

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16681 of 2018

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Nirmal Kumar Singh, Son of late Shyam Nandan Singh, Resident of Village-
Chapahi, P.S. Andhara Thadhi, District-Madhubani.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of General Administration. Government of Bihar, Patna.
2. The Joint Secretary, Department of General Administration, Government of Bihar, Patna.
3. The Commissioner, Kosi Division, Saharsa.
4. The Secretary to The Commissioner, Kosi Division, Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr.Ashok Kumar Sinha, Sr. Advocate Mr.Bijendra Kumar Singh, Advocate Mr.Rajeev Kumar, Advocate Mr.Divyani Verma, Advocate
For the Respondents	:	Mr.Harshvardhan Shivsundaram, AC to SC8

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 01-11-2022

Heard learned Senior Counsel for the petitioner as
well as learned counsel for the State.

2. The writ petition has been filed for the
following relief/s:-

“1. That the petitioner above named seeks
refuge of this Hon’ble Court and humbly
prays for issuance of a Writ of Certiorari for
setting aside the order contained in Memo
No. 1034/Saharsa dated 24/5/2014 issued by
the Respondent No.4 the Secretary to the
Commissioner Kosi Division, Saharsa,
whereby with immediate effect appointment



of the petitioner on the post of Typist cum Clerk has been set aside and consequence whereof the order dated 23/1/2015 contained in Memo No. 37 issued from the end of Joint Secretary, Department of General Administration, Government of Bihar has been issued giving afresh temporary appointment on the post of Peon Group- 'Gha' on the Pay Scale without any Show Cause notice and allow the petitioner on the post of Typist cum Clerk Group 'Ga' appointed Vide Memo No. 1971/Est. dated 22/8/2012 by Respondent No. 4 on compassionate ground by the alleged Committee."

3. The petitioner's application for compassionate appointment was considered by the Central Compassionate Committee in its meeting dated 09.12.2010. The same made a recommendation for petitioner's compassionate appointment on a Group- 'Ga' post, subject to availability of vacancies. The petitioner, thereafter, has been appointed on the post of 'Clerk-cum-Typist' by the Office of Divisional Commissioner, Kosi Division, Saharsa. The appointment of the petitioner being by an incompetent Authority, the same has been canceled by the same Authority under office order dated 24.05.2014, and the petitioner has been given the due benefits



under recommendation of the Central Compassionate Committee dated 09.12.2010 by Office order dated 23.01.2015, issued by the General Administration Department, which admittedly is the competent Authority for the petitioner's appointment on compassionate ground in the secretarial services.

4. Learned Senior Counsel appearing for the petitioner submits that the Central Compassionate Committee was headed by Principal Secretary of the General Administration Department. The recommendation being by the Principal Secretary there was no occasion for issuance of the Office order dated 24.05.2014, without complying with the principles of natural justice. It is submitted that the order, therefore, is unsustainable in the eye of law.

5. The learned counsel for the State, however, has drawn attention of the Court towards the subsequent appointment of the petitioner under Office order dated 23.01.2015 issued by the competent Authority. The same refers to an application made by the petitioner for appointment against a Group 'Gha' post. The application of the petitioner precedes issuance of the impugned office order dated 24.05.2014. He, therefore, submits that petitioner is not in a position to question



the Office order dated 24.05.2014. Another aspect of the matter is that in between cancellation of the petitioner's appointment under impugned Office order dated 24.05.2014 and the Office order issued by the competent Authority, appointing the petitioner on 23.01.2015, the petitioner has not raised any objection. Rather he has made an application. After his appointment afresh under office order dated 23.01.2015, the petitioner has not raised any grievance or objection to his new appointment, and three years later he has filed the instant writ petition.

