

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10898 of 2024

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Amar Nath Late Uday Shankar Prasad H No. 27, Nehru Nagar, P.S. Patliputra,
P.O. Patliputra, District-Patna-800013.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Law Department, Bihar, Patna.
2. Patna High Court, Patna through the Registrar General.
3. The Convernor Co-ordination Committee Patna Cum Session Judge, Patna.
4. Shyam Babu Kumar S/o Prabhu Prasad Resident of Village-Bhaluwahiya, P.O. and P.S. Mainatand, District-West Champaran.
5. Promod Kumar Burnawal S/o Pradeep Burnwal Resident of Village and P.O. and P.S. Sono, District-Jamui.
6. Ajeet Kumar S/o Tuli Yadav Resident of Village-Konhwa, P.O. Karariya, P.S. Kotwa, District East Champaran.
7. Avinash Kumar Gupta S/o Ramjee Prasad Gupta Resident of Mohall Block Colony Road Bihta Bhojpur, P.O. and P.S. Bihiya, District-Bhojpur.
8. Arjun Kumar S/o Shambhu Prasad Resident of Pali Gram Apartment, Block A, Bajranpuri Sahid Bhagar5 Singh, Patnacity, Sampakchak, Patna, Sampakchak, District-Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Vikas Mohan, Advocate Mr.Vikrant Kumar, Advocate
For the High Court	:	Mr.Piyush Lal, Advocate
For the Respondent/s	:	Mr.Kumar Manish, Standing Counsel (5) Mr.Madan Mohan, AC to SC 05

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 25-07-2024

Heard Mr. Vikas Mohan along with Mr. Vikrant Kumar, learned counsels appearing on behalf of the petitioner; Mr. Piyush Lal, learned counsel for the Patna High Court and Mr. Kumar Manish (SC 5) along with Mr. Madan Mohan (AC to SC 5), learned counsels for the Respondents/State.



2. The petitioner in paragraph no. 1 of the present writ petition has sought *inter alia* following relief(s), which is reproduced hereinafter:-

“That this application is being filed for quashing the appointment of respondents No.4 to 8, who have appointed as Clerk Subordinate Court's, Bihar vide notice dated 11.03.2024 and 22.04.2024 secured less marks than petitioner in total marks of written and interview. The petitioner has secured 71.16 marks whereas the respondent no.4 has secured 70.75 marks respondent no.5 has secured 69.50 marks and respondents no.6 has secured 67.50 respondent no.7 has secured 68.40 marks and respondent no.8 has secured 70.83 marks. The petitioner and respondents are belongs to B.C. II category.”

3. By an Advertisement dated 07.02.2016, the office of the Convenor, Co-ordination Committee, Patna-cum-District & Sessions Judge, Patna invited online applications for filling up of 1681 posts in Grade III (Clerk), as per the reservation roster. On 26.09.2018, select list was published. The petitioner being a candidate of Backward Caste category was selected and his name was in the panel (at Sl.No.1774), having secured total 71.16 marks.

4. Learned counsel appearing on behalf of the petitioner submitted that the petitioner has secured higher marks (71.16) than respondent nos. 4 to 8, all belonging to B.C. II category, (respondent no.4 - 70.75 marks, respondent no.5 - 69.50 marks, respondent no.6 - 67.50 marks, respondent no.7 -



68.40 marks, respondent no.8 - 70.83 marks). In spite of that, respondent nos. 4 to 8 were selected and appointed but the petitioner was not appointed.

5. Learned counsel appearing on behalf of the petitioner in this regard has relied upon the judgment dated 19.04.2023 passed in LPA No.650 of 2022 and referring to paragraph nos. 20, 21 and 22, he claims equity with those candidates, who had approached the writ court in the year, 2018 and 2019.

6. Learned counsel appearing on behalf of Patna High Court has submitted that the Advertisement is of the year, 2016 and the merit list was published on 26.09.2018 and thereafter being aggrieved by non-selection, some of the candidates preferred CWJC No.21219 of 2018, CWJC No.6259 of 2019 and CWJC No.1414 of 2019. The relief(s) sought by those candidates were not entertained by the learned Single Judge and thereafter, they preferred Letters Patent Appeal, which were allowed.

7. Learned counsel further submitted the writ jurisdiction is not for indolent and in this regard, he has referred the law laid down by the Apex Court in the case of **State of U.P. & Ors. vs. Harish Chandra and Ors.** reported in (1996) 9



SCC 309.

