

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.118 of 2020

In
Civil Writ Jurisdiction Case No.15808 of 2017

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Ashok Kumar Son of Late Sh. Narayan Shahi resident of Village Khopi, P.S. Runnisaidpur, District Sitamarhi at present residing at Flat No. 205, S.S. Palace, North Shastrinagar, P.S. Shastrinagar, District Patna, Bihar.

... .. Appellant/s

Versus

1. The State of Bihar Through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary (Home), Govt. of Bihar, Patna.
3. The Special Secretary Home (Police), Govt. of Bihar, Patna.
4. The Director General of Police, Bihar, Patna.
5. Bihar Public Service Commission through its Secretary, 15, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Arvind Kumar, Advocate Mr. S. S. Thakur, Advocate Mr. Kaushikesh Kumar, Advocate Mr. Amit Bhaskar, Advocate
For the Respondent/s	:	Mr. Suman Kumar Jha, AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 23-01-2023

The present Letters Patent Appeal is filed against the order of the learned Single Judge dated 08.01.2020 passed in CWJC No. 15808 of 2017.

02. Grievance of the appellant in the writ petition is as under:-

"For issuance of a writ of mandamus or any other appropriate writ/order/direction commanding the respondents to accord promotion to the



petitioner on the post of staff officer in the Pay Band-4 with grade pay of Rs. 8700 from due date in the cadre of Bihar Police Service on the ground that before petitioner's promotion on 21.10.2013 to Indian Police Service, one vacancy was available in the cadre of staff office w.e.f. 01.10.2013 and to grant consequential monetary and other admissible benefits."

03. Core issue involved in the present *lis* is whether the appellant is entitled for promotion to the cadre of Staff Officer in the Pay Band-4 with a Grade Pay of Rs. 8700/- in the Bihar Police Service cadre and promotion w.e.f. 21.10.2013 after duly taking note of vacancy of the promotion cadre of Staff Officer.

04. In the month of February, 2013 respondents-state have undertaken exercise of considering names of the feeder cadre to the post of Staff Officer for five vacancies. Undisputedly, appellant is entitled to claim his right to promotion to the post of Staff Officer against the sixth vacancy and onwards. Sixth vacancy was considered after 21.10.2013. In the meanwhile, appellant entered the Central Government cadre like IPS Officer (Non-IPS). In this backdrop, the appellant had the cause of action in approaching this Court in the year 2013 as and when DPC held for the post of Staff Officer in the month of February, 2013. Whereas the present litigation commenced from the date of filing of CWJC No. 15808 of 2017 stated to have been filed on 18.10.2017.



05. Learned counsel for the appellant submitted that appellant's grievance has been pending consideration with reference to representation and it was rejected in the year 2017. If it is rejected in the year 2017 then there is no challenge to the decision of the respondent-state insofar as rejection of appellant's claim in the year 2017.

06. Hon'ble Apex Court, in the case of **P.S. Sadasivaswamy vs. State of T.N.** reported in **AIR 1974 SC 2271**, in para 2 held as under:-

"2. The main grievance of the appellant is that the second respondent who was junior to him as Assistant Engineer was promoted as Divisional Engineer in 1957 by relaxing the relevant rules regarding the length of service necessary for promotion as Divisional Engineer and that his claim for a similar relaxation was not considered at that time. The learned Judge of the Madras High Court who heard the writ petition was of the view that the relaxation of the rules in favour of the second respondent without considering the appellant's case was arbitrary. In view of the statement on behalf of the Government that such relaxation was given only in the case of overseas scholars, which statement was not controverted, it is not possible to agree with the view of the learned Judge. Be that as it may, if the appellant was aggrieved by it he should have approached the Court even in the year 1957, after



the two representations made by him had failed to produce any result. One cannot sleep over the matter and come to the Court questioning that relaxation in the year 1971. There is the further fact that even after Respondents 3 and 4 were promoted as Divisional Engineers over the head of the appellant he did not come to the Court questioning it. There was a third opportunity for him to have come to the Court when Respondents 2 to 4 were again promoted as Superintending Engineers over the head of the appellant. After fourteen long years because of the tempting prospect of the Chief Engineership he has come to the Court. In effect he wants to unscramble a scrambled egg. It is very difficult for the Government to consider whether any relaxation of the rules should have been made in favour of the appellant in the year 1957. The conditions that were prevalent in 1957, cannot be reproduced now. In any case as the Government had decided as a matter of policy, as they were entitled to do, not to relax the rules in favour of any except overseas scholars it will be wholly pointless to direct them to consider the appellant;s case as if nothing had happened after 1957. Not only Respondent 2 but also Respondents 3 and 4 who were the appellant;s juniors became Divisional Engineers in 1957, apparently on the ground that their merits deserved their promotion over the head of the appellant. He did not question it. Nor did he question the promotion of his juniors as Superintending Engineers over his



head. He could have come to the Court on every one of these three occasions. A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner;s petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant;s petition as well as the appeal."

07. Hon'ble Apex Court, in the case of **Vijay Kumar**

Kaul vs. Union of India reported in **(2012) 7 SCC 610**, in para 26

held as under:-

"26. From the aforesaid pronouncement of law, it is manifest



that a litigant who invokes the jurisdiction of a court for claiming seniority, it is obligatory on his part to come to the court at the earliest or at least within a reasonable span of time. The belated approach is impermissible as in the meantime interest of third parties gets ripened and further interference after enormous delay is likely to usher in a state of anarchy."

08. In the light of these facts and circumstances and the fact that appellant has approached this Court belatedly after lapse of about four years he has not made out any case due to delay and laches.

09. Even on merit the appellant has not made out a case in the light of observation made by the learned Single Judge in para 10 to 13 of his judgment so also learned Single Judge has relied on a number of decisions insofar as promotion to be granted with reference to retrospective promotion.

10. In the light of these facts and circumstances, the appellant has not made out *prima facie* case so as to interfere with the order of the learned Single Judge dated 08.01.2020 passed in CWJC No. 15808 of 2017. Accordingly, the present Letters Patent Appeal stands dismissed.

11. At this stage, learned counsel for the appellant submitted that delay is not on the part of the appellant but the delay is on the part of the State in not considering the appellant's



name, it is to be noted that the appellant approached this Court and not the State Government so as to examine on whose part there is delay and laches. When the appellant had cause of action in the year 2013 in all fairness he should have approached this Court within a reasonable period of six months from the date of cause of action accrued.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