6. In view of the above facts, it is obvious that the petitioner's appointment as 'Clerk-cum-Typist' by the Divisional Commissioner, Kosi Division, Saharsa, was unsustainable as being by an incompetent Authority. The said fact is not in dispute, therefore, submission on behalf of the petitioner that the recommendation was by a competent Authority is hardly of any significance. The recommendation could only have been given effect to by a competent Authority. The fact that the appointment is by an incompetent Authority cannot be overlooked merely because it is based on a recommendation passed by a competent Authority. The issue regarding non-compliance with principles of natural justice also,



in the present facts and circumstances, are of no avail since the petitioner himself has made an application and only thereafter based on his application the Authorities have taken steps for issuance of appointment letter by a competent Authority, after canceling the earlier Office order by the impugned order dated 24.05.2014.

7. The aforesaid facts do not make out any case for interference with the Office order dated 24.05.2014. Also for the fact that the petitioner has not raised any grievance and has approached this Court three years after availing the benefits of the appointment by the competent Authority under Office order dated 23.01.2015.

8. Having observed so, the Court would also consider submission of the learned senior counsel regarding the recommendation of the competent Authority that the petitioner was entitled for appointment against a Group 'Ga' post, which fact has also been taken note by the Authority in the Office order dated 23.01.2015, wherein at Paragraph-1 the Authority has taken note of the fact that the petitioner was entitled for compassionate appointment on the post of 'Lower Division Clerk'. Why the petitioner has not been offered appointment against a post of 'Lower Division Clerk', however, is not



apparent from the records. Whether the reasons for not extending him the benefits of the post of 'Lower Division Clerk' was based on any justifiable reasons or not is not on record. The petitioner also has not approached the Authorities for any relief in this regard.

9. The petitioner has clearly accepted his appointment afresh under Office order dated 23.01.2015 without any demur. It is also obvious from the same Office order that the petitioner's appointment afresh as 'Peon' is based on a letter dated 29.05.2014 bearing no.1072 issued by Office of the Commissioner, Kosi Division, Saharsa, Departmental notification dated 11.04.2014 bearing memo no.5046 as well as the petitioner's own application for appointment against a Group- 'Gha' post. The facts constitute delay, laches and acquiescence by the petitioner, since he has accepted the fresh appointment dated 23.01.2015 after his earlier appointment as 'Clerk-cum-Typist' was canceled by Office order dated 24.05.2014, without any demur. Having accepted the fresh appointment on 23.01.2015, he has waited for nearly four years before filing the instant writ proceedings seeking to challenge cancellation of his appointment under Office order dated 24.05.2014. In this connection, this Court would take into



consideration decision of the Apex Court in the case of ***Union of India and Others vs. N. Murugesan and Others*** reported in ***(2022) 2 SCC 25***. The Apex Court has laid down the law regarding delay, laches, acquiescence, and waiver by a party. The Apex Court has also considered that a petitioner, like in the instant case, cannot be allowed to accept and reject the same thing. The petitioner has accepted the appointment afresh after accepting cancellation of his earlier appointment by the Office order dated 24.05.2014. The appointment afresh is a benefit which the petitioner could not have availed without cancellation of his earlier appointment under the impugned Office order dated 24.05.2014. Apparently, the petitioner has not objected to the Office order dated 24.05.2014 so as to avail and enjoy the benefits of appointment afresh under Office order dated 23.01.2015, since it is an admitted fact that his earlier appointment as 'Clerk-cum-Typist' was by an incompetent Authority namely Divisional Commissioner, Kosi Division. While enjoying the fruits of the Office order dated 23.01.2015, the petitioner now cannot be permitted to assail the Office order dated 24.05.2014. The relevant extract of the judgment in the case of ***Union of India and Others vs. N. Murugesan and Others*** (supra), which the Court has considered in arriving at the



instant conclusion are being reproduced herein, which reads as follows:-

“22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.”

10. The Court, in view of the above consideration, in light of the legal position, as per decision of the Apex Court in the case of ***Union of India and Others vs. N. Murugesan and Others*** (supra), finds the petitioner's claim to be hit by delay and laches, as also acquiescence. No case is made out for invoking equitable writ jurisdiction.



11. Writ application is accordingly disposed of.

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.12.2022
Transmission Date	NA

