

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.127 of 2020

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Rishi Raj, Male, aged about 37 years, Son of Late Harish Chandra Sinha
Resident of Flat No. 401, Block-A, Arpana Mansion, Tilak Nagar, Rukanpura,
P.S.-Rupaspur, District-Patna Pin Code-800014

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Energy Department,
Bihar Patna
2. Bihar State Power Holding Company Limited through the General Manager,
Human Resource and Administration
3. Chairman-Cum-Managing Director, Bihar State Power (Holding) Company
Limited, Vidyut Bhawan, Patna.
4. Managing Director, Bihar State Power Transmission Company Limited,
Vidyut Bhawan, Patna.
5. General Manager, Human Resource and Administration, Bihar State Power
(Holding) Company Limited, Patna.
6. Deputy General Manager, Human Resource and Administration Bihar State
Power (Holding) Company Limited, Patna.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Abhinav Srivastava, Adv.
For the Respondents : Mr. Anand Kumar Ojha, Adv.

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT

Date : 24-08-2022

Heard learned counsel for the petitioner and learned
counsel representing the respondent- Bihar State Power Holding
Company Limited (for short ‘ the Company’).

2.The petitioner is aggrieved by the Final Gradation List,



which was communicated to him on 04-10-2019, wherein, he has been placed at Sl. No. 312. It is his grievance that others, who were appointed under the same transactions, which commenced in the year 2007, have been ranked above the petitioner in an illegal manner.

3. The brief factual background leading to the instant writ proceedings is that the petitioner was appointed as Junior Accounts Clerk in the respondent Company on compassionate grounds on death of his father in harness. By way of an Advertisement bearing Employment Notice No. 4 of 2007(Internal) applications were invited from eligible candidates for internal appointment on post of Assistant Electrical Engineer (General Cadre) and Assistant Executive Engineer (GTO) against the 2% reserved quota earmarked for internal recruitment.

4. The undisputed fact is that the petitioner had applied pursuant to the selection process. When the process of selection was being delayed for one reason or the other he also applied for being considered for (External) direct recruitment on the same post pursuant to an advertisement arising out of Employment Notice No. 5 of 2007 by appearing at the test conducted by National Power Training Institute (for short



NPTI), Faridabad. The petitioner participated in the said selection process also. Relying on the petitioner's dismal performance in the test conducted by NPTI, Faridabad, the petitioner was being denied appointment in the other recruitment process (Internal) against 2% quota, which brought the petitioner before this Court in CWJC No 18382 of 2012. The issue was finally settled by decision of this Court dated 08-01-2013. This Court allowed the petitioner's writ petition and passed an order, relevant extract of which is being reproduced:-

“27. In the said circumstances, this writ petition is allowed, the impugned orders of the authorities dated 16.01.2012 and 10.09.2012 are hereby quashed and the respondents are directed to appoint both the petitioners on the post of Assistant Electrical Engineer (General Cadre) Assistant Executive Engineer (G.T.O. Cadre) forthwith (emphasis mine) in the 2% quota reserved for under employed in the Board as per Employment Notice No. 04 of 2007 (internal).”

5. The Authorities assailed the said order before the Division Bench by way of Intra Court appeal. Division Bench of this Court in LPA No. 1471 of 2013, has dismissed the appeal of the respondent-Company.

6. The petitioner was, thus, issued the offer of appointment to the post of Assistant Electrical Engineer on 04-11-2015 (Annexure-14). Whereafter, appointment letter was



issued to the petitioner on 17.12.2015 (Annexure-15 to the writ petition).

7. Sometime later an exercise was undertaken for preparing a seniority list of the persons who were working as Assistant Electrical Engineer, for the next promotion. A tentative gradation list was published on 07-05-2019 inviting objections. The petitioner filed his objection, relying on Clause 1. (क) of the notification dated 08-05-1978 (Annexure-25) which reads as follows:-

“ 1. यदि कामगारों की भर्ती एक साथ ही प्रोन्नति और सीधी नियुक्ति से की जाए तो :-

(क) प्रोन्नत कामगारों को सीधे भर्ती किए गए कामगारों के मुकाबले पूर्वता मिलेगी।

टिप्पणी :- “एक साथ ही” से अभिप्रेत है “एक ही संव्यवहार” में । “संव्यवहार” शब्द सक्षम पदाधिकारी के इस विनिश्चय का निर्देश करता है जिसमें यह निर्णय किया गया हो कि कुल पदों में से कितने पद “सीधी नियुक्ति” द्वारा और कितने पद “प्रोन्नति द्वारा” भरे जाएंगे । प्रक्रियागत विलंबों के कारण वास्तविक नियुक्तियां कई प्रक्रमों में तथा विभिन्न तारीखों को की जा सकती हैं। फिर भी रिक्तियों को भरने को संबंध में चूंकि एक ही तारीख को विनिश्चय किया गया है इसलिए ऐसी सभी नियुक्तियां एक ही संव्यवहार का अंग समझी जाएगी।”

