

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13313 of 2017

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Kanchan Kumari Wife of Kumar Yuvraj resident of Village - Dhamdaha
Madhya, Ward No. 5, P.S. - Dhamdaha, District - Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Social Welfare Department.
2. The Principal Secretary, Department of Women and Child Welfare, Bihar, Patna.
3. The Director, Integrated Child Development Scheme, Bihar, Patna.
4. The District Magistrate, Purnea.
5. The District Programme Officer, Purnea.
6. The Child Development Project Officer, Dhamdaha, Purnea.
7. Smt. Punam Chand Gandhi wife of Sri Ajay Kumar Yadav resident of Village - Dhamdaha Madhya, Ward No. 5, P.S. - Dhamdaha, District-Purnea presently working as Anganbari Sevika at Centre No. 44, situated in Ward No. 5 at Dhamdaha in the district of Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha
For the Respondent/s : Mr. K.K.Jha - Aag8

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 08-05-2018

The petitioner by way of the present writ petition has sought for quashing of the order dated 29.06.2017 passed by the District Magistrate, Purnea in Service Appeal No. 04 of 2017 whereby the appeal preferred by the petitioner against the order of the District Programme Officer, Purnea dated 12.08.2016 has been rejected. The petitioner has further prayed for quashing of the order of the District Programme Officer, Purnea dated 12.08.2016 as also for directing the authorities to select the petitioner as Anganwari Sevika at Centre No. 44 situated in Ward No. 5 at Dhamdaha, District-Purnea.



2. The brief facts of the case are that the process for selection of Anganwari Sevika at Centre No. 44, Village-Dhamdaha, District-Purnea was started in the year 2004. Apart from the petitioner, one another candidate, namely, Punam Chand Gandhi had also submitted an application for appointment on the post of Anganwari Sevika. It has further been submitted that the petitioner is intermediate pass with 48.77 % marks and she is having 63.55% marks in the matriculation examination whereas the private Respondent No. 7 is a matriculate with only 48.33% marks. The meeting of the Aam Sabha is stated to have taken place on 28.01.2004 for the purposes of selecting Anganbari Sevika and the then Mukhiya had decided to appointment the private Respondent No. 7 as Anganbari Sevika since she belongs to the B.P.L. Category and thereafter, the Respondent No. 7 was issued an appointment letter dated 08.02.2004. It is the case of the petitioner herein that later on, she came to know that the B.P.L. certificate produced by the private respondent is forged and fabricated, hence, she lodged a compliant dated 16.03.2004 before the Child Development Project Officer, Dhamdaha with a copy to the Block Development Officer, Dhamdaha, Sub-Divisional Officer, Dhamdaha, District Programme Officer, Purnea and District



Magistrate, Purnea. Thereafter, the Mukhiya is said to have prepared a false proceedings of the minutes of meeting of the Aam Sabha wherein it was recorded that the petitioner did not produce the income certificate and her house is situated at a greater distance than the house of the respondent No. 7. Upon receipt of the complaint made by the petitioner, the Sub-Divisional Officer, Dhamdaha directed the Block Development Officer, Dhamdaha to conduct an inquiry. The Block Development Officer, Dhamdaha had then directed the Labour Enforcement Officer, Dhandaha to conduct an inquiry with regard to the B.P.L. certificate being used by the Respondent No. 7. The Labour Enforcement Officer by his letter dated 07.08.2004 reported that the complaint of the petitioner is true and the respondent No. 7 is using a wrong B.P.L. card for her own benefit. The said report was forwarded by the Block Development Officer, Dhamdaha to the Sub-Divisional Officer, Dhamdaha vide letter dated 13.08.2004 whereafter the Sub-Divisional Officer vide letter dated 1.06.2005 directed the petitioner to appear in his office for inquiry. The petitioner is said to have been orally informed that the report has been sent to the office of the District Programme Officer, Purnea for taking appropriate action. It appears that thereafter, the petitioner had



not taken any action and as per her averments made in the writ petition had filed a complaint in Janta Darbar of the District Magistrate, Purnea on 16.11.2015 i.e. after lapse of 11 years from the appointment of the respondent No. 7. The District Magistrate, Purnea had referred the complaint of the petitioner to the District Programme Officer, Purnea whereafter a proceeding was initiated by the District Programme Officer, Purnea. The District Programme Officer, Purnea by an order dated 12.08.2016 consigned the proceedings on the ground that firstly upon perusal of the original records, it is apparent that the same have not been tampered with and secondly, on the ground that the petitioner herein has made a complaint regarding the selection of the respondent No. 7 after a lapse of 11 years, hence the matter is beyond the jurisdiction of the Court. The said order dated 12.08.2016 was challenged in appeal before the Court of District Magistrate, Purnea and the District Magistrate, Purnea by the impugned order dated 29.06.2017 passed in Service Appeal No. 4 of 2017 has been pleased to dismiss the appeal of the petitioner on the ground that the petitioner herein had earlier also filed a complaint in the year 2006 which was disposed of in the year 2006 itself, however, the petitioner did not choose to challenge the said order, hence, the present complaint filed after



a lapse of 11 years is clearly barred.

3. The learned counsel for the Respondents Nos. 1 to 6 has submitted that the present writ petition is an abuse of the process of the Court in view of the fact that earlier also, the petitioner had filed a complaint before the concerned authority in the year 2006 which was disposed of by the competent authority in the year 2006 itself, but the petitioner did not assail the same and one fine morning, decided to initiate fresh action by challenging the appointment of the respondent no. 7 after a lapse of 11 years by filing a complaint before the District Programme Officer, Purnea, hence, the present writ petition is not fit to be entertained since the same would lead to unsettling of the settled position, both in law as well as on facts and further, the present case is also fit to be dismissed on the ground of delay and laches.

4. I have heard the learned counsel for the parties and gone through the materials on record.

5. Admittedly, the respondent No. 7 was appointed vide order dated 08.02.2004 whereafter the petitioner had agitated against the appointment of the respondent no. 7 before the appropriate authorities in the year 2006 itself and the same was disposed of in the year 2006 itself, but the petitioner did not



choose to move further by challenging the said order passed by the appropriate authority, hence, the fresh challenge of the petitioner to the appointment of the respondent no. 7 belatedly after a lapse of 11 years by filing a complaint before the District Programme Officer, Purnea on 16.11.2015 is clearly barred by the principles of res judicata as also suffers from delay and laches.

6. The law in this regard is well settled by the Hon'ble Apex Court wherein it has been held in a catena of decisions that a proposition settled several years back cannot be unsettled and the Courts / the tribunals should be slow in distributing the settled affairs in a service matter after lapse of a long period of time. Reference in this regard be had to a judgment reported in ***1991 supp (2) SCC 183 (Government of Andhra Pradesh and Ors Vs. M.A. Kareem and others) & (2007) 15 SCC 716 (Surya Prakash Jaiswal vs. Osmania University and Another).***

It is equally a well recognized principle of law that a right not exercised for a long time is non-existent, even where no limitation period is prescribed by statute and then the Courts apply the doctrine of delay / laches / acquiesce and non suit litigants who approach Court belatedly without justifiable explanation. Reference in this regard be also had to a judgment



reported in 2015 (15) SCC1 (*Prabhakar vs. Joint Director, Sericulture Department & Anr.*)

7. I find that the appointment of the respondent No. 7 was made on 08.02.2004 whereas the petitioner herein had belatedly challenged the same by filing a complaint before the District Magistrate, Purnea on 16.11.2015 i.e. after a lapse of about 11 years, which was referred to the District Programme Officer, Purnea for adjudication. Apparently, the challenge of the petitioner to the appointment of the respondent no. 7 is grossly belated inasmuch as the same has been made after 11 years, hence, the same suffers from gross delay and laches, as stands covered by the well settled principle of law in this regard, as laid down by the Hon'ble Apex Court in a catena of decisions, including the ones referred to hereinabove in the preceding paragraphs. Thus, in view of the settled principle of law to the effect that a right which has not been exercised for a long time is non existent and cannot be permitted to be exercised after a considerable lapse of time as also the settled legal principle that a challenge made after an inordinate delay without any explanation for the said delay should not be permitted and such challenge should be nipped in the bud on the ground of delay and laches, which is fully applicable to the present case, the



present writ petition is fit to be dismissed on this score alone. The petitioner has challenged the appointment of the Respondent No. 7 after an inordinate delay of 11 years and no explanation whatsoever has been furnished by the petitioner for such gross delay and laches on her part, hence, the petitioner is not entitled for any relief, especially, in a writ jurisdiction under Article 226 of the Constitution of India and the present writ petition is fit to be dismissed on the ground of delay and laches.

8. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the present writ petition is dismissed, however without any order as to cost.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.05.2019
Transmission Date	NA

