

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4175 of 2024

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Pawan Kumar S/o- Surendra Prasad, R/o - Sri Nagar, Road No. 1 A.G.
Colony Park, Ashiyana Nagar, P.S.- Shastri Nagar, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Law Secretary, Law Department Govt. of Bihar, Patna.
3. The Patna High Court through its Registrar General.
4. The Registrar General, Patna High Court, Patna.
5. The Convener, Co-ordination Committee-cum- District and Sessions Judge,
Patna, Judges Court, Road, Civil Court, Patna, P.O. - Bankipur, District-
Patna.
6. Vipin Kumar, S/o - Rajendra Prasad, R/o - Village and P.O. and P.S.- Koko,
District - Jehanabad, Bihar - 804418.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Tej Pratap Singh, Adv.
For the State	:	Mr.P.K.Shahi, AG
		Mr.Manish Dhari Singh, AC to AG
For the High Court	:	Mr.Piyush Lall, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 22-03-2024

1. The present writ petition has been filed for directing the respondents to consider the case of the petitioner for appointment on the post of clerk, in pursuance to Employment Notice dated 07.02.2016, bearing Employment Notice No. 01 of 2016, in light of the judgment dated 19.04.2023, passed in LPA No.650 of 2022 (*Prince Kumar and Ors. vs. The State of Bihar & Ors.*) & other analogous cases. The petitioner has also prayed for cancellation of the candidature of the private respondent no.6, who has been appointed along with others, by an order issued by the respondent



no.5, in pursuance to the order dated 19.04.2023, passed in L.P.A. No.650 of 2022. Lastly, the petitioner has prayed for quashing of the resolution dated 04.12.2023 and 11.01.2024, issued by the Centralized Selection and Appointment Committee, whereby list of 25 persons (selected candidates) has been published.

2. The brief facts of the case, according to the petitioner are that the petitioner had filed an application for being appointed on the post of clerk pursuant to Employment Notice dated 07.02.2016, issued by the Centralized Selection and Appointment Committee cum the District and Sessions Judge, Patna. It is stated that the petitioner had appeared in the preliminary test, conducted on 17.07.2016, whereupon the result was published on 29.04.2017 and the petitioner had stood successful, whereafter he had appeared in the mains written examination, held on 15.10.2017, result whereof was published on 16.12.2017. The petitioner is stated to be amongst the 4914 successful candidates, hence he had participated in the interview, conducted by the respondents. Thereafter, the respondent no.5 had issued a letter dated 26.09.2018, by which 1681 candidates were declared to have been selected against the Employment Notice No.1 of 2016, on the post of Clerk in the Civil Courts of Bihar.

3. The learned counsel for the petitioner has submitted



that a bare perusal of Rule 7 (12), 7(13) and Rule 7(14) of the Bihar Civil Court Staffs (Class-III and Class-IV Staffs), Rules, 2009 (hereinafter referred to as the 'Rules, 2009'), postulates preparation of a panel in the order of merit for all the judgeships in the State of Bihar. It is also stated that the said Rules, 2009, also envisage that the panel would be valid for a period of two years, however, in the instant case, no panel was prepared, which is not only violative of Article 14 of the Constitution of India but also Rule 7(13) and Rule 7(14) of the Rules, 2009. This had led to filing of various writ petitions by the candidates bearing C.W.J.C. No.6259 of 2019 and other analogous cases (including C.W.J.C. No.21219 of 2018), before this Hon'ble Court, however, the same were dismissed by a co-ordinate Bench of this Court by a judgment dated 29.09.2022, leading to filing of LPA No.650 of 2022 (***Prince Kumar and Ors. Vs. The State of Bihar and Ors.***) & other analogous cases, which was allowed by the Ld. Division Bench of this Court by a judgment dt. 19.4.2023, passed in LPA No. 650 of 2022 & other analogous cases, whereby and whereunder the concerned Selection/Appointing authority was directed to consider the name of each of the Appellants for the purposes of appointment on the post of clerk against unfilled vacancies arising due to



non-joining of the candidates as well as against the accrued vacancies till 26.09.2020 and issue necessary orders of appointment to the eligible Appellants, within a period of three months of the date of receipt of the said order and in case any of the Appellants are not suitable or eligible, necessary orders shall be passed and communicated to them.