8. Petitioner's counsel submits that his appointment against the 2% quota (internal), and appointment against the direct recruit 60% quota were in the same transaction since both



recruitments were pursuant to two advertisements of the same year, i.e. Advertisement No. 4 of 2007 and Advertisement No. 5 of 2007 respectively. Appointments made pursuant to both advertisements were against posts falling in the respective quotas in the same year as per notification dated 13-08-2005 (Annexure-26). Thus, it is contended that the petitioner is entitled to seniority above the recruits under the 60% (External) quota. The petitioner, thus, was required to be placed above the first person directly appointed pursuant to the Employment Notice No. 5 of 2007, who has been placed at Sl. No. 84 in the tentative gradation list.

9. It is submission of the petitioner's counsel that petitioner is not in any way responsible for delayed issuance of the appointment letter as he was dragged into unnecessary litigation by the unreasonable stand of the respondent Authorities, who were illegally taking into consideration the petitioner's performance/merit in two different selection process, for his appointment against 2% quota. It is only after this Court in CWJC No. 18382 of 2012 and thereafter in LPA No 1471 of 2013 had passed orders in favour of petitioner's appointment under under the 2% (internal) quota, that petitioner was appointed. That being so, the petitioner is now required to



be granted his due benefits as a consequence of the decision on his writ petition.

10. It is further submitted that respondents' reliance placed on the offer of appointment or terms of advertisement, is legally unsustainable inasmuch as it is trite law that the petitioner actually had no option as he had accepted the terms imposed upon him by his employer. He, thus, cannot be prevented from claiming his due. Such estoppel which is sought to be raised against the petitioner's claim is not only contrary to the Rule provision; but is also opposed to public policy for which he has relied upon decision of the Apex Court in case of ***Somesh Thapliyal v. Vice Chancellor, H.N.B. Garhwal University*** reported in ***AIR 2021 SC 4158***. The petitioner has placed specific reliance in paragraph Nos. 43 and 44 of the said judgment which read as follows:-

“43.The bargaining power is vested with the employer itself and the employee is left with no option but to accept the conditions dictated by the authority. If that being the reason, it is open for the employee to challenge the conditions if it is not being in conformity with the statutory requirement under the law and he is not estopped from questioning at a stage where he finds himself aggrieved.

44.In the instant case, they lodged the protest petition and brought their grievance to the notice of the respondents but were unable to question except to pray the almighty to consider their grievance sympathetically.”



11. It is his submission that once a Rule prescribes for determination of *inter se* seniority in a particular manner all other modes would be excluded and, therefore, the petitioner would be entitled to determination of his *inter se* seniority by placing him in the gradation list above the persons who have occupied the post based on the direct recruitment selection process.

12. Learned counsel for the respondent -Company, on the other hand, has submitted that the Authorities have rejected the petitioner's objection, and claimed seniority position relying upon the petitioner's terms of appointment, specifically Clause 6 of the same. The Authorities were of the view that the petitioner was conscious right from the offer of appointment that his *inter se* seniority will be effective from the date of joining on the post. Thus, his claim for seniority since prior to his actual joining was unsustainable and unacceptable.

13. It is also submitted that claim sought to be raised by the petitioner in the instant writ petition is not maintainable. It is his submission that the petitioner had approached this Court in CWJC No. 18382 of 2012, wherein, the issue regarding his appointment was considered by this Court. This Court, after taking into consideration the fact that the petitioner had



participated in the process of selection against the 2% quota reserved for internal recruits had allowed the petitioner's claim, but the relief was specific that the petitioner was to be appointed on the post of Assistant Electrical Engineer or Assistant Executive Engineer "forthwith". The petitioner at that point had the option of raising his claim that his appointment was to be considered with effect from an earlier date. This plea was available to the petitioner on that day and since he has not raised this plea, such plea cannot be raised today. That also so late in the day when the issue of *inter se* seniority of those who have come to be appointed against the (External) direct recruitment 60% quota, pursuant to the Employment Notice No. 5 of 2007, has attained finality.

14. Several orders, including offer of appointment, the appointment letter, rejection of the petitioner's objection filed pursuant to the tentative gradation list have been issued in the meantime, all of which have not been assailed by the petitioner. The petitioner's claim would now also be barred by delay and laches.

