

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14648 of 2018

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Kanchan Kumar Mishra, Son of Late Nand Kishore Mishra, Resident of
Village- Mahuli, Police Station- Athmal Gola, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Health Department, Bihar, Patna.
2. The Principal Secretary, Health Department, Bihar, Patna.
3. The Special Secretary-cum-Executive Director, State Health Committee, Bihar.
4. The District Magistrate-cum-Chairman, District Health Committee, Jamui.
5. The Secretary, District Health Committee, Jamui.
6. The Civil Surgeon-cum-Secretary, District Health Committee, Jamui.
7. The Civil Surgeon-cum-Member Secretary, District Health Committee, Jamui.
8. The Civil Surgeon-cum-First Appellate Authority, Health Department, Jamui.
9. The Secretary, Patient Welfare Committee, Jhajha.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Kanchan Kumar Mishra, In person
For the Respondent/s : Mr.Manoj Kumar Yadav, AC to GA10

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 18-10-2022

The petitioner seeks a positive direction to the respondent-Authorities for his reinstatement and allowing him to continue to work as Health Manager on contractual basis.

2. The brief factual background is that the petitioner participated in the process for selection of contractual Health Manager under Advertisement dated 14.02.2007. The modus of selection was through walk-in interview and after verification of documents of the candidates, taking into



consideration their work experience.

3. It is submitted by Mr. Kanchan Kumar Mishra, who appears in person, that from communication dated 30.08.2007, from the Secretary of the District Health Society, Jamui, addressed to the Secretary, Patient Welfare Committee, Refferal Hospital, Jhajha, it is apparent that he was selected as Health Manager for the Refferal Hospital, Jhajha. The selection was under certain terms and conditions, which included the tenure of contractual engagement to be for a period of two years after entering into an agreement with the candidate, that he would not be claiming any permanence in future, and that the contract shall stand terminated automatically on completion of two years. It is submitted by the petitioner that the period of contract was extended by the District Health Society in its meeting dated 15.12.2009 for a further period of three years, after giving a one day's break in between the lapse of the earlier contractual service and commencement of contract in terms of the decision of the District Health Society dated 15.12.2009.

4. An FIR came to be instituted against the petitioner bearing Jamui P.S. Case No.177/2013. The FIR was lodged on 15.07.2013 and alleged that the petitioner had gained contractual engagement on the basis of marksheet in respect of his MBA qualification showing his marks to be 1303 out of



1800. The petitioner's said marksheet was sent for verification to the Institution from which it was issued, and the institution sent a report that the petitioner's marks were 1065 out of 1800 and not 1303 out of 1800, as claimed by the petitioner. It would be relevant to mention here that upon his implication in the criminal case the petitioner was also arrested on 05.01.2015, to be released on bail on 26.02.2015. From the pleadings, the admitted position that emerges is that at the time of lodging of FIR the petitioner was relieved from his contractual engagement.

5. Relying upon a prescription (Annexure-08), which shows the petitioner to be ill between 01.03.2015 to 01.03.2016, it is submitted by the petitioner that he was absent from duty for valid reasons. Petitioner has also submitted that he was suffering from depression. It is, therefore, submitted by the petitioner that he could not have been disengaged from his contractual services without complying with principles of natural justice. It is also submitted that recognizing the services rendered by him as contractual Health Manager, he is entitled to be reinstated and in fact be considered for regularization.

6. Learned counsel for the State on the other hand submits that upon discovery of forgery committed by the petitioner, for obtaining the benefit of contractual appointment



in question, FIR was instituted against the petitioner and his contractual services were also brought to an end. The specific order has also been enclosed at Annexure-B to the supplementary counter affidavit, filed on behalf of Respondent No.6. Since 15.07.2013, i.e. the date of lodging of FIR, the petitioner has not worked a single day; and another specific order dated 15.07.2013 was also issued terminating the petitioner's contractual existence.

7. The petitioner has also sought quashing of this order dated 15.07.2013 in the instant writ proceedings. The writ petition is barred by delay and laches. The petitioner has not worked on contractual basis since 15.07.2013 and, therefore, the petitioner cannot claim any right to regularization.

8. Considering the rival submissions, this Court is inclined to accept the stand of the respondent-State Authorities. It is apparent from the pleadings that nine candidates had participated in the process of selection of contractual Health Manager by walk-in interview. Selection was based on marks of their MBA degree. The petitioner has emerged as the first empanelled candidate in the process of selection based on marks percentage being 72.38 per cent. Such percentage is based on the marks claimed by the petitioner at the time of selection process being 1303/1800, and on this basis he



was declared 1st empanelled candidate and selected. The petitioner now in fact submits that he has not participated in the process of selection based on these marks and that the marksheet has been replaced by someone only to harass him. Whether it was replaced by someone or not is a disputed issue of fact requiring pleading of evidence in appropriate proceedings, and this Court is not inclined to enter into such stand of the petitioner in exercise of writ jurisdiction. The issue is left open. However, in view of the stand taken by the petitioner, that in fact he has not claimed 1303/1800 marks in MBA degree, this Court would observe that he would thus not be entitled to be the first empanelled candidate, as his selection is based on marks percentage which is a percentage reflection of 1303/1800 marks. The petitioner, therefore, admittedly was unduly selected in the process of selection.

9. Another aspect of the matter is that the petitioner has been removed from his contractual service way back on 15.07.2013. He cannot show by any material, nor does he claim that he was working thereafter. Having accepted the termination dated 15.07.2013 for five years the petitioner cannot be permitted to now awake from his slumber at his own sweet will and seek a positive direction from this Court to reinstate him.



10. Petitioner now cannot also be permitted to assail the order of termination dated 15.07.2013 by saying that the order was never communicated to him and that he has come to know about the order of termination by way of counter affidavit filed in the instant proceedings. This is for the simple reason that the petitioner has not been allowed to work after 15.07.2013 till filing of the writ petition without any demur. The fact that the petitioner has slept over his right for five years itself disentitles him to invoke the equitable writ jurisdiction of this Court. The conduct of the petitioner in choosing not to assert his rights for five long years, and the fact of his contractual engagement being for a limited period; which in any case had lapsed long before filing the instant writ petition, this Court would hold that the petitioner has not been able to make out any claim enforceable by way of a writ petition. Writ petition is also barred by delay and laches.

11. Apex Court in the case of ***Chennai Metropolitan Water Supply and Sewerage Board and Ors vs. T.T. Murali Babu*** reported in (2014) 4 SCC 108, has laid down the law with regard to delay and laches, operating as a bar to invocation of writ jurisdiction. Paragraphs Nos. 16 and 17 are relevant and are being reproduced:-

“16. Thus, the doctrine of delay and laches should not be lightly



brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinise whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay



does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons — who compete with “Kumbhakarna” or for that matter “Rip Van Winkle”. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.”

12. For the reasons noted hereinabove, this Court would find that no case is made out for issuance of any direction in favour of the petitioner.

13. Writ petition is dismissed.

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	NAFR
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