4. The learned counsel for the petitioner has submitted that similar treatment as has been directed to be extended to the appellants of the aforesaid LPA No.650 of 2022 (***Prince Kumar and Ors. Vs. The State of Bihar and Ors.***) & other analogous cases, vide judgment dated 19.04.2023, be also extended to the petitioner.

5. Per contra, the learned counsel for the respondents no.3 to 4 has submitted that the Employment Notice in question was published way back in the year 2016 i.e. on 07.02.2016, whereafter the merit list was published on 26.09.2018, taking into account the marks of the final written exam as well as the interview, in the order of merit and on the same day, the select list of 1681 candidates was also published for appointment on the post of clerk in the Subordinate Courts of Bihar. It is submitted that the petitioner had thereafter, sat idle and had not raised any grievance, however, only after passing of the



aforesaid judgment dated 19.04.2023 in LPA No.650 of 2022 (*Prince Kumar and Ors. Vs. The State of Bihar and Ors.*) & other analogous cases, he has moved this Court by filing the present writ petition in the month of February, 2024. Thus, it is submitted that the present writ petition is barred by the principles of delay, laches and acquiescence on the part of the petitioner, inasmuch as the select list of 1681 successful candidates had stood declared as far back as on 26.09.2018, whereas the present writ petition has been filed belatedly in the month of February, 2024, after favorable pronouncement of judgment of the learned Division Bench of this Court in the case of similarly situated candidates, hence on this ground alone, the present writ petition is fit to be dismissed.

6. I have heard the learned counsels for the parties and perused the materials on record, from which this Court finds that not only the final result but the select list of 1681 successful candidates was published as far back as on 26.09.2018, whereas the present writ petition has been filed only in the month of February, 2024 and that too, after pronouncement of the aforesaid judgment dated 19.04.2023, in the case of *Prince Kumar and Ors.* (supra), hence the conduct of the petitioner apparently demonstrates that he was sitting on the fence and



waiting for the result of the said proceedings and has approached this Court only after the final judgment dated 19.04.2023 has been passed by the learned Division Bench of this Court in the case of ***Prince Kumar and Ors.*** (supra), with a view to claim parity and derive the same benefit. This Court finds that the position, as existing in law, in this regard, is now well settled. It has now conclusively been held that when a person who is not vigilant of his rights and acquiesces to the situation, his writ petition cannot be entertained after a long delay even on the ground that the same relief was granted to a person similarly circumstanced who was vigilant enough about his rights and had challenged the action without any unnecessary wastage of time. In this regard, it would be useful to quote paragraph no. 29 of a judgment rendered by the Hon'ble Apex Court, reported in (2010) 12 SCC 471 (***Shiba Shankar Mohapatra and Ors. v. State of Orissa and Ors.***) herein below:-

“29. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the court is guilty of delay and the laches. The court exercising public law jurisdiction does not encourage agitation of



stale claims where the right of third parties crystallizes in the interregnum. (vide Aflatoon v. Lt. Governor of Delhi; (1975) 4 SCC 285; State of Mysore v. V.K.Kangan; (1976) 2 SCC 895; Municipal Council, Amhednagar v. Shah Hyder Beig; (2000) 2 SCC 48; Inder Jit Gupta v. Union of India; (2001) 6 SCC 637; Shiv Dass v. Union of India; (2007) 9 SCC 274; A.P. SRTC v. N. Satyanarayana; (2008) 1 SCC 210 and City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla; (2009) 1 SCC 168).”

7. Though, the aforesaid observations were made by the Hon’ble Supreme Court in the matter of a dispute pertaining to seniority which had become final, yet, by way of analogy, what was held by the Supreme Court in the aforementioned case is also applicable to the facts of the present case.

