

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10521 of 2022

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Chandan Kumar S/o Ramesh Prasad Singh, resident of Village and P.O.
Korai, P.S. Garhpura, District Begusarai (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar.
2. The Law Secretary, Law Department, Govt. of Bihar, Patna.
3. The Patna High Court through its Registrar General.
4. Registrar General, Patna High Court.
5. The Convenor, Co-ordination Committee-cum-District and Sessions Judge,
Patna, District-Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kumar Kaushik, Adv. Mr. Purnendu Keshav, Adv.
For the Respondent/s	:	Mr. Prashant Pratap, GP-2
For the High Court	:	Mr. Piyush Lall, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 09-07-2025

Heard Mr. Kumar Kaushik, learned Advocate with
Mr. Purnendu Keshav, learned Advocate for the petitioner, Mr.
Prashant Pratap, learned GP-2 for the State and Mr. Piyush Lall,
learned Advocate for the Patna High Court.

2. The petitioner has filed the present writ petition
inter alia seeking a direction upon the concerned respondents to
declare him successful under Advertisement No. 1 of 2016 dated
07.02.2016 issued for appointment of Clerks in the Civil Court
of Bihar and to appoint him on the said post with all



consequential benefits, in terms with Rule 7 of the Bihar Civil Court Staff (Class-III & IV) Rules, 2009.

3. The issue with regard to the entitlement of the petitioner is primarily based on his merit position in the wait-list prepared on 26.09.2018, relating to subject advertisement issued for selection and appointment against 1681 post of clerk in the Civil Court of Bihar and still the posts are vacant due to non joining etc. which came to be water down by the learned Division Bench of this Court in LPA No. 650 of 2022 and other analogous cases, wherein the learned Court vide its order dated 19.04.2023 directed the concerned respondents for consideration of the cases of the appellants, who secured their position in the wait-list for appointment against the remaining vacancies, in view of the provisions of Rule 7 of the Bihar Civil Court Staff (Class-III & IV) Rules, 2009 (hereinafter referred to as, “Rules, 2009”).

4. There is no confrontation on behalf of the respondents with regard to the position of law, as has been crystallized by the learned Division Bench in LPA No. 650 of 2022 and other analogous cases, leading to issuance of the consequential orders, in favour of the candidates who secured



good position in the wait-list and it is also not in dispute that the name of the petitioner figured at Sl. No. 28 of the said wait-list, but his claim is being resisted on the sole ground of delay and laches; and he is said to be a fence sitter, hence not entitle to get the relief prayed for in the writ petition.

5. Before parting with this case, it would be pertinent to note short facts of the case in order to adjudicate the only issue as to whether the claim of the petitioner is barred by delay and laches, and he can be termed as a fence sitter.

6. The subject Advertisement No. 01 of 2016 was issued by the Convenor, Co-ordination Committee, Patna cum District and Sessions Judge, Patna inviting applications for direct recruitment against 1681 posts of clerk in Civil Court of Bihar, including 841 unreserved posts. The petitioner having eligibility, applied for the aforementioned post under unreserved category and declared successful in the preliminary examination. Subsequent thereto, he appeared in the mains written examination and was also declared successful and thereupon, he was asked to appear in interview and finally on 26.09.2018, a panel of 6841 candidates was published on the basis of merit as per the total marks obtained by them in written



examination and interview.

7. Altogether 1681 candidates were declared successful and appointment letters were issued in their favour. The cut off for successful candidates belonging to unreserved category was 74.66 marks, whereas the total marks obtained by the petitioner was 74.25. A wait-list was also prepared along with the merit list on 26.09.2018 itself, wherein the name of the petitioner stood at Sl. No. 28. Since the wait-list duly prepared by the recruiting agency was not approved by the Patna High Court, some of the candidates who had been placed in the above mentioned wait-list in relation of the subject advertisement approached this Court by filing CWJC No. 21219 of 2018 and CWJC No. 6259 of 2019.

8. Their claim was in limited bound that notwithstanding, the fact that 273 vacancies kept vacant because of non joining of the successful candidates, their claims have not been considered under Rule 7 of the Rules, 2009, which clearly postulates that the wait-list was to operate and be valid for period of two years for the purpose of filling of existing and anticipated vacancies. The co-ordinate Bench of this Court, however, did not persuade with the submissions of the



petitioners of those writ petitions and finally both the writ petitions came to be dismissed. It would be pertinent to note here that the present petitioner had also filed an intervention application bearing I.A. No. 04 of 2022 in CWJC No. 21219 of 2018, however, he withdrew the application with a liberty to file a fresh writ petition and thus, he filed the present writ petition.