8. At this stage, this Court inquired from the learned counsel for the Patna High Court as to whether the posts are still vacant, upon which, he replied in affirmative. He further informed this Court that the validity of the panel was for only two years and the petitioner can not claim equity with those candidates who were agile and they had suffered and immediately rushed this Court.

9. Learned counsel further submitted that as the panel has already expired and now filing belated representation before the learned Registrar General of Patna High Court, will not claim for equity in any manner with those candidates who had approached this Court. Learned counsel further made it clear that the judgment passed in LPA No.650 of 2022 can be considered to have been passed *in persona and not in rem* and in this regard, he refers to observation made in Paragraph No.20, which is re-produced *inter alia* hereinafter, as follows : -

“20. Accordingly, the order of the learned Single dated 29.09.2022 passed in CWJC No.6259 of 2019 and connected matters stands set aside. While allowing LPA No.650 of 2022 (arising out of CWJC no.6259 of 2019), LPA No.657 of 2022 (arising out of CWJC No.21219 of 2018), & LPA No.661 of 2022 (arising out of CWJC No.21219 of 2018) the concerned selecting/appointing authority is hereby directed to consider each of the petitioners name for the purpose of appointment tot the post of Clerk



against unfilled vacancies and anticipated vacancies during the relevant period of two years and necessary order of appointment shall be issued to each of the eligible petitioner within a period of three months from the date of receipt of this order. If any, of the candidate is not suitable or eligible in that event necessary speaking order shall be passed and communicated to such petitioner/s.”

10. Mr. Kumar Manish, learned SC 5 appearing on behalf of the State submitted that the the law is well settled in respect of those persons, who approached this Court and the candidates who remained as fence sitter can not be allowed to claim equity. Particularly, in the present case, in spite of the fact that the similarly situated person had approached this Court in the year 2018-2019 and the petitioner after the judgment dated 19.04.2023 passed in LPA No.650 of 2023 and other analogous cases has filed his representation before the learned Registrar General of Patna High Court for considering his case as the posts are still vacant, which will not entitle him in any manner for being appointed.

11. Heard the parties.

12. Before I proceed to decide the writ petition on merit, preliminary question arises - whether the writ petitioner, who was waiting on the fence from the year, 2018, has filed writ petition after six years of publication of the select list, can it be entertained? It is well settled law laid down by the Apex Court



that if it is found that the writ petitioner is guilty of delay and laches, the High Court should dismiss it at the threshold. Close to the facts of this case, the Apex Court in the case of **State of U.P. & Ors.** (supra), relied by Mr. Piyush Lal, learned counsel appearing for the respondents, and similarly a Co-ordinate Bench of this Court in CWJC no.10450 of 2024 has relied on the judgment of the Apex Court in the case of **Ex. Capt. Harish Uppal v. Union of India** reported in **1994 SCC Supl. (2) 195.**

The Hon'ble Apex Court has 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.”

13. The Apex Court in **“C. Jacob Versus Director of Geology and Mining and Other** reported in **(2008) 10 SCC**



115, having found that the employee suddenly brought up a challenge to the order of termination of his services after 20 years and claimed all consequential benefits, held that the relief sought for was inadmissible. The legal position in this regard was laid out in the following terms:-

“10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action.”

14. Reiterating the aspect of delay and laches would dis-entitle the discretionary relief being granted, the Apex Court in the case of **Chennai Metropolitan Water Supply &**



Sewerage board V. T.T. Murali Babu, reported in (2014) 4

SCC 108 has held in paragraph no.16 which is reproduced hereinafter :-

“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 scrutinize 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”

15. Having considered the rival submissions made on behalf of the parties and having perused the judgment dated 18.01.2024 passed in LPA No.727 of 2023 (arising out of CWJC No.1414 of 2019), I find that the advertisement is of the year, 2016, the result was published in the year, 2018 and thereafter few rounds of litigation were filed and finally, this Court has granted relief to those candidates, who had



approached this Court in CWJC no.6259 of 2019 and CWJC No.21219 of 2018 making it clear in **Paragraph no.20** of judgment dated **19.04.2023** passed in **LPA No.650 of 2022** (supra).

16. The above judgment has been passed in respect of those who had approached this Court much earlier and the petitioner can only be held he was not conscious of his right and remained indolent, which don't entitle them to claim the equity with those candidates who have been granted relief.

17. I do not find merit in the present writ petition, accordingly, the same is dismissed.

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.07.2024
Transmission Date	NA

