

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13024 of 2023

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Nagendra Kumar @ Nagendra Yadav Son of Matu Yadav, resident of village -
Imadpur, Police Station - Khodaganj, District- Nalanda, Pin - 801303.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Home, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Director-cum-State Fire Brigade Officer, Bihar, Budha Marg, Patna - 800001.
4. The Central Selection Board of Constables , Patna through its Secretary.
5. The Officer on Special Duty, Central Selection Board of Constables, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prerna Anand, Adv.
For the Respondent/s : Mr.Manish Kumar (GP-4)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 11-03-2024

1. The present writ petition has been filed for setting aside the order dated 21.07.2023, passed by the Director-cum-State Fire Brigade Officer, i.e. the respondent no.3, whereby and whereunder it has been held that the claim of the petitioner cannot be considered for appointment on the post of Fireman. The petitioner has also prayed for directing the respondents to appoint him on the post of Fireman, in pursuance to Advertisement No.2 of 2012.

2. The brief facts of the case, according to the petitioner are that the respondents had published an advertisement bearing Advertisement No.2 of 2012, inviting applications for selection



of Constable/Fireman in the State of Bihar, pursuant whereto, the petitioner had applied for being appointed on the post of Fireman in the Bihar Fire Services, whereafter, he was also selected and vide Memo dated 02.09.2014, he was called for Document Verification to be held on 08.09.2014. Thereafter, the respondent no.3 had again issued Memo dated 13.02.2015, informing the petitioner that he has to appear on 23.02.2015, for verification of documents, whereupon the petitioner was called for medical fitness test and he was directed to appear on 10.04.2015, vide Memo dated 13.03.2015. After the petitioner was found medically fit, the respondents had allowed him to join, subject to the result of the criminal case pending against him, bearing Khudaganj P.S. Case No.24 of 2014.

3. The learned counsel for the petitioner has submitted that after the petitioner was acquitted in the aforesaid criminal case, vide judgment dated 13.08.2021, passed by the Ld. Additional Session Judge-IInd Hilsa, Nalanda in Sessions Case No.167 of 2018, he had submitted an application before the respondent no.3 on 29.09.2021, for permitting him to join as a Fireman, however, the respondent no.3, by the impugned order dated 21.07.2023, issued vide letter dated 24.07.2023, has intimated the petitioner, on the basis of the opinion given by the



Ld. Advocate General, that his appointment cannot be considered after such a long time.

4. The learned counsel for the petitioner has further submitted that the Ld. Advocate General has furnished two reasons for not entertaining the case of the petitioner, firstly that though the petitioner was directed to appear on 23.02.2015, by way of last chance, however, he did not turn up and moreover, the vacancies have been included in the subsequent selection process, initiated vide Advertisement No. 1 of 2021, apart from the fact that the petitioner had never represented his case before the concerned authorities in between the years 2015 to 2022. Secondly, it has been stated by the Ld. Advocate General that in the criminal case, in which the petitioner was acquitted on 13.08.2021, his date of birth has been shown as 47 years, however, in the application form, it has been shown as 01.01.1989, thus, there is discrepancy in the date of birth of the petitioner, nonetheless, the Ld. Advocate General has opined that on account of unexplained inordinate delay of about 7 years, as also considering the fact that vacancies have been included in the next transaction and there is discrepancy in the date of birth of the petitioner, the claim of the petitioner for appointment on the post of Fireman does not deserve any



consideration. It is submitted that the date of birth mentioned in the educational certificate as well as the Adhaar Card of the petitioner is 1.1.1989, moreover, the petitioner had approached the respondent no.3 on 29.09.2021, immediately after his acquittal in the criminal case & admittedly, the post of Fireman is vacant, hence no prejudice would be caused to the fresh selection process, thus it is submitted that the respondents be directed to appoint the petitioner as Fireman.

5. Per contra, the learned counsel for the Respondent-State has raised a preliminary objection with regard to the maintainability of the present writ petition, inasmuch as the present writ petition has been filed belatedly, after a great delay of about 7 years. The learned counsel for the Respondent-State has submitted that the Hon'ble Apex Court, in a catena of judgments, has held that while exercising extraordinary and equitable jurisdiction under Article 226 of the Constitution of India, the Constitutional Court, while protecting the rights of citizens, should simultaneously keep itself alive to primary principle that when an aggrieved person, without adequate reason, approaches the Court belatedly, at his own leisure or pleasure, the writ Court is not required to grant any indulgence to such indolent person and on the ground of delay and laches



alone, the writ Court ought to throw the petition overboard at the very threshold. In this regard, the learned counsel for the Respondent-State has referred to the following judgments:-

“(i). *Chennai Metropolitan Water Supply & Sewerage Board & Others vs. T.T.Murali Babu*, reported in (2014) 4 SCC 108.