9. Aggrieved with the order passed by the learned Single Judge, as noted hereinabove, the petitioner of CWJC Nos. 21219 of 2018 and 6259 of 2019 preferred LPA Nos. 650 of 2022, 661 of 2022 and 657 of 2022. The learned Division Bench having given anxious consideration, pleased to allow these appeals directing the respondents to consider the cases of each of the appellants/petitioners for appointment on the post of Clerk against unfilled and anticipated vacancies, arisen during the relevant period of two years and to issue necessary orders for appointment of each of the eligible appellants/petitioners and in case any of the candidates is not eligible/suitable, in that event, necessary speaking order shall be passed and communicated to them.

10. Mr. Kumar Kaushik, learned Advocate for the petitioner referring to the order/judgment passed by learned



Division Bench of this Court has submitted that the case of the petitioner is identical with those of the petitioners/appellants and, as such, he should also be accorded identical treatment. The name of the petitioner stood at Sl. No. 28 in the wait-list and has secured 74.25 marks, whereas the persons who secured lesser marks than the petitioner, their cases were considered in the light of the order of the Division Bench and in their favour, appointment letters have been issued. It is specifically contended that 25 candidates, who were appellants in LPA NO. 650 of 2022 and other analogous cases were selected and appointed vide notice dated 07.02.2024 and even a person securing 72.50 marks in the unreserved category has been selected.

11. One Chandra Prakash Ajit @ Chandra Prakash Ajeet also filed a contempt application stating *inter alia* that although he was not an appellant in LPA No. 650 of 2022, which came to be decided on 19.04.2023, but he was also one of the petitioner in the original CWJC No. 6259 of 2019, from which the aforesaid appeal had arisen. The learned Division Bench hearing the contempt application bearing MJC No. 3586 of 2023 directed the authorities to examine the eligibility of the



petitioner and proceed to comply the order of this Court vide order dated 12.01.2024.

12. In the light of the order passed in the aforementioned contempt petition, 21 more persons were selected by the competent authority vide notice dated 11.03.2024. Further some of the identically situated persons also aggrieved with the order of the learned Single Judge preferred LPA No. 727 of 2023, which also came to be allowed having found involving similar issue vide order dated 18.01.2024 in similar terms of the order passed by the Division Bench in LPA No. 650 of 2022. In pursuant thereto, a further 20 candidates were also offered appointment vide notice dated 22.04.2024.

13. It has also been apprised to this Court that while considering the LPA No. 261 of 2024, the delay of about one year, four months and sixteen days in preferring the appeal by the appellant was condoned placing reliance upon the judgment of the Hon'ble Supreme Court in the case of *Lt. Col. Suprita Chandel Vs. Union of India & Ors., 2024 SCC Online SC 3664*, wherein the Apex Court held that similarly situated persons, who have not obtained orders need not be driven to the Court. Reinforcing the aforesaid settled legal position, the



learned Division Bench held that the concerned authorities was required to extend similar benefits, if the person approached for the second time is similar to such of those persons, who have approached earlier. It is lastly contended that the respondents were statutorily obliged to prepare a panel/ waiting list of selected candidates from which the remaining vacancies existing in the subsequent two years and accordingly, were required to be filled up. Since the respondent authorities failed to follow the specific prescriptions of the advertisement, the petitioner cannot be blamed and termed as fence sitter. To buttress his submission reliance has also been placed on a decisions rendered by the Apex Court in the case of ***State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava & Ors., (2015) 1 SCC 347.***

14. On the other hand, Mr. Piyush Lall, learned Advocate for the Patna High Court vehemently opposed the writ petition and urged before this Court that it is a settled law that a writ of mandamus cannot be sought unless it is preceded by a demand/representation before the competent authority in context of a legally enforceable right, apart from the writ petition is barred by delay and laches. It is specifically contended that the



petitioner is not similarly situated with those of the petitioners/appellants, who have been offered appointment in pursuant to the decision rendered by the learned Division Bench in LPA No. 650 of 2022 and other analogous cases, as those persons have asserted their rights under Rule 7 of the Rules, 2009, as being placed in wait-list with vacancies existing by filing CWJC No. 21219 of 2018 and CWJC No. 6259 of 2018 in the year 2018-19 itself, without any delay as also within the validity period of two years of the panel/wait-list. However, in the case in hand, the petitioner has approached this Court almost after four years. Even the interlocutory application bearing I.A. No. 04 of 2022 was filed on 09.05.2022 in CWJC No. 21219 of 2018, which was also not pressed by the petitioner. Reliance has also been placed on a Bench decision of this Court in CWJC No. 1063 of 2024 and CWJC No. 4175 of 2024, whereby the learned co-ordinate Bench was pleased to reject the identical claim, as raised by the petitioner on the ground of delay, laches and acquiescence.

15. Further submission has been made that the judgment rendered by the Division Bench of this Court whereupon the petitioner has placed his reliance is only



judgment in personam and not in rem. Moreover, while approving appointments to those 75 persons, who have been offered appointment pursuant to the order of