Date of Decision:- 28.02.2017

Sarwan Kumar

....Appellant

vs.

Haryana State through Collector and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. C.R. Dahiya, Advocate,
for the appellant.

DAYA CHAUDHARY, J.

The present appeal has been filed by appellant-Sarwan Kumar, who was plaintiff before the trial Court, challenging judgment and decree dated 18.12.2009 passed by the Additional Civil Judge (Senior Division), Hisar as well as judgment and decree dated 31.3.2014 passed by the Additional District Judge, Hisar.

Briefly, the facts of the case are that plaintiff-appellant did his graduation from Magadh University, Bodh Gaya, Bihar. He was appointed as Assistant Secretary in the Haryana State Agricultural Marketing Board, Panchkula vide order dated 14.6.2000. Thereafter, he was appointed to the post of H.C.S. (Executive Branch) vide order dated 4.10.2004. However, his appointment was subject to final decision in CWP Nos. 14129 of 2004, 15510 of 2000 and 15529 of 2004. Thereafter, the appellant was relieved

from the post of Assistant Secretary on 4.10.2004 and joined as H.C.S. with Haryana Government in the month of October, 2004. Subsequently, vide memo. dated 16.2.2005 issued by the Chief Secretary to Government of Haryana, he was asked to submit his original B.A. Degree. A reminder dated 9.3.2005 was also sent. He submitted the provisional certificate issued by Magadh University on 11.3.2005 with a request that he would submit his B.A. Degree by next week. On 16.3.2005, he submitted all the certificates including B.A. Degree issued by Magadh University, Bodh Gaya, Bihar to the Chief Secretary, Government of Haryana. Thereafter, his services were terminated on 25.4.2005 by invoking Rule 23 of the Punjab Civil Services (Executive Branch) Rules, 1930 as his work and conduct was not satisfactory during the period of probation. His services were terminated as his certificate was found to be fake. Before termination of his services, he was also issued show cause notice and thereafter order of termination was passed on 23.8.2005 on the ground that his degree of graduation was found to be fake and even the appointment to the post of Assistant Secretary was also secured fraudulently on the basis of fake document. He was reverted from the post of HCS (Executive Branch) to the post of Assistant Secretary in Haryana State Agricultural Marketing Board. Order dated 26.4.2005 passed by the defendant-respondent was challenged by way of filing suit, which was dismissed vide judgment and decree dated 18.12.2009.

Aggrieved by said judgment of trial Court, the appellant filed appeal before Additional District Judge, Hisar which was also dismissed vide judgment and decree dated 31.3.2014.

Aggrieved by the judgments passed by both the courts below, the appellant-plaintiff has filed the present regular second appeal before this Court.

Learned counsel for the appellant submits that both the Courts below have not appreciated the evidence available on record and has not framed the issues properly. Learned counsel also submits that while recording the findings, it has not been taken into consideration by the first appellate Court that the appellant has challenged the termination order. The findings recorded by the trial Court are totally erroneous and contrary to facts and law. Both the Courts below have recorded the wrong findings and reached to a wrong conclusion and as such the judgments of both the Courts below are not based on proper appreciation of evidence and are not sustainable in the eyes of law.

In the present case, the judgment and decree passed by the Lower Court was set aside on 31.3.2014 and the present appeal has been filed on 24.12.2015. Thereafter, some objections were there and after removal of the same, again it was re-filed.

There is a delay of 540 days in filing of the appeal. An application has been moved for condonation of 540 days' delay in filing of the appeal. It has been mentioned in the application that after dismissal of the appeal, the appellant contacted his counsel to whom the brief was handed over. When the appellant did not get any information from his counsel, he came to meet him on 11.10.2015 but he came to know that his counsel had died. The family members of the lawyer could not trace the relevant papers of the case so subsequently, all the documents were

collected and thereafter, the present appeal was filed.

Undisputedly, the appellant has approached this Court after a long delay and the same has not been explained properly. The appellant has slept over his right and has woke up after a long slumber of 540 days. The only reason which has been given in the application is that the documents of the case were handed over to a lawyer, who had expired and thereafter the documents were not available and the same were collected from different sources which took some time and were handed over to the other counsel on 16.10.2015.

In a judgment of this Court in ***Rupinder Singh vs State of Haryana and others 2016 (1) SCT 565***, the petitioner approached the Court after a long delay and a legal notice was served upon the respondents after a period of seven years. It was held that the appointment could not be claimed as a matter of right as not only the delay was there but reasons for approaching the Court after a long delay was not explained.