(ii). *State of Uttranchal & Anr. vs. Shiv Charan Singh Bhandari & Ors.*, reported in 2013 AIR SCW 6627.

(iii). *C. Jacob vs. Director of Geology & Mining & Anr.*, reported in AIR 2009 SC 264.

(iv). *State of Jammu & Kashmir vs. R.K. Zalpuri & Others*, reported in AIR 2016 SC 3006.

(v). *State of Tamil Nadu vs. Seshachalam*, reported in (2007) 10 SCC 137.

6. The learned counsel for the respondent-State has further submitted that the Government of Bihar, Home (Police), vide notification dated 11.06.2012, had sent a requisition to the Central Selection Board of Constable (hereinafter referred to as the ‘Board’) for appointment of Fireman under the Bihar Fire Services, whereafter the Inspector General Home Guards and



Fire Service, vide Memo dated 22.06.2012 sent the vacancies, for making appointment on 953 posts of Firemen, to the respondent-Board and requested for initiating the recruitment process whereafter, the respondent-Board, had published an Advertisement No.2 of 2012 on 21.08.2012, for recruitment of 953 Firemen, wherein it was clearly stipulated that the candidates of all categories, who are not successful in obtaining 30% minimum marks out of the total marks in the written examination, shall be disqualified and shall not be allowed to appear in the physical test.

7. It is further submitted by the learned counsel for the respondent-State that the advertisement also postulates that the merit list shall be prepared on the basis of marks obtained in the written examination and the candidates will be selected in the ratio of 1:5, category wise, on the basis of marks obtained in the written examination, for the purposes of appearing in the Physical Examination Test, in which also the candidates would have to qualify. The petitioner belongs to backward class-male, non-home guard (BC-M-NHG) category, who had appeared in the written test and after he had qualified in the same, he had appeared in the Physical Examination Test, in which also the petitioner had qualified, whereafter the merit list for the post of



Fireman was prepared and the final result was published on 12.06.2014, wherein altogether 951 candidates including the petitioner were declared successful as against 953 vacancies. The Board had then issued selection letter dt. 12.6.2014 to the petitioner and directed the petitioner to report his joining at the Bihar State Fire Office with all his original documents on 23.06.2014, whereafter the Board had sent its recommendation regarding 951 successful candidates, vide letter dated 17.6.2014, to the Bihar Fire Service Directorate, Patna. It is submitted that the entire selection process has been completed, inasmuch as recommendation of successful candidates along with their original documents have been sent to the Bihar Fire Service Directorate, Patna and then appointments have also been made. Lastly, it has been submitted that since the petitioner was an accused in a criminal case, bearing Khudaganj, Hilsa, Nalanda P.S. Case no.24 of 2014, he did not turn up earlier, hence at this belated stage, no relief can be granted to the petitioner. It is stated that after completion of the selection process, initiated vide Advert. No.2 of 2012, the vacancies have also been included in the fresh advertisement, issued vide Advertisement No.1 of 2021, selection process whereof has already commenced long back.



8. I have heard the learned counsel for the parties and perused the material on record. This Court finds that the present writ petition is fit to be dismissed on the ground of delay and laches alone, inasmuch as the petitioner has approached this Court belatedly after a lapse of about 8 years, thus, considering the principles laid down by the Hon'ble Apex Court in a catena of judgments, as referred to by the Ld. counsel for the Respondent-State and recorded herein above in the preceding paragraphs, as also considering the maxim-"equity aids the vigilant and not those who slumber on their rights", this Court is of the view that since the petitioner has not filed the writ petition within a reasonable period of time, this Court is not under any legal obligation to entertain the writ petition, hence, the present writ petition is dismissed on the ground of delay and laches.

9. In fact, in a judgment, rendered by the Hon'ble Apex Court in the case of *P. S. Sadasivaswamy vs. State of Tamil Nadu*, reported in (1975) 1 SCC 152, the Hon'ble Apex Court has held that in a service matter/promotion matter, an aggrieved person should approach the Court at least within six months or at the most a year of the arising of a cause of action and it would be a sound and wise exercise of discretion for the Courts to



refuse to exercise their extraordinary powers under Article 226 of the Constitution of India, in the case of persons who do not approach it expeditiously for relief and such petitions should be dismissed in limine, inasmuch as entertaining such petitions is a waste of time of the Court, the same clogs the work of the Court and impedes the work of the Court in considering legitimate grievances. In yet another judgment, rendered by the Hon'ble Apex Court in the case of ***Naresh Kumar vs. Department of Atomic Energy & Others***, reported in ***(2010) 7 SCC 525***, the Hon'ble Apex Court has held that the High Court was not in error while dismissing the writ petition on the ground of unexplained delay and laches of about seven and a half years.

