

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.3835 of 2021**

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Rakesh Kumar Son of Chandra Sekhar Paswan, Resident of Village-  
Kashipur, P.S. - Samstipur Town, District- Samastipur.

... .. Petitioner

Versus

1. The State of Bihar through its Principal Secretary, General Administration Department.
2. The Deputy Secretary, Govt. of Bihar, General Administration Department.
3. The Registrar General, High Court of Judicature at Patna.

... .. Respondents

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**Appearance :**

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|---------------------------|---|-------------------------------------------------------------------------|
| For the Petitioner        | : | Mr. Yogesh Chandra Verma, Sr. Advocate<br>Mrs. Priyanka Singh, Advocate |
| For the State             | : | Mr. P.K. Verma, AAG-3<br>Mr. Suman Kumar Jha, AC to AAG-3               |
| For the Patna High Court: | : | Mr. Piyush Lal, Advocate                                                |

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**CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN**

**and**

**HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE VIKASH JAIN)**

**Dated : 26.10.2021**

Heard learned Senior counsel for the petitioner and learned counsel for the respondents. Learned counsel for the petitioner hereby undertakes to remove all defects pointed out by the Stamp Reporter as and when required. It is accordingly directed that all defects pointed out by the Stamp Reporter be removed within one month hereof.

2. The following reliefs as formulated by the petitioner have been claimed in the writ petition -

*“A. A writ application is filed in the nature of*



*Certiorari or any other appropriate writ/s, order/s, direction/s quashing the following :-*

*I. The notification issued by Deputy Secretary to General Administration Department, Govt. of Bihar vide memo No. 11698 dated 10.12.2020 cancelling the appointment of the petitioner on account of non-submission of joining in pursuance to departmental notification no. 164 dated 06.01.2020 of the appointment of the petitioner in 30<sup>th</sup> Bihar Judicial Services Examination (Junior Division) whose name is mentioned at Sr. No. 3 was rejected on the ground that he could not join the service.*

*II. The letter bearing Letter No. 29415 dated 06.07.2020 passed by the Registrar General, Patna by which the prayer for allowing petitioner for joining as Probationary Civil Judge, (Junior Division) at Biraul, Darbhanga has been rejected stating that no plausible explanation for delay is forth coming on the ground that the order passed is without considering the national lockdown and the case of the petitioner falls under exceptional circumstances as there was Covid-19 Pandemic from March, 2020.*

*III. The letter bearing Letter No. 32072 dated 13.08.2020 passed by the Registrar General, Patna by which the representation filed by the petitioner has been rejected stating that it does not require reconsideration.*

*IV. The letter bearing Letter No. 44295 dated 21.10.2020 passed by the Registrar General, Patna by which the prayer for allowing petitioner for joining as Probationary Civil Judge, (Junior*



*Division) at Biraul (Darbhanga) has been rejected stating that no plausible explanation for delay is forthcoming.*

*B. A writ in the nature of Mandamus or any other appropriate writ/s, order/s, direction/s commanding the respondents for the following:*

*I. To direct the respondents to consider the joining forthwith of the petitioner who got appointed on 06.01.2020 as Probationary Civil Judge (Junior Division) at Darbhanga (Biraul) after qualifying 30<sup>th</sup> Bihar Judicial Services Examination.*

*C. To any other relief/s to which the petitioner is found entitled to.”*

3. The short facts of the case according to the petitioner are that he qualified in the 30<sup>th</sup> Bihar Judicial Services Examination and was appointed as Probationary Civil Judge (Junior Division) vide Serial No. 177 of the list published in the notification dated 06.01.2020 (Annexure-1). The appointees were required to submit their joining before this Court by 31.01.2020 in terms of clause 7 of the said notification. However, owing to personal reasons, namely that his wife was scheduled for delivery in April 2020 and that his father had to undergo surgery for cataract at Chennai, he requested by letter dated 22.01.2020 for extension of time till April, 2020 for joining at Biraul, Darbhanga where he had been posted, which was acceded to by the learned Registrar General of this Court by his letter no.



11961 dated 20.02.2020 (Annexure-2 series). Before the expiry of the extended time up to April 2020, Covid-19 pandemic started spreading and consequently, lockdown was imposed in the last week of March, 2020 across the country. As such, the petitioner by his letter dated 08.06.2020 (Annexure-5) communicated to the learned Registrar General that he was stuck in the lockdown at Nagpur and would join at the directed place as soon as possible. The petitioner made efforts to book tickets from Nagpur to Patna by train as well as by air but was unable to travel and finally he travelled by road. Upon reaching Darbhanga, he sought to submit his joining before the District and Sessions Judge on 20.06.2020 (Annexure-7), but was directed to obtain fresh permission for joining. Finally, by letter dated 06.07.2020 issued by the learned Registrar General (Annexure-8), it was communicated to the petitioner that no plausible explanation for delay had been forthcoming. Representations for condoning the delay were filed by the petitioner, which were not entertained as not requiring reconsideration and communicated by the learned Registrar General's letter dated 13.08.2020 (Annexure-10). The petitioner thereafter wrote an apology for the delay in joining and by letter dated 01.09.2020 requested for sympathetic consideration of his case. The plea of the petitioner did not however find favour with this Court and finally, the appointment of the petitioner was cancelled in terms of notification in Memo



No. 11698 dated 10.12.2020 (Annexure-11) impugned herein.