In another judgment of this Court in ***Vironika vs State of Punjab and others 2016(2) SCT 814***, the process of selection was initiated in the year 2011 and the petitioner in that case approached the Court in the year 2015. It was held that no fresh cause of action arose in favour of the petitioner and the petition suffered from delay and laches and the writ petition was dismissed on the ground of delay only.

Similarly, in ***Mahender Singh Malik vs State of Haryana and others 2016(2) SCT 40***, the claim of the petitioner was dismissed on the ground of delay by holding that the petitioner in that case slept over his

rights and woke up only when orders were passed in the cases filed by some other persons. It was held that the petitioner could not be allowed to ride piggyback on other employees, who were vigilant about their rights and approached the Court well within time for the vindication of their grievances.

In a judgment of Division Bench of this Court in ***Yash Paul Raheja vs Union of India and others 2016(2) SCT 821***, the petitioner approached the Court by moving representation after a delay of more than twenty years and his claim was declined on the ground of delay. It was held that the petitioner was not entitled for any relief on account of principle of delay and laches.

Hon'ble the Supreme Court in ***Chandigarh Administration vs Jagjit Singh 1995(1) SCC 745***, has held as under :-

“ In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world.”

Hon'ble the Apex Court in the case of ***Chennai Metropolitan Water Supply and Sewerage Board and others vs. T. T. Murali***

Babureported as 2014 (2) S.C.T. 193 has held as under :-

*“13. First, we shall deal with the facet of delay. In **Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others** [AIR 1969 SC 329] the Court referred to the principle that has been stated by Sir Barnes Peacock in **Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp** [1874 (5) PC 221], which is as follows :-*

“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 most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere 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.”

In **State of Maharashtra v. Digambar**, 1995 (4) SCC 683, while dealing with exercise of power of the High Court under Article 226 of the Constitution, Hon'ble the Apex Court observed that 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.

In *State of M.P. and others etc. etc. v. Nandlal Jaiswal and others etc. etc.*, AIR 1987 SC 251, Hon'ble the Apex Court observed that it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in 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 if there is inordinate delay on the part of the petitioner in filing a petition and such delay 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.

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. In the case at hand, though there has been four years’ delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. At the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice as it is likely to affect others. Such delay may have impact on others’ ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons – who compete with ‘Kumbhakarna’ or for that matter ‘Rip Van Winkle’. Such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

The above view of the Apex Court was followed in a recent judgment rendered by this Court in ***Suraj Mal vs. State of Haryana*** reported as ***2015 (1) SCT 31***, wherein it has been held as under :-

“9. In view of the above authoritative enunciation of law by Hon'ble the Supreme Court and this Court, the present writ petition filed by the petitioner nearly after 9 years of his retirement to claim certain benefits, which may be due to him while in service, certainly deserves to be dismissed on account of delay and laches as there is no satisfactory explanation available for delay.”

The benefits of a decision rendered in the case of similarly placed persons cannot straightway be given to a person, who himself approaches the Court belatedly. For getting relief from the Court, he is required to satisfactorily explain the delay on his part in approaching the Court.

In this regard, it would be useful to refer to the following observations made by the Apex Court in the case of ***Chairman, U. P. Jal Nigam and another vs. Jaswant Singh and another*** reported as ***2006 (11) SCC 464*** :-

“6. The question of delay and laches has been examined by this Court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that

about 9 writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 30.6.2005 and 31.7.2005. Two writ petitions were filed wherein no relief of interim order was passed. They were granted interim order. Thereafter a spate of writ petitions followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 & 2006 much after their retirement. Whether such person should be granted the same relief or not?

*7. Learned senior counsel for the appellants has invited our attention to various decisions to impress upon that persons who are guilty of such laches and acquiesced with the situation should not be granted any relief because it is going to cost the Nigam a heavy financial burden to the tune of Rs. 17,80,43,108/-. Therefore, relief should be confined to those persons who were continuing in service and filed their writ petitions in time but not to all and sundry who woke up to file the writ petitions much after their retirement. In this connection, our attention was invited to a decision of this Court in the case of **M/s. Rup Diamonds & Ors. v. Union of India & Ors., reported in (1989) 2 SCC 356**, wherein their Lordships observed that those people who were sitting on the fence till somebody else took up the matter to the court for refund of duty, cannot be given the benefit. In that context, their Lordships held as follows :*

