

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7188 of 2018

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1. Vinod Kumar, Son of Shiv Bachan Prasad, Resident of Village-Elahibag, Post-Bairiya, P.S.-Gopalpur, District-Patna, Pin-800007, Bihar.
 2. Sanjay Kumar Yadaw, Son of Jhabar Yadaw, Resident of Village-Bhedachaur, Post-Pharsahani, P.S.-Laukariya, District-West Champaran, Pin-845105, Bihar.
 3. Sunil Sah Son of Vishvnath Sah, Resident of Village-Bhenachour, Post-Pharsahani, P.S.-Laukariya, District-West Champaran, Pin-845105. Bihar.
 4. Bipul Kumar Son of Hareram Singh, Village-Karanpura, P.O.-Bairiya, P.S.-Gopalpur, District-Patna Pin-800007, Bihar.

.... Petitioner/s

Versus

1. The Union of India through its Secretary, Home Department, New Delhi.
2. Central Staff Selection Commission through its Chairman, Lodi Road, New Delhi.
3. The Director, General, C.R.P.F., C.G.O. Complex, Lodi Road, New Delhi.
4. The Regional Director, (CR) SCC8-8-AB, Baily Allahabad, U.P.
5. The Regional Director (ERO SSc Kolkata, West Bengal th Floor234/4 (Acharya J.C. Bose road) Kolkata.
6. The Regional Director (NER) SSC Guahati null null
7. The Dy, Director (MOr) SSC J.S. Anupam Nager Raipur, Chattisgarh.
8. The Commandant, BSF Campus, Kishanganj (Khagra Camp), District-Kishanganj, Bihar.
9. The Commandant, Grop Centre, CRPF, Mokamaghat District-Patna, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gopal Govind Mishra
For the Respondent/s (UOI) : Mr. Anjani Kr. Sharan (ASG)
For SSC, Allahabad : Mr. Rajesh Kr. Verma (CGC)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 27-04-2018

1. The petitioners, by way of the present writ petition, have prayed for directing the respondent authorities for appointing the petitioners on the post of Constable against the left over vacancies in respective categories in light of the judgment *dated 05.04.2018* passed by this Court in *CWJC no. 4547 of 2017 and other analogous cases*



(Pintoo Kr. Singh and ors. vs. Union of India and ors.)

2. The learned counsel for the petitioners, at the outset, has relied upon a judgment of this Court dated 05.04.2018 passed in ***CWJC no. 4547 of 2017 (Pintoo Kumar Singh & ors. v. Union of Indian & ors. and other analogous cases)*** and has contended that the same relief be granted to the petitioners of the present case.

3. *Per contra*, the learned counsel for the respondents has submitted that the present petition is barred by the principles of delay, laches and acquiescence on the part of the petitioners, inasmuch as the advertisement was published on 24.01.2015, physical evaluation test and written examination were also conducted in the year 2015, result of the written examination was declared by the Staff Selection Commission in the year 2016, review medical examination of the candidates who had appealed against their fitness was also conducted in the in the year 2016 and the final results were declared on 02.02.2017 whereas the present writ petition has belatedly been filed on 13.04.2018 after favourable pronouncement of a judgment of this Court in the cases of similarly situated candidates.

4. I have heard the learned counsel for the parties and gone through the records of the case. I find that the final result has been declared by the Staff Selection Commission as far back as on 02.02.2017, whereas the present writ petition has been filed only on



20.04.2018 and that too, after pronouncement of the judgment by this Court ***dated 05.04.2018 in CWJC no. 4547 of 2017 and other analogous cases***, hence the conduct of the petitioners herein apparently demonstrate that they were sitting on the fence and waiting for the result of the said proceedings and have approached this Court only after the final judgment ***dated 05.04.2018*** was passed by this Court ***in CWJC no. 4547 of 2017 and other analogous case***, with a view to claim parity in order to get the same benefit. The position of law in this regard is now well settled. It has now conclusively been held that when a person who is not vigilant of his rights and acquiesces to the situation, his writ petition cannot be entertained after a long delay even on the ground that the same relief was granted to person similarly circumstanced who was vigilant enough about his rights and had challenged the action without any unnecessary wastage of time. In this regard, it would be useful to quote paragraph no. 29 of a judgment reported in (2010) 12 SCC 471 ([Shiba Shankar Mohapatra and others v. State of Orissa and others](#)) hereinbelow :-

"29. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the



person approaching the court is guilty of delay and the laches. The court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallizes in the interregnum. (vide [Aflatoon v. Lt. Governor of Delhi](#); (1975) 4 SCC 285; [State of Mysore v. V.K.Kangan](#); (1976) 2 SCC 895; [Municipal Council, Amhednagar v. Shah Hyder Beig](#); (2000) 2 SCC 48; [Inder Jit Gupta v. Union of India](#); (2001) 6 SCC 637; [Shiv Dass v. Union of India](#); (2007) 9 SCC 274; [A.P. SRTC v. N. Satyanarayana](#); (2008) 1 SCC 210 and [City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla](#); (2009) 1 SCC 168)."