4. Learned senior counsel Mr. Yogesh Chandra Verma appearing on behalf of the petitioner submits that the petitioner was prevented from joining within the stipulated time for reasons beyond his control. In response to his request for extension of time by letter dated 22.01.2020 (Annexure-2), the petitioner was allowed to join till April, 2020, but he was unable to travel to Darbhanga before expiry of the stipulated time by reason of lockdown. It is submitted that the respondent authority ought to have appreciated the extenuating circumstances and taken a lenient view in the matter of grant of further extension of time for joining.

5. It is then submitted that having been appointed by notification dated 06.01.2020 (Annexure-1), a vested right had accrued in favour of the petitioner and such appointment could not have been cancelled without observing natural justice by issuance of a notice calling for an explanation. It is submitted that vacancies are available against which the petitioner can be accommodated. It is also submitted that no reasons have been afforded for not accepting the plea of the petitioner explaining the reasons for delay in submitting his joining, which vitiates the order cancelling the petitioner's appointment.

6. Mr. Piyush Lal, learned counsel appearing on behalf of learned Registrar General of this Court (Respondent no. 3)



appears and opposes the writ petition. It is submitted that the letter dated 20.02.2020 (Anneure-2) extending time for joining till April, 2020 itself came with an unequivocal stipulation that there would be no further extension. It is therefore submitted that having taken advantage and benefit of the said letter, it was not open to the petitioner to avoid the burden thereunder. In other words, a person is not allowed to approbate and reprobate as held in *Shyam Telelink Limited Vs. Union of India, (2010) 10 SCC 165*, wherein the aforesaid principle has been enunciated in paragraph-23 of the judgment as follows -

*“23. The maxim qui approbat non reprobatur (one who approbates cannot reprobate) is firmly embodied in English common law and often applied by courts in this country. It is akin to the doctrine of benefits and burdens which at its most basic level provides that a person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying with the latter. A person cannot approbate and reprobate or accept and reject the same instrument.”*

7. As regards recording of reasons in the letter dated 06.07.2020 (Annexure-8), it is submitted that in view of the obtaining facts and circumstances, it was duly communicated to the petitioner that no plausible explanation for delay had been forthcoming. It is submitted that administrative orders do not



require recording of detailed reasons. Reliance has been placed on paragraph-10 of the judgment reported in *Union of India and others Vs. E.G. Nambudiri*, (1991) 3 SCC 38 as follows-

*“10. There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. ... But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. ... If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons ex facie and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. ...”*

8. It is also submitted that inasmuch as the order of appointment (Annexure-1) did not come into operation as far as the petitioner is concerned, there was no legal necessity for the observance of natural justice.

9. Mr. Piyush Lal has then relied on a decision of the Hon'ble Apex Court in *Dr. J. Shashidhara Prasad Vs. Governor of*



*Karnataka and another, (1999) 1 SCC 422*. In that case the Chancellor of Mysore University selected the appellant therein to be the Vice-Chancellor of the said University and in respect of which an order of appointment for three years was passed by him on 20.08.1997. However, on the very next day, he passed another order rescinding the order of appointment on the ground that he had not been aware earlier of the pendency of a criminal case against the appellant and it was therefore not desirable to appoint him as Vice Chancellor. The Hon'ble Apex Court found the rescinding order to be valid and dismissed the appeal. It is therefore submitted that there is no infirmity in any of the orders passed by the respondent no. 3.

10. As regards the petitioner's contention with respect to availability of vacancy against which he be accommodated, it is submitted that it is now rather late in the day and Officers of the 30<sup>th</sup> Batch of the Bihar Judicial Service have by far already completed their training by now, as the entire process could not have been postponed indefinitely.

11. Having heard the parties and on consideration of the materials on record, we are not inclined to interfere in the matter. It is not in dispute that the petitioner applied for extension of time for joining upto April, 2020 which was granted with clear stipulation of no further extension. There is nothing on record to show that the petitioner made any attempt to seek



further extension of time before expiry of the extended period upto April, 2020. Even during lockdown, he could well have informed the authority through e-mail but no action whatsoever appears to have been taken by the petitioner until as late as on 08.06.2020 when he informed that he was stuck in lockdown at Nagpur where he remained stranded and would join at the directed place as soon as possible. No details have been furnished before the authority with regard to the steps he had taken in his attempt to reach Darbhanga without delay, either before learned Registrar General or before the District and Sessions Judge, Darbhanga. Well after learned Registrar General informed the petitioner by letter dated 13.08.2020 (Annexure-10) that his representations did not require reconsideration, that the petitioner sent further representations dated to 08.08.2020, 29.08.2020 and 01.09.2020. Even these were responded to by learned Registrar General through his letter dated 21.10.2020, stating that such representations had not found favour with this Court. It has not been brought to our notice that copies of the railway and air tickets were submitted before the authorities, which have now been enclosed in the writ petition. The approach of the petitioner appears to us to be more than casual. In that view of the matter, we find no infirmity in the letter dated 06.07.2020 issued by the Registrar General stating that no plausible explanation for delay had been forthcoming. We find



merit in the submissions made on behalf of the respondent no. 3 on the basis of the principles of law adverted to in terms of the decisions relied upon.

12. Consequently, we do not also find any infirmity in the impugned order dated 10.12.2020 by which the petitioner’s appointment has been cancelled.

13. The writ petition stands dismissed.

14. Office shall follow-up to ensure that all defects are removed and compliance with the notices of this Court are made by the petitioner within the stipulated time provided in para-1 hereinabove, failing which the matter shall be brought to the notice of this Court.

**(Vikash Jain, J)**

**( Rajesh Kumar Verma, J)**

Ibrar//-

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|--------------------------|------------|
| <b>AFR/NAFR</b>          | NAFR       |
| <b>CAV DATE</b>          | N.A.       |
| <b>Uploading Date</b>    | 02.11.2021 |
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