15. Petitioner's counsel, to resist the issue of delay and laches raised by the learned counsel for the respondent-Company, has relied upon decision of the Apex Court in case of



State of M.P. and others vs. Nandlal Jaiswal and others reported in ***AIR 1987SC 251***.

16. He has also relied upon ***Amarjeet Singh and others vs. Devi Ratan and others*** reported in ***(2010) 1 SCC 417*** and ***Roshan Lal and others vs. International Airport Authority of India and others*** reported in ***1980 (Supp) SCC 449*** in support of his submission that the petitioner had actually no option at the time he was offered appointment. Acceptance of the terms and conditions imposed by the employer, who is in a dominating position, cannot take away the petitioner's right and he cannot be estopped from questioning the denial of seniority vis-a-vis those appointed against direct recruits (external) 60% quota in the same transaction. Petitioner's counsel has also relied upon judgment of the Apex Court in case of ***Somesh Thapliyal v. Vice Chancellor, H.N.B. Garhwal University*** reported in ***AIR 2021 SC 4158***. Reliance is also placed on one decision of the Apex Court in case of ***Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and others*** reported in ***(2003)2 SCC 111*** as also the case of ***Ambica Quarry works vs. State of Gujarat and others*** reported in ***(1987) 1 SCC 213***.

17. This Court, having considered the rival submissions, would observe that the petitioner's appointment under the



internal recruitment process against the 2% quota was only after decision of this Court which attained finality in LPA No. 1471 of 2013. The writ petition had been filed by the petitioner in the year 2012 after having participated in the process of selection under Advertisement No. 4 of the year 2007. The petitioner, thus, had approached this Court for being appointed against the 2% quota five years after having participated in the selection process. Even in the proceedings arising out of CWJC No. 18382 of 2012, the petitioner, admittedly, has not been allowed any seniority with retrospective effect. The order of this Court directs for appointment “forthwith”. The petitioner, therefore, today in these proceedings, instituted 13 years after having participated in the selection process, cannot be permitted to raise a contrary claim for seniority in excess of the order passed in CWJC No. 18382 of 2012, which has directed appointment forthwith. The expression forthwith used by this Court indicates the intention that appointment was to be done without any delay and as soon as possible. This Court has thus not granted any retrospectivity.

18. This Court would also observe that the precedents relied upon by the petitioner, to meet the issue of delay and laches; and estoppel would not apply since factually the



precedents relied upon by the petitioner are distinguishable.

19. The petitioner had ample opportunity to raise his claim for seniority. First, in the proceedings arising out of CWJC No. 18382 of 2012, thereafter, at the time of issuance of offer of appointment, appointment letter containing specific clause that his seniority would be w.e.f. the date of his joining; and also after rejection of the petitioner's objection filed pursuant to the tentative gradation list and after his earlier claim sought for grant of seniority was rejected by the authorities vide communication dated 08-08-2019 (Annexure-24). The petitioner, however, has chosen not to assert his claim for seniority all this while. In the meantime, vital third party rights of appointees under the direct recruit 60% quota (external) has arisen with respect to their seniority.

20. The submission of the petitioner's counsel that the petitioner had no actual option since the terms of the offer of appointment and conditions in the appointment letter were imposed by the employer, is also not acceptable to the Court. In the instant case, the petitioner had approached this Court prior to issuance of the offer of appointment or appointment letter for asserting his right and plea of the petitioner being in any way intimidated by the employer, in the instant case, appears to be



factually unsustainable. In view of these facts, the Court would not lightly brush aside the inordinate delay in approaching this Court claiming seniority after 13 years.

21. The petitioner's plea regarding estoppel not being applicable in view of the mandate for determination of *inter se* seniority between the appointees like the petitioner against 2% quota, and those appointed against 60% quota (external) as per notifications dated 08-05-1978 and 13-08-2005, is also not considered by this Court to be of any benefit to the petitioner's case, in view of the conduct of the petitioner taken note of above. The Court must consider that because the petitioner was indolent and slept over his right, the issue of seniority of at least 83 appointees, over which the petitioner is now claiming seniority, has attained finality over the years. They have also not been impleaded as parties. Therefore, these 83 appointees now cannot be deprived of their settled seniority.

22. In view of the above noted reasons, this Court would consider it useful to quote paragraph Nos. 16 and 17 from the decision of the Apex Court in case of ***Chennai Metropolitan Water Supply and Sewerage Board vs. T.T. Murali Babu*** reported in ***(2014) 4 SCC 108*** which read as follows:-

“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.”

23. This Court finds no substance in the relief claimed by the petitioner for the reasons indicated above.

24. The writ petition is, accordingly, dismissed.

(Madhuresh Prasad, J)

shyambihari/-

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