"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 the present writ petition which is brought after a year after the first rejection. As observed by the Court in Durga Prashad case, the exchange position of this country and the policy of the government regarding international trade varies from year to year. In these matters it is essential that persons who are aggrieved by orders of the government should approach the High Court after exhausting the remedies provided by law, rule or order with utmost expedition. Therefore, these delays are sufficient to persuade the Court to decline to interfere. If a right of appeal is available, this order rejecting the writ petition shall not prejudice petitioners' case in any such appeal. "

8. *Our attention was also invited to a decision of this Court in the case of **State of Karnataka & Ors. v. S.M. Kotrayya & Ors., reported in 1997(1) SCT 359 (SC) : (1996) 6 SCC 267.** In that case the respondents woke up to claim the relief which was granted to their colleagues by the Tribunal with an application to condone the delay. The Tribunal condoned the delay. Therefore, the State approached this Court and this Court after considering the matter observed as under: "Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-section (1) or (2) of Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately*

thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under subsection (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay."

9. Similarly, in the case of Jagdish Lal & Ors. v. State of Harvana & ors., reported in 1998(1) SCT 26 (SC) : (1997) 6 SCC 538, this Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the Court, then such person cannot stand to benefit. In that case it was observed as follows :
"The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Vir Pal Singh Chauhan case. The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage."

10. In the case of Union of India & Ors. v. C. K. Dharagupta & Ors., reported in 1997(2) SCT 117 (SC) : (1997) 3 SCC 395, it was observed as follows:

"We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P. Joshi gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit of Joshi case. In view of our finding that the benefit of the judgment of the Tribunal dated 17-3-1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief."

11. In the case of Government of W.B. v. Tarun K. Roy & Ors., reported in 2004(1) SCT 78 (SC) : (2004) 1

SCC 347, their Lordships considered delay as serious factor and have not granted relief. Therein it was observed as follows :

"The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in Debdas Kumar. The plea of delay, which Mr. Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others there from who may be found to be entitled thereto by a court of law."

12. The statement of law has also been summarized in Halsbury's Laws of England, Para 911, pg. 395 as follows: "In determining whether there has been such delay as to amount to laches, the chief points to be considered are :

- (i) acquiescence on the claimant's part; and*
- (ii) any change of position that has occurred on the defendant's part. Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is*

unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

13. In view of the statement of law as summarized above, the respondents are guilty since the respondents has acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussion on the financial management of the Nigam. Why the Court should come to the rescue of such persons when they themselves are guilty of waiver

and acquiescence.”[Emphasis supplied by me”

In view of the law position referred herein-above, the unexplained delay of 540 days in filing of the appeal and that too without any satisfactory reply cannot be condoned. Not only on the point of delay but on merits as well, the appellant could not make out any case as both the courts below have given specific findings and passed well reasoned and speaking judgments. The trial Court framed the following issues:-

- “1. Whether the order dated 4.7.2005 passed by defendant No. 3 is illegal, null and void, ab initio, malafide, discriminatory, against the principles of natural justice? OPP
2. Whether the order dated 26.4.2005 passed by the defendant Nos. 1 and 2 terminating the services of plaintiff is illegal, null and void, ab initio, malafide, discriminatory, against the principles of natural justice? OPP
3. Whether the order dated 23.8.2005 passed by the defendant No. 4 is illegal, null and void, ab initio, malafide, discriminatory, against the principles of natural justice? OPP
4. Whether the plaintiff is entitled for injunction as prayed for? OPP
5. Whether the plaintiff is entitled for reinstatement in services as Assistant Secretary with full back wages

and all other benefits of increments and promotion etc.

and to pay the arrears with interest @ 12% per annum?

OPP

6. Whether the plaintiff has no locus-standi or cause of action to file present suit? OPD

7. Whether the suit of plaintiff is bad on account of non-joinder and mis-joinder of necessary parties? OPD

8. Whether the plaintiff is estopped by his own act and conduct to file present suit? OPD

9. Whether the plaintiff has not come to the Court with clean hands and has suppressed true and material facts from the court, if so to what effect ? OPD

10. Whether the Civil Court at Hisar has got no territorial jurisdiction to try and entertain present suit? OPD

11. Whether the plaint has not been signed and verified in accordance with law ? OPD

12. Relief.”

The findings recorded by the trial Court are reproduced as under:-

“20. In the instant case, the Magadh University, Bodh Gaya had conducted full-fledged enquiry with regard to degree of the plaintiff as is evident from Enquiry report Ex. D5 and the plaintiff was also given an opportunity for producing his certificates in original and

also given an opportunity for appearing personally before the Enquiry Officer but the plaintiff has failed to appear before Enquiry Officer and University after holding full-fledged enquiry concluded that the plaintiff has never remained a regular student of Magadh University, Bodh Gaya from B.A. Part I to B.A. III and the plaintiff has been able to get the degree from the university in a fraudulent manner and the degree of the plaintiff is fake one.