5. Though, the aforesaid observations were made by the Supreme Court in the matter of a dispute pertaining to seniority which had become final, yet, by way of analogy, what was held by the Supreme Court in the aforementioned case is also applicable to the facts of the present case.

6. The Apex Court in the case of ***State of Uttar Pradesh & ors. Vs. Arvind Kumar Srivastava & ors. (Civil Appeal No.9849 of***



2014) decided on 17.10.2014 while dealing with the question of delay and latches held that in such like cases, the Court should be very slow in granting relief to the incumbent specially when the claimants lost time and did not rise to the occasion in time for filing the writ petitions by holding that :-

“(23) The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated



persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of latches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and latches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

7. Similarly, the observations of the Single Bench of the Calcutta High Court in the case of ***Mithi Mukherjee Vs. State of West Bengal and ors. (W.P. No. 14028 of 2013)*** and other connected petitions decided on 20.01.2014 are most relevant:-

“The inviolable conclusion deducible from the



above noted decisions are that the stale and dead claims should not be encouraged in exercise of the discretionary relief under Article 226 of the Constitution of India. A line of distinction is to be drawn between a vigilant and a non-vigilant litigant and they cannot be equated on the same footing. A litigant who was sitting on a fence and waiting for the result of the litigation initiated by other litigant promptly and after the favourable result approaches the Court to seek equality, should not be encouraged. Delay and latches is one of the important factor to push away the recalcitrant or invariable litigant who was watching the proceeding of the other and ventilated the grievance only after a favourable decision is obtained by the other litigant. The plea of inordinate delay is not applicable in case of an infringement of the fundamental rights. The proceeding may attract dismissal, more so, when a third parties' right are created in interregnum. It is not an inflexible rule but



depends upon the rational and satisfactory explanation and, therefore, varies from case to case.”

8. Even, in the case of ***Ex. Capt. Harish Uppal vs. Union of India*** reported in ***1994 SCC, Supl. (2) 195*** the Apex Court in para 8 held that :

“8.The petitioner sought to contend that because of laches on his part, no third party rights have intervened and that by granting relief to the petitioner no other person's rights are going to be affected. He also cited certain decisions to that effect. This plea ignores the fact that the said consideration is only one of the considerations which the court will take into account while determining whether a writ petition suffers from laches. It is not the only consideration. It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and



remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of the Constitution of India and that is what precisely the Delhi High Court has done. We cannot say that the High Court was not entitled to say so in its discretion.”

9. In the present case also, the petitioners herein waited till the decision of ***Pintoo Kumar Singh (supra)*** case and have approached this Court after lapse of more than one year. Though, it is not disputed that the case of the petitioners herein is covered by the ratio of the said judgment rendered in the case of ***Pintoo Kumar Singh (supra)*** but still the petitioners cannot be granted the same relief in view of the delay and laches on their part in approaching this Court and being mere fence-sitters who had not taken up the litigation at the appropriate time when the other petitions were decided by this Court. The petitioners herein kept sleeping over their rights for long and woke up only when they had the impetus from the judgment rendered by this Court in the case of ***Pintoo Kumar Singh (supra)***. It is a clearly settled law that the delay disentitles the party to discretionary relief under Article 226 and Article 32 of the Constitution of India. Thus, the litigant who was sitting on a fence and



watching for the result of the litigation initiated by other litigants promptly and only after a favourable result, approaches the Court to seek equality, should not be encouraged/ entertained.

10. For the reasons mentioned hereinabove, the petitioners herein being the fence-sitters, cannot take the benefit of an order passed in the case of persons who were vigilant of their cause and had moved the Court within a reasonable period.

11. Thus, this Court finds no merit in the present writ petition and it is, accordingly, dismissed.

(Mohit Kumar Shah, J)

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CAV DATE	-
Uploading Date	08.06.2018
Transmission Date	

