

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23175 of 2019

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Devendra Prasad, male, aged about 52 years, Son of Laxmi Prasad Resident
of Village- Bhakhara, P.S.- Kathaia, Sheikhpura.

... .. Petitioner

Versus

1. The State of Bihar through the Director General of Police, Bihar, Sardar Patel Bhawan, Bailey Road, Patna.
2. The Director General of Police, Bihar, Sardar Patel Bhawan, Bailey Road, Patna.
3. The Superintendent of Police, Sheikhpura.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Awadhesh Kumar Mishra with Mr. Ajay Kumar & Shiv Pujan Sahay, Advocates
For the State	:	Mr. Ajay Kumar AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 19-07-2022

Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner claims to have been appointed under special circumstances on 01-04-1997 as a Constable and has continued to serve the Police Department till 16-09-2002 when he was terminated. The petitioner's termination was on the ground that his appointment was contrary to the provisions under the Bihar Police Manual, namely Rule 661 (b) thereof which provided that the selection was to be done on the basis of



list prepared by the Selection Board whereas the petitioner has been appointed by the Superintendent of Police.

3. In sum and substance, the petitioner, by filing the instant writ petition, is seeking reinstatement in service, which service was brought to an end in the year 2002. In the meantime, the petitioner had approached this Court by filing CWJC No. 14223 of 2016.

4. It is submitted by Mr. Awadhesh Kumar Mishra learned counsel appearing for the petitioner that since others who had been appointed under special circumstances and contrary to the Rules, were reinstated under various orders of the Court, the petitioner had filed CWJC No 14223 of 2016 placing reliance on the provisions contained in Clause 4.C(1) the Bihar State Litigation Policy, 2011 insofar as the “covered matters” are concerned which reads as follows:-

“4.C(1) A good number of cases are from the category of similar cases. Each Government Department will aim to consider and settle the claim of the representationist/applicant-employee/citizen, if the claim is found covered by any decision of the Court. Many service matters of this nature, can be disposed of at the level of the Department itself without compelling the litigant to come to the Court. In this manner, the Government Departments would be acting as efficient litigants.”

5. Pleadings on record reveal that CWJC No 14223 of



2016 was placed before the *Lok Adalat* on 22-04-2018. The order of the *Lok Adalat* reads as follows:-

“Mr. Awadhesh Kumar Mishra, learned counsel with reference to PLJR 2018(2) 294 submits that present writ application has now become infructuous as the impugned order itself has been set aside by the LPA Court.

Learned counsel for the State admits the aforesaid factual and legal position.

In view of the aforesaid, the writ application stands disposed of in terms of the judgment of the Division Bench passed in LPA No. 1584 of 2017.

The parties are informed that the court fee, if any, paid by any of them shall be refunded.”

6. The petitioner, thereafter, has approached the Director General of Police (for brevity ‘DGP’) by making an application for his reinstatement which has been rejected under the impugned order dated 10-05-2019. The order is taking into consideration the nature of the petitioner’s initial appointment in the year 1997 and the fact that it was contrary to the Rules and on such grounds the petitioner had been terminated in the year 2002 itself.

7. The Authorities have turned down the petitioner’s claim under Clause 4.C(1) of the Bihar State Litigation Policy, 2011. They have categorically stated in the order dated 10-05-2019 that the petitioner’s appointment was illegal as it was neither in accordance with the Bihar Police Manual, nor by



the Selection Commission. From the petitioner's representation (Annexure-10) after the award of the *Lok Adalat* dated 22-04-2018, it is apparent that the petitioner has not stated details of any person whose appointment was contrary to the Rules, and who was similarly situated as the petitioner, who have been actually reinstated. The petitioner, in the representation, has not made out any claim for parity or any basis for concluding that his claim would be covered by Clause 4.C(1) of the Bihar State Litigation Policy, 2011.

8. In the instant writ application, assailing the order dated 10-05-2019, he has placed on record certain orders passed in favour of other constables, who were appointed contrary to the Rules and have been directed to be reinstated. Copy of the orders have been enclosed at Annexure-1 series to the writ application. In all the writ applications this Court would find that the petitioners have diligently brought their grievance before this Court. Md. Manzoor Alam had approached this Court by filing writ petition in 2006 bearing CWJC No 12005 of 2006. Deepak Kumar had approached this Court in the year 2008 by filing CWJC No. 18029 of 2008. Ranjit Kumar Shandilya had also approached this Court in CWJC No. 15046 of 2006. Satish Chandra Jha and Jagdish Paswan had also



approached this Court in the year 2006. Their writ petitions were registered as CWJC No 3799 of 2006 and 4097 of 2006 respectively. The case of Mithilesh Kumar Singh was also filed long ago as his LPA is of the year 2006 bearing LPA No. 690 of 2006. Ashok Kumar Choudhary had also approached this Court by filing CWJC No 13521 of 2008. Kamal Chandra Sah had also approached this Court around the same time as his LPA is of the year 2008 bearing LPA No. 221 of 2008.

9. The petitioner, on the other hand, having been removed in the year 2002, for the first time, approached this Court by filing CWJC No. 14223 of 2016, nearly 14 years after his dismissal. At such a belated stage, the petitioner has approached this Court claiming parity with those, who have diligently raised their claim and have been allowed relief or direction in their favour by this Court for consideration of their case by the Authority concerned. This Court would observe that limitation does not strictly apply to proceedings under Article 226 of the Constitution of India. Nonetheless an individual cannot be permitted to sleep over his rights and at his own sweet Will awake from slumber at any time to approach this Court.

10. Law is settled that this Court should be reluctant to exercise writ jurisdiction in favour of such person. The



petitioner, appears to be a fence sitter, who has sat on the fence for quite a long time, nearly 14 years. This Court, therefore, would consider it appropriate to take note of the law in this regard as stated by Hon'ble Apex Court in the case of ***U P Power Corporation Ltd Vs. Ram Gopal*** reported in ***2020 SC Online 101***. Paragraph No. 16 of which reads as follows:-

16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In SS Balu v. State of Kerala², this Court observed thus:

“17. It is also well-settled principle of law that “delay defeats equity”. ...It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.”
(emphasis supplied)

11. This Court does not find any infirmity in the order passed by the DGP. The writ petition is devoid of any merit and



the same is dismissed.

(Madhuresh Prasad, J)

shyambihari/-

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