

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2868 of 2020

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Rajeshari Kumari, Daughter of Bewalal Prasad, Wife of Sri Panchanan Rai,
Resident of Vilage Bulansarai, Post-Bidupur Bazar, Police Station-Bidupur
Bazar, District-Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, Patna.
2. The Director, Primary Education, Bihar, Patna.
3. The District Magistrate, Vaishali.
4. The District Education Officer, Vaishali.
5. The District Programme Officer (Establishment), Vaishali.
6. The Block Education Officer, Raghopur, District-Vaishali.
7. The Mukhia, Gram Panchayat Raj Jahangirpur, Block-Raghopur, P.S.-
District-Vaishali.
8. The Panchayat Secretary, Gram Panchayat Raj Jahangirpur, Block-
Raghopur, P.S.- District-Vaishali.
9. Gayatri Kumari, Wife of Upendra Kumar Singh, Resident of Village-
Khilwat, P.S. Bidupur, District-Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar, Advocate Mr. Pranav Kumar, Advocate
For the Respondent/s	:	Mr. Prabhakar Jha, GP-27 Mr. Mukund Mohan Jha, Advocate
For the respondent No. 9:		Mr. Basant Kumar Choudhary, Sr. Advocate Mr. Shashi Bhushan Kumar, Advocate Mr. Praveen Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT



Date : 04-12-2024

1. Part-IX of the Constitution of India, containing Articles 243, 243-A to 243-O, was inserted in the Constitution (73rd Amendment Act, 1992) in order to give effect to the laudable vision of the Father of the Nation. Mahatma Gandhi envisaged about the existence of village republics, which were historically in existence in ancient India. It is the Gandhian philosophy that the best, quickest and most efficient way is to build up from the bottom. Every village has to become a self-sufficient republic and for village administration, local self government in the name of Panchayati Raj has been implemented by way of the aforesaid Constitutional amendment, so that almost all the local issues relating to education, health, housing, sewerage, municipal needs and other aspects of good-governance can be delivered through the Panchayat. The Father of the Nation thought of the idea of a Panchayat System of the Headmen of village (Panch Moral) but our experience, barring a minuscule exception, is that the “Panchayat of Panch Moral” became the “Panchayat of Panch Ghosts (Panch Bhoot)”. The Panchayati Raj system is greatly suffering from the vices of corruption, malpractice, giving relief to the persons who do not deserve such relief, consuming



government aids on different counts. Even they do not spare the staples of mid-day meal to be fed to the little poor children from being eating up.

2. Under this backdrop of Panchayati Raj System, we proceed to decide the instant writ petition for adjudication.

3. Indisputably, the petitioner submitted his candidature for appointment of a Panchayat Teacher under Bihar Panchayat Prarambhik Shikshak (Niyojan Awam Seva Sharten) Niyamawali, 2006. Rule 4 of the said Niyamawali delineates the qualification for appointment of Panchayat Teachers. The said rule runs thus: -

4. पंचायत प्रारम्भिक शिक्षकों का नियोजन :-

(1) प्रखण्ड शिक्षकों का नियोजन मध्य विद्यालय में पंचायत समिति के द्वारा तथा पंचायत शिक्षक का नियोजन प्राथमिक विद्यालयों में ग्राम पंचायत के द्वारा किया जायेगा।

(2) शिक्षकों की आवश्यकता को ध्यान में रखते हुए उपर्युक्त दोनों स्तरों पर कोटिवार प्रशिक्षित एवं अप्रशिक्षित अभ्यर्थियों का पैनेल अलग-अलग तैयार किया जायेगा। सर्वप्रथम प्रशिक्षित शिक्षकों का नियोजन किया जायेगा। तत्पश्चात रिक्ति उपलब्ध होने पर अप्रशिक्षित शिक्षकों का नियोजन भी किया जा सकेगा और उन्हें दो वर्षीय प्रशिक्षण देने की व्यवस्था की जाएगी।

(3) आरक्षित कोटि में उच्चतर माध्यमिक / इन्टरमीडियट परीक्षा पास उम्मीदवार उपलब्ध नहीं होने की



स्थिति में माध्यमिक परीक्षा पास उम्मीदवारों को भी नियोजित किया जा सकेगा। परन्तु उन्हें निर्धारित योग्यता अधिकतम 6 वर्षों के अन्दर प्राप्त करना अनिवार्य होगा।

4. It is also not in dispute that the petitioner passed Matriculation examination and submitted his candidature as per Sub-rule 3 of Rule 4 for appointment of a Panchayat Teacher in the year 2006 on the basis of an advertisement duly published on 11th of February, 2006 by the District Education Officer, Vaishali. It would not be out of place to mention that in respect of filling up of vacancy of 11 candidates, counselling was held prior to 16th of December, 2006 and 9 candidates were selected. Out of the said 9 candidates, 2 candidates did not join, resulting in vacancy of 4 candidates, belonged to B.C. (F), S.C. (F), EBC (M) and EBC (F) having one candidate each in each reserved category.

