

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.189 of 2022

In
Civil Writ Jurisdiction Case No.7678 of 2021

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Ved Prakash Sharan, S/o Shambhu Sharan Prasad, R/o Village- Purvi
Gopalpur, Ward No. 36, Motihari, P.S. - Motihari Town, District- East
Champaran.

... .. Appellant/s

Versus

1. The Staff Selection Commission through its Chairman, Bihar, Patna.
2. The Secretary, Staff Selection Commission (S.S.C.), Bihar, Patna.
3. The Public Information Officer, S.S.C, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Avinash, Advocate
For the Respondent/s	:	Mr. Satyabir Bharti, Advocate
		Ms. Kanupriya, Advocate
		Mr. Abhishek Anand, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 28-02-2024

Heard the parties.

2. The challenge in the present Letters Patent Appeal is made to an order of this Court dated 11.02.2022 passed by the learned Single Judge in C.W.J.C. No. 7678 of 2021, whereby the writ petition stands dismissed on the ground of delay and laches.

3. It is submitted on behalf of the appellant that the appellant, having requisite qualification, applied for the post of Amin in response to Advertisement No. 604 of 2004, issued by



the Staff Selection Commission. On receipt of admit card, the appellant appeared in the examination held on 01.05.2005 and finally the result was published in the month of December, 2005, but the appellant could not succeed.

4. Learned Advocate for the appellant argued that on being dissatisfied with the result, the appellant approached the concerned respondents to procure the marks obtained in competitive examination of Amin, but they did not provide the marks/O.M.R. sheet leading to filing an application under the Right to Information Act, 2005 (for short 'RTI, Act, 2005').

5. Despite all his persuasion and the application filed under RTI, Act, 2005, when the authority failed to provide marks, the appellant filed an appeal under RTI, Act, 2005 before the First Appellate Authority and finally the First Appellate Authority vide its order dated 12.09.2017 directed the Staff Selection Commission to provide the marks of the petitioner within seven days, but the same also went in vain. Thus, the appellant filed the writ petition seeking a direction upon the respondent Staff Selection Commission to provide/issue the marks/OMR sheet of the petitioner obtained in the competitive examination of Amin held on 01.05.2005.

6. Mr. Satyabir Bharti, learned counsel representing



the respondents submits that apart from the unexplained delay and laches on the part of the writ petitioner-appellant, unless the Rules and Regulations of the examining body provides for re-evaluation, inspection or disclosure of the answer books, the examining body is not obligated to provide marks/OMR sheets.

7. Referring to the decision of the Apex Court in the case of **Central Board of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors., (2011) 8 SCC 497**, learned counsel for the respondent submitted that right to access information does not extend beyond the period during which the examining body is expected to retain the answer books. In the case of CBSE, the answer books are required to be maintained for a period of three months and thereafter they are liable to be disposed of/destroyed. The power of the Information Commission under Section 19(8) of the RTI Act, 2005 to require a public authority to take any such steps as may be necessary to secure compliance with the provision of the Act, does not include a power to direct the *public authority* to preserve the information, for any period larger than what is provided under the rules and regulations of the public authority.

8. Having heard the parties and taking note of the position of law, it would be worth noting that the RTI Act, 2005



provide access to all information that is available and existing. The fact that right to information is available in regard to answer books does not mean that answer books will have to be maintained for any longer period than required under the rules and regulations of the public authority. The obligation under the RTI Act, 2005 is to make available or give access to only existing information or information which is expected to be preserved or maintained.

9. This Court deems it apposite to quote para. 54 and 55 of the decision of the Apex Court rendered in the case of **Aditya Bandopadhyay** (supra) to highlight the right to access the information qua the preservation or maintenance of the record/information for a limited period:

“54. The right to access information does not extend beyond the period during which the examining body is expected to retain the answer books. In the case of CBSE, the answer books are required to be maintained for a period of three months and thereafter they are liable to be disposed of/destroyed. Some other examining bodies are required to keep the answer books for a period of six months. The fact that right to information is available in regard to answer books does not mean that answer books will have to be maintained for any longer period



than required under the rules and regulations of the public authority. The obligation under the RTI Act is to make available or give access to *existing information* or information which is expected to be preserved or maintained.

55. If the rules and regulations governing the functioning of the respective public authority require preservation of the information for only a limited period, the applicant for information will be entitled to such information only if he seeks the information when it is available with the public authority. For example, with reference to answer books, if an examinee makes an application to CBSE for inspection or grant of certified copies beyond three months (or six months or such other period prescribed for preservation of the records in regard to other examining bodies) from the date of declaration of results, the application could be rejected on the ground that such information is not available. The power of the Information Commission under Section 19(8) of the RTI Act to require a public authority to take any such steps as may be necessary *to secure compliance with the provision of the Act*, does not include a power to direct the *public authority* to preserve the information, for any period larger than what is provided under the rules and regulations of the public authority.”



10. Apart from the aforementioned settled legal position, it is also well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and in exercise of such discretion, the High Court cannot ordinarily assist the tardy and the indolent or the acquiescent and the lethargic.

11. The Apex Court in the case of **State of M.P. & Ors. Vs. Nandlal Jaiswal & Ors., (1986) 4 SCC 566**, while considering a belated claim has held that the High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties.

12. In any view of the matter, admittedly the result was published way back in the year 2005. Thus, apart from unexplained delay and laches, the writ petitioner-appellant knowingly has not disclosed this fact that as to when the first application under the RTI Act, 2005 has been filed, even in the writ petition, moreover, to invoke extra ordinary jurisdiction of



this Court by filing a writ petition under Article 226 of the Constitution of India, in the guise of executing an order of the First Appellate Authority cannot be countenanced and is deprecated by this Court.

13. In view of the reasons aforementioned, the Letters Patent Appeal stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.03.2024
Transmission Date	NA