22. Now it is to be seen as to whether the plaintiff has been condemned unheard. The plaintiff has summoned record of his admission and attendance from D.N. College Masaruhi in the instant case and if the said record is not available with the college authorities, then the plaintiff cannot be held responsible for the same. Moreover, the other corroborative evidence from the custody and possession of the university like detailed mark sheets, provisional degree, emigration certificate and the record of examinations undertaken by the plaintiff has been got produced from the record of the University, therefore, it can be safely held that the plaintiff was a regular student of D.N. College Masaurhi and the above-said record cannot be said to be forged and fabricated by the plaintiff, has been so contended by the learned counsel for plaintiff. Now had the plaintiff been

a regular student of D.N. College Masaurhi then the college would have been in possession of the record relating to admission and attendance of the plaintiff. It means that the plaintiff has never been a regular student of the college. Therefore, the contention of learned counsel for plaintiff in this respect is without any force and is rejected.”

Similarly, the findings recorded by the Lower Appellate Court are as under:-

“But the aforesaid contentions of the ld. Counsel for the plaintiff are also not sustainable. As already mentioned, the plaintiff has not placed on record any cogent and convincing evidence that the degree of B.A. which is basic qualification for the appointment to the post of Assistant Secretary in the defendant no. 4 Haryana State Agricultural Marketing Board or for the appointment of HCS (Executive Branch) is genuine, while on the other hand it is established on the record from the evidence led by the defendants that the same is fake one, therefore, the work and conduct of the plaintiff is liable to be held to be unbecoming of an officer. Though the services of the plaintiff could be dispensed with during the probation period even without assigning any cogent reason, but, however, in this case a full-fledged enquiry was conducted by Magadh University,

Bodh Gaya, Bihar, wherein it was found that plaintiff was not a regular student of D.N. College Masauhri and his certificates of B.A. Were found fake and forged, then the service of the plaintiff as HCS (Civil) could be terminated and have rightly been terminated by the government of Haryana. In view of the above discussion, the submission of Ld. Counsel for the plaintiff-appellant that Sh. Het Ram never come forward can also not help the petitioner.

XXXX XXXX XXXX

Since as per the report dated 6.4.2005 prepared by Examination Controller Magadh University, Bodh Gaya, Bihar for verification of the degree/certificate of B.A. of the plaintiff, which is enclosed with letter Ex. D6, already mentioned, it was found that the degree of B.A. of the plaintiff submitted by him for appointment to the post of Assistant Secretary in Haryana State Agricultural Marketing Board and HCS (Civil) was fake and the plaintiff has failed to prove on record that his certificates/degree of B.A. are genuine, therefore, the order dated 23.5.05 Ex. D15 passed by the Chief Administrator is quite valid and justified. Moreover, the plaintiff has failed to establish on record that had a regular enquiry been conducted by Haryana State Agricultural Marketing Board, then it could be proved on

record that the certificates/degree of B.A. submitted by the plaintiff for his appointment to the post of Assistant Secretary could be proved as genuine in such enquiry.”

It has been held by Hon'ble the Apex Court in the case of **R. Vishwantha Pillai vs. State of Kerala and others**, 2004 (2) SCC 105 that recruitment in service on the basis of fake certificate is no appointment in the eyes of law. The appellant could not claim any right to the post to which he was appointed on the basis of false/fake certificate as he would not be entitled to the protection provided under Article 311 of the Constitution of India as well as the Rules framed thereunder.

Similar view has been taken in a Division Bench judgment of Patna High Court in the case of **Ishwar Dayal Sah vs. State of Bihar**, 1987 Lab. I.C. 390 as well as in full Bench judgment of Patna High Court in the case of **Rita Mishra vs. Director, Primary Education, Bihar**, AIR 1988 Patna 26. The following observation was made in **Ishwar Dayal's case (supra)** :-

"If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under [Article 311](#) can possible flow from such a tainted force. In such a situation, the question is whether the person concerned is at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of [Art. 311](#). If the very entry or the crossing of the threshold into the arena of the civil service of the State or the Union is put in issue and door is barred against him, the cloak of protection under [Art. 311](#) is not attracted."

Similar view was taken in Rita Mishra's case (supra) which is as under:-

" 13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow it."

In view of facts and law position as discussed above, there is no merit in the contentions raised by learned counsel for the appellant and the present appeal is hereby dismissed not only on the ground of delay but on merits as well.

February 28, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes