

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.432 of 2018
In
Civil Writ Jurisdiction Case No.7435 of 2013

Sarita Yadav, daughter of Dhanushdhari Ray, wife of Mithilesh Kumar Yadav,
resident of village- Mirjapur, P.O.- Mathma Bishanpur, P.S. and District-
Sitamarhi.

... .. Appellant/s

Versus

1. The State of Bihar through Collector of Sitamarhi.
2. Sachiv
3. Mukhiya
4. Members
From 2 to 4- Authority Officers and Members of Aam Sabha, Gram
Panchayat, Mirjapur, P.S. and District- Sitamarhi.
5. Upper Samaharta Jan Shikayat Koshang, Samaharanalaya, Sitamarhi.
6. C.D.P.O., Dumra, District- Sitamarhi.
7. Upper Samaharta-cum-Zima.Pa. Pra. Pada., Sitamarhi.
8. Mamta Devi, married daughter of Nainath Rai, resident of village-
Mirjapur, P.S. and District- Sitamarhi.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Dhananjay Kumar, Advocate
For the Respondent/s	:	Mr.Gyan Prakash Ojha, GA-7 Mr. Abhishekh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-01-2019

Heard learned counsel for the appellant.

There is an absolutely unexplained inordinate delay of four years and 284 days inasmuch as according to the appellant herself she had come to know about the status of the dismissal of the writ petition when her husband had arrived in this Court to file another writ petition in the year 2016. The writ petition came to be dismissed on 10th May, 2013.



It is also not in dispute that some other person had already been occupying the post which is being claimed by the appellant and it is this which came to be challenged in the subsequent writ petition. It is, therefore, clear that the appellant cannot take a plea of not having knowledge about the dismissal of her earlier writ petition on the pretext that she had not been informed by her counsel.

The appellant appears to be vigilant enough to contest the appointment of the person appointed against the said post in 2016 and it is long thereafter, that the present appeal has been filed assailing the judgement of the year 2013.

Even on merits, learned counsel for the appellant has relied on the judgement in the case of Vimal Kumari and another vs. State of Bihar and others, reported in 2017(1) PLJR 11 paragraph-16 to contend that no such disqualification can be read against the appellant inasmuch as the father-in-law of the appellant was not employed within the same Block and, therefore, the provisions of Clause-3(e) of the Guidelines would not be attracted in the present case. It is also the submission of the learned counsel that apart from this, the authorities have not taken care to record any finding about the income of the father-in-law being above Rs.12,000/- for invoking the said disqualification.



These points on merits need not be gone into, but since the decision has been cited, we can also express our reservations about the ratio decidendi as enunciated in paragraph-16 of the judgement of Vimal Kumari (supra) inasmuch as Clause-3(e) clearly spells out the disqualifications and which clause was not even under challenge before the learned Single Judge. In such circumstances, it will not be possible for us to approve the law laid down in the case of Vimal Kumari (supra) leaving it open to be considered in some other appropriate case.

So far as the issue of the income of the father-in-law being above Rs.12,000/- and partition is concerned, the same does not appear to be an issue raised before the learned Single Judge. In the given facts and circumstances and keeping in view the inordinate unexplained delay, we see no reason to entertain the appeal which is accordingly rejected both on the ground of limitation and otherwise.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Nasimul/K.C.Jha

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