8. The Apex Court in the case of ***State of Uttar Pradesh & ors. Vs. Arvind Kumar Srivastava & ors.*** (Civil Appeal No.9849 of 2014) decided on 17.10.2014, while dealing with the question of delay and latches held that in such like cases, the Court should be very slow in granting relief to the incumbent specially when the claimants lost time and did not rise to the occasion in time for filing the writ petitions by holding as follows:-

“(23) The legal principles which emerge from the



reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the



acquiescence, would be a valid ground to dismiss their claim.”

9. Similarly, the observations of the Ld. Single Judge of the Calcutta High Court in the case of ***Mithi Mukherjee Vs. State of West Bengal and Ors.*** (W.P. No. 14028 of 2013) and other connected petitions, decided on 20.01.2014, being relevant are reproduced herein below:-

“The inviolable conclusion deducible from the above noted decisions are that the stale and dead claims should not be encouraged in exercise of the discretionary relief under Article 226 of the Constitution of India. A line of distinction is to be drawn between a vigilant and a non-vigilant litigant and they cannot be equated on the same footing. A litigant who was sitting on a fence and waiting for the result of the litigation initiated by other litigant promptly and after the favourable result approaches the Court to seek equality, should not be encouraged. Delay and latches is one of the important factor to push away the recalcitrant or invariable litigant who was watching the proceeding of the other and ventilated the grievance only after a favourable decision is obtained by the other litigant. The plea of inordinate delay is not applicable in case of an infringement of the fundamental rights. The proceeding may attract dismissal, more so, when a third parties' right are created in interregnum. It is not



an inflexible rule but depends upon the rational and satisfactory explanation and, therefore, varies from case to case.”

10. Even, in the case of ***Ex. Capt. Harish Uppal vs. Union of India, reported in 1994 SCC, Supl. (2) 195***, the Hon’ble Apex Court, in para 8, held as under:-

“8. The petitioner sought to contend that because of laches on his part, no third party rights have intervened and that by granting relief to the petitioner no other person's rights are going to be affected. He also cited certain decisions to that effect. This plea ignores the fact that the said consideration is only one of the considerations which the court will take into account while determining whether a writ petition suffers from laches. It is not the only consideration. It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of the Constitution of India and that is what precisely the Delhi High Court has done. We cannot say that the High Court was not entitled to say so in its discretion.”

11. In the present case also the petitioner waited till the



decision of ***Prince Kumar and Ors.*** (supra) & other analogous cases and approached this Court after a lapse of more than five years of the arising of cause of action and about one year of passing of the aforesaid judgment in the case of ***Prince Kumar and Ors.*** (supra), hence the petitioner cannot be granted the same relief, in view of the delay and laches on his part in approaching this Court and being merely a fence-sitter who had not taken up the litigation at the appropriate time when the other petitions were decided by this Court, especially when the Appellants of the aforesaid LPA No.650 of 2022 (***Prince Kumar and Ors. Vs. The State of Bihar & Ors.***) & other analogous cases had approached this Court by filing writ petitions in the year 2019 itself, thus apparently, the petitioner kept sleeping over his right for long and woke up only when he had the impetus from the judgment, rendered by the learned Division Bench of this Court in the case of ***Prince Kumar and Ors.***(supra).

12. It is a well settled law that delay disentitles the party to discretionary relief under Article 226 of the Constitution of India. Thus, the litigant who was sitting on the fence and waiting for the result of the litigation initiated by other litigants promptly and only after a favorable result, has approached the Court to seek equality, should not be encouraged/ entertained.



13. For the reasons mentioned hereinabove, this Court is of the view that the petitioner being a fence-sitter, cannot take the benefit of an order passed in the case of persons who were vigilant of their cause and had moved the Court within a reasonable period.

14. Thus, this Court finds no merit in the present writ petition, hence the same is accordingly, dismissed.

(Mohit Kumar Shah, J)

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CAV DATE	NA
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