

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8656 of 2017

=====

Shatrughan Prasad Sah, Son of Yogendra Prasad, Resident of Village-
Ismailpur, P.S.- Sadar, District- Vaishali.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Union of India through The Chief Secretary, Department of Home New Delhi.
3. The Central Public Information Officer, Department of Home, New Delhi.
4. The Deputy Director-cum-Appellate Authority, Department of Home, New Delhi.
5. The District Magistrate, Vaishali, Hajipur.
6. The Superintendent of Police, Vaishali, Hajipur.
7. Pankaj Kumar, Son of Late Arun Sah, Resident of Village- Sahjadpur, P.S. Sadar Hajipur, District- Vaishali.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Subodh Prasad, Adv.
For U.O.I.	:	Mr. S.D. Sanjay, A.S.G.
		Mr. Kumar Priya Ranjan, C.G.C.
For the Respondent/s	:	Md.Nashrul Hoda Khan-SC 1

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 27-09-2018

Heard Mr. Subodh Prasad, learned counsel for the
petitioner, Mr. S.D. Sanjay, learned Additional Solicitor General of
India, for the Union of India and Mr. N.H. Hoda Khan, learned SC
1 for the respondent-State.



The present writ application has been filed for a direction to the respondent authorities to give details of action taken against Respondent No.7, Pankaj Kumar and to provide relevant documents regarding his appointment as a clerk in the Home Department, Secretariat Branch at New Delhi..

Learned counsel for the petitioner submits that the petitioner is on litigating terms with Respondent No.7, Pankaj Kumar against whom he filed a criminal case, being Hajipur Sadar P.S. Case No. 190 of 2013 with accusation under Sections 385, 341, 323, 324 and 308 of the IPC, but Respondent No.7, Pankaj Kumar has been appointed as a clerk in the Ministry of Home, Government of India on the basis of forged documents.

Counter affidavit has been filed on behalf of Respondent Nos. 2 to 4 taking specific plea that the petitioner has failed to avail the remedy of second appeal as provided under Section 19(3) of the Right to Information Act, 2005 (hereinafter referred to as 'the Act'). Section 19(3) of the Act reads as follows:-

19. (3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be,



may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Moreover, the information sought for by the petitioner does not come within the **exception** under the proviso of Section 24 of the Act, as the information sought for, does not relate to the exempted allegation of corruption or human rights, violation under Section 24(3) of the Act which reads as follows:-

24. Act not to apply to certain organisations.- (1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed



to be included in or, as the case may be, omitted from the Schedule.

(3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.

(4) Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information commission and, notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(5) Every notification issued under sub-section (4) shall be laid before the State Legislature.

Learned counsel for the petitioner has not filed any reply to the counter affidavit filed on behalf of Respondent Nos. 2 to 4 and has not controverted the non-maintainability of the present writ application on the above-mentioned grounds.

In view of the settled law that the discretionary jurisdiction under Article 226 of the Constitution of India is usually not exercised where alternative remedy of appeal is available. In the present case, the petitioner has alternative remedy



of second appeal. Moreover, the information sought for, also appears to be exempted under Section 24 of the Act.

In the circumstances, this Court is inclined to interfere.

However, the present writ application is disposed of with a liberty to the petitioner to avail the remedy of second appeal under the Act. It is expected from the second appellate authority to consider the second appeal if it is being filed within a period of three weeks of receipt/production of the copy of this order along with an application for condonation of delay, the same may be considered by the second appellate authority in view of the fact that petitioner’s writ application was pending before this Court since last several years.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

