

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 17656 of 2022

Chandan Mallik S/o Late Mahendra Mallik, Resident of Mohalla- Sipahi Tola,
P.S. K. Hat, District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through its the Principal Secretary Urban Development and Housing Department Government of Bihar, Patna, District- Patna.
2. The Municipal Commissioner, Nagar Nigam, Purnea, District- Purnea.

... .. Respondent/s

Appearance:

For the Petitioner/s	:	Mr. Ashutosh Kumar Jha, Advocate
For the State	:	Mr. Abbas Haider (SC- 6)
For the Municipal Corporation	:	Mr. Prince Kr. Mishra, Advocate
		Mr. Vikas Kr. Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 23-04-2024

The present writ petition has been filed for quashing the order dated 31.12.2007 passed by the then Executive Officer, Nagar Parishad, Purnea (now Nagar Nigam, Purnea), whereby and whereunder the services of the petitioner has been terminated.

2. The brief facts, according to the petitioner, are that the father of the petitioner was employee of Nagar Parishad, Purnea and was working as Safai Karamchari, however, he died in harness on 18.12.2001, whereafter the petitioner was



appointed on compassionate ground as Daily Wager vide letter dated 01.09.2006, whereupon the Executive Officer, Nagar Parishad, Purnea had issued an appointment letter dated 18.06.2007 and the petitioner was appointed on compassionate ground as safai Karamchari in the pay-scale of Rs. 775-1025/-, however, few months thereafter, the Executive Officer, Nagar Parishad, Purnea, by the impugned memo dated 31.12.2007 has terminated the services of the petitioner.

3. The learned counsel for the petitioner has submitted that without granting any opportunity to the petitioner to put forth his defence, the impugned order dated 31.12.2007 has been passed, hence the same is fit to be set aside, being in violation of the principles of Natural Justice.

4. *Per contra*, the learned counsel appearing for the respondent no. 2 i.e. the Municipal Commissioner, Purnea Municipal Corporation, Purnea has submitted that the father of the petitioner Late Satto Mehtar died in harness on 18.12.2001, while working as Safai Karamchari in



the Nagar Nigam, Purnea, however, at that time the mother of the petitioner namely Bugiya Mehtarni was in service of the Nagar Nigam, Purnea and this fact was concealed by the petitioner from the respondents while applying for appointment on compassionate ground, leading to issuance of letter dated 18.06.2007, whereby and whereunder the petitioner was appointed on compassionate ground. Nonetheless, subsequently it came to the notice of the respondent-authorities that the mother of the petitioner was in service, hence the then Executive Officer, Nagar Parishad, Purnea (now Nagar Nigam, Purnea) had immediately issued letter dated 31.12.2007 recalling the previous letter dated 18.06.2007, whereby the petitioner had been appointed on compassionate ground, in view of the circular issued by the Department of Personnel and Administrative Reforms, Govt. of Bihar, dated 05.10.1991, which postulates that if both wife and husband are in government service/public service, then after the death of any one of them, no appointment on



compassionate ground shall be permissible to any children of the deceased employee. Thus, it is submitted that there is no illegality in the impugned order dated 31.12.2007. It is further submitted that even otherwise appointment on compassionate ground is a concession and not a right. In this connection, reliance has been placed on a judgment rendered by the Hon'ble Apex Court in the case of **Fertilizers and Chemicals Travancore Ltd. & Ors. Vs. Anusree K.B.**, reported in 2022 SCC OnLine SC 1331, paragraphs no. 15 and 16 whereof are being reproduced herein below:-

“15. While considering the issue involved in the present appeal, the law laid down by this Court on compassionate ground on the death of the deceased employee are required to be referred to and considered. In the recent decision, this Court in the case of Director of Treasuries in Karnataka v. V. Somyashree, 2021 SCC OnLine SC 704, had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of this Court in N.C. Santhosh v. State of Karnataka, (2020) 7 SCC 617, this Court has summarised the principle governing the grant of appointment on compassionate ground



as under:—

“(i) that the compassionate appointment is an exception to the general rule;

(ii) that no aspirant has a right to compassionate appointment;

(iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

(iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;

(v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

16. *As per the law laid down by this Court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.”*

5. The Ld. counsel for the respondent-Purnea Municipal Corporation has also raised an 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 15 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 Respondents 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. Reference has also been made to 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***, wherein 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 8 years.

7. 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 & 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.”

8. Having heard the Ld. counsel for the parties and having gone through the materials 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 15 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 Respondents 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, especially considering the fact that the petitioner has not offered any reason whatsoever, for the enormous delay which has taken place in approaching this Court, hence, the present writ petition is dismissed on the ground of delay and laches.

9. This Court further finds that even on merits the petitioner has got no case inasmuch as the



petitioner had suppressed the material fact regarding his mother namely Bugiya Mehtarni being in service of the Nagar Nigam, Purnea, at the time, the father of the petitioner namely Late Satto Mehtar died in harness on 18.12.2001, leading to his illegal appointment on compassionate ground vide letter dated 18.06.2007, nonetheless, the same was immediately recalled vide letter dated 31.12.2007, upon the authorities having detected the mischief committed by the petitioner and in view of the stipulations laid down in the aforesaid circular dated 05.10.1991, issued by the Department of Personnel and Administrative Reforms, Government of Bihar, Patna, which postulates that if both wife and husband are in government service/public service, then after the death of any one of them, no appointment on compassionate ground shall be permissible to any children of the deceased employee. Therefore, this court does not find any infirmity in the order dated 31.12.2007 passed by the then Executive Officer, Nagar Parishad, Purnea (now Nagar Nigam,



Purnea), whereby and whereunder the services of the petitioner has been terminated, hence, the present writ petition is dismissed on merits as well.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	NAFR
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