10. At this juncture, it would be gainful to reproduce paragraphs No. 1, 16, 17 and 34 of the Judgment rendered by the Hon'ble Apex Court in the case of ***Chennai Metropolitan Water Supply & Sewerage Board*** (Supra), herein below:-

“1. The present appeal, by special leave, is directed against the judgment and order dated 22-11-2012 passed by the High Court of Judicature of Madras in Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu whereby the Division Bench has affirmed the judgment and order dated 21-7-2011 in WP No. 25673 of 2007 whereunder the learned Single Judge had allowed the writ



petition, and after setting aside the punishment of dismissal, directed reinstatement of the respondent with continuity of service but without back wages.

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.

34. Judged on the anvil of the aforesaid premises, the irresistible conclusion is that the interference by the High Court with the punishment is totally unwarranted and unsustainable, and further the High Court was wholly unjustified in entertaining



the writ petition after a lapse of four years. The result of aforesaid analysis would entail overturning the judgments and orders passed by the learned Single Judge and the Division Bench of the High Court and, accordingly, we so do."

11. Even on merits this Court finds that the petitioner has got no case inasmuch as though the petitioner was repeatedly asked to submit his joining but he remained absconding right from the year 2015 up to 28.09.2021, i.e. for a period of about 6 years and only after his acquittal in the aforesaid criminal case vide judgment dated 13.08.2021, he is stated to have filed an application belatedly on 29.09.2021, before the respondent no.3 to accept his joining, which in any view of the matter is not tenable in the eyes of law and could not have been entertained, since the time period for submitting joining had ended long back. Even otherwise, it is the stand of the respondents, not refuted by the petitioner, that the selection process initiated vide Advertisement No.2 of 2012 is over, recommendation of successful candidates along with their original documents have been sent to the Bihar Fire Service Directorate, Patna and then appointments have also been made, whereafter, the vacancies have been included in the subsequent selection process, which has also stood initiated vide Advertisement No.1 of 2021. In this



regard, it would be apt to refer to a judgment rendered in the case of ***State of Orissa v. Rajkishore Nanda*** reported in (2010) 6 SCC 777, paragraph no. 16 whereof, is reproduced herein below:-

“16. A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required. It is the settled legal proposition that no relief can be granted to the candidate if he approaches the court after the expiry of the select list. If the selection process is over, select list has expired and appointments had been made, no relief can be granted by the court at a belated stage. (Vide J. Ashok Kumar v. State of A.P. [(1996) 3 SCC 320], State of Bihar v. Mohd. Kalimuddin [(1996) 2 SCC 7], State of U.P. v. Harish Chandra [(1996) 9 SCC 309], Sushma Suri v. Govt. of NCT of Delhi [(1999) 1 SCC 330], State of U.P. v. Ram Swarup Saroj [(2000) 3 SCC 699], K. Thulaseedharan v. Kerala State Public Service Commission [(2007) 6 SCC 190], Deepa Keyes v. Kerala SEB[(2007) 6 SCC 194] and Subha B. Nair[(2008) 7 SCC 210.)”

12. In view of the law enunciated by the Hon’ble Apex



Court in the case of ***Rajkishore Nanda*** (supra), no relief can be granted to the petitioner at this belated stage. Considering the facts and circumstances of the case and for the reasons mentioned hereinabove in the preceding paragraphs, this Court finds that the present writ petition is fit to be dismissed on the ground of delay and laches alone inasmuch as the petitioner has approached this Court belatedly after an unexplained delay of about 8 years apart from the fact that even on merits, the petitioner has got no case. Thus, for the foregoing reasons and considering the principles laid down by the Hon’ble Apex Court in a catena of judgments, as referred to herein above in the preceding paragraphs, as also considering the maxim- “equity aids the vigilant and not those who slumber on their rights”, this Court is of the view that since the petitioner has not filed the present writ petition within a reasonable period of time, this Court is not under any legal obligation to entertain the writ petition, hence, the present writ petition stands dismissed on the ground of delay and laches as well as on merits.

(Mohit Kumar Shah, J)

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CAV DATE	NA
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