5. Be that as it may, a fresh counselling was held on 29th of December, 2006 under the Chairmanship of Mukhiya-Smt. Ruma Devi, Ward Member-Smt. Chandrama Devi, Panchayat Member and Sri Janarain Singh, Assistant Teacher, High School, Jahangirpur and the petitioner selected in the said counselling and duly appointed on 29th of December, 2006. She had been working as Primary School Teacher, Parohar after his



selection w.e.f. 6th of January, 2007.

6. To cut-short the matter, the dispute involved in the writ petition arose between the petitioner and Respondent No. 9, who was one of the candidates having Intermediate qualification, but was not selected.

7. It is contended on behalf of the petitioner that had there been any grievance of Private Respondent No. 9, she could have filed an appeal under the provisions of Rule 18 of Bihar Panchayat Prarambhik Shikshak (Niyojan Awam Seva Sharten) Niyamawali, 2006. Rule 18 provides that in respect of any dispute relating to appointment of Block Teachers, transfer or conditions of service, the aggrieved candidate can file a complaint before the Block Development Officer within 30 days from the date of accrual of the cause of action.

8. The learned Advocate appearing on behalf of the petitioner rightly submits that the grievance of the Respondent No. 9 relates to her appointment (Niyojan). So the Block Development Officer was appropriate authority under the Statute where she ought to have lodged a complaint. The Respondent No. 9 did not take recourse of such Statute. On the other hand, after a lapse of three years, in the year 2009-2010, he preferred an appeal before the District Education Appellate



Authority.

9. The learned Advocate appearing on behalf of the petitioner submits that the said appeal ought to have been dismissed on the ground of delay and laches because the Private Respondent approached the concerned authority after a lapse of three years. In support of his contention, he refers to the decision of the Division Bench of this Court, passed in ***L.P.A. No. 984 of 2014, Manohar Prasad v. The State of Bihar through the Principal Secretary, Education Department & Ors.***, reported in ***2016 (2) PLJR 474***. Almost on same factual circumstances, the Division Bench of this Court held in paragraph 11 as hereunder: -

“11. The learned Single Judge further held, keeping in view the scheme of the rules and the manner in which the forum of appellate authority, the B.D.O., was replaced by the Tribunal and the time when it was done would show that the interference by the B.D.O. was in respect of first phase of the appointment process. When second phase appointment process started, the power of B.D.O. was taken away and vested in the Tribunal. All pending matters before the B.D.O. were then transferred to the Tribunal. Therefore, the scheme rightly appreciated by the learned Single Judge was that the Tribunal was to interfere only with matters of second phase appointments and matters pending in relation to the first phase of appointments. In other words, Tribunal was not competent to entertain grievances for the first time in respect of the first



phase of appointments which had been completed before the Tribunal was constituted. At that time, it was the B.D.O. who was the competent authority. This reason appeals to us and we accept that this ground for holding in favour of the writ petitioner and as against the appellant in this appeal can also be supported by another reason i.e. the selection process and the appointment took place in the year 2007 and the challenge to it was made before the Tribunal only in the year 2011, though the appellants pleads that he had immediately represented or protested before the B.D.O., the Collector and others. There are no materials contemporaneous to substantiate such submissions. If there was any matter pending before the B.D.O., then it would have been transferred to the Tribunal. The appellant has not been able to bring on record anything to show that anything was transferred from the B.D.O., the appellate authority, to the Tribunal as an appellate authority. Thus, the challenge to non-selection of the appellant or the selection of writ petitioner was a belated challenge. It was made four years after the appointment. The challenge was not on the ground of ineligibility but challenge was solely on the ground of better suitability. Such a belated challenge ought not to have been entertained by the Tribunal. It is well settled that even if there is no period of limitation fixed, parties have to act within reasonable time as held in L.P.A. No. 375 of 2010 in the case of Panna Devi v. The State of Bihar decided on 01.07.2015 with another analogous appeal in which a recent judgment of the Apex Court has been relied and held that even suo motu power without limitation as to time could not be exercised after undue delay.”

10. Thus, the appeal was dismissed by the Division



Bench of this Court on the ground of delay and laches.

11. On similar point, the learned Advocate appearing on behalf of the petitioner refers to another decision of Hon'ble Apex Court in the case of ***Shiv Dass v. Union of India & Ors.***, reported in ***(2007) 9 Supreme Court Cases 274***. In the aforesaid report, the Hon'ble Supreme Court respectfully observed the decision of the 1st Chief Justice of the 1st High Court of British India, i.e., the High Court at Calcutta delivered by Sir Barnes Peacock in ***Lindsay Petroleum Co. v. Prosper Armstrong Hurd***, reported in ***(1874) 5 PC 221***, which was subsequently approved by the Hon'ble Apex Court in ***Moon Mills Ltd. v. M. R. Meher***, reported in ***AIR 1967 SC 1450*** and ***Maharashtra SRTC v. Balwant Regular Motor Service***, reported in ***AIR 1969 SC 329***. Sir Barnes Peacock in paragraph 7 of the aforesaid judgement stated as under: -

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an



argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

12. Thus, it is no longer *res integra* that the writ court has the discretion to dismiss the writ petition on the ground of delay and laches.

13. After quoting the authorities, this Court is of the view that no further words are necessary to elucidate the matter and the Constitutional Court, dealing with equitable relief, has discretionary power to dismiss a writ petition on the ground of delay, provided such discretion must be judicially applied.

14. The Learned Sr. Counsel appearing on behalf of Respondent No. 9, on the other hand, submits that the issue advocated by the learned counsel for the petitioner with regard to delay is not applicable under the facts and circumstances of this case because of the fact that the Respondent No. 9 previously approached this Court in C.W.J.C. No. 5446 of 2009 (Annexure-6), which was disposed of on 16th of April, 2010, giving liberty to the Respondent No. 9 to withdraw the said writ



petition, permitting her to file an appeal before the Appellate Tribunal. It is also directed by the writ Court that in case of appeal preferred by the petitioner within a month from the date of delivery of the order, it should be considered and decided by the Tribunal within the statutory time.

15. It is not in dispute that the Respondent No. 9 did not prefer the appeal within the said statutory period of time. Therefore, the ground of appeal was held to be condoned by virtue of the order dated 16th of April, 2010 in C.W.J.C. No. 5446 of 2009 and the petitioner cannot claim any relief on this ground.

16. The learned Sr. Counsel next draws my attention to the impugned order, i.e., the order passed by the State Appellate Authority in Appeal No. 240 of 2017 filed by the petitioner and decided on 4th of November, 2019.

17. It is submitted by the learned Sr. Counsel appearing on behalf of Respondent No. 9 with reference to various observations of the Appellate Court that the said appeal was decided by the Appellate Authority considering all the documents and papers and the Appellate Authority found that even the caste certificate was in the name of some third person and it was struck down and the name of Appellant / Petitioner



was inserted. The Appellate Authority also found that no reason was appended by the Panchayat Employment Unit as to why the Respondent No. 9 was left out. There was no transparency with regard to the recruitment process. The Panchayat Niyojan Unit selected the petitioner without giving any cogent reason in favour of the petitioner. He also observed that the minutes of the meeting bore the signature of Panchayat Employment Unit held on 23rd of December, 2006 having signature of one Jagnarain Singh, which shows that minutes of the proceeding dated 23rd of December, 2006 was a fabricated document as the signature of the said Jagnarain Singh was also found in the proceeding of the meeting dated 16th of December, 2006. The State Appellate Authority took pain to discuss that altogether there were 290 applicants. Out of them, 288 candidates had Intermediate qualification and only 2 candidates had Matriculation qualification. No permission was obtained from the higher authorities for selecting the appellant / petitioner, on the basis of her Matriculation certificate. There is no reason as to why the petitioner was selected when there are applicants having higher qualification. In short, the Appellate Authority found that the entire selection process was vitiated by arbitrariness, illegality, forgery of documents and manufactured for the purpose of



giving employment to the petitioner.

18. On dispassionate examination of the impugned orders, I do not find any scope to spill ink over the said order.

19. As a result, the instant writ petition is dismissed on contest.

20. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	NAFR
CAV DATE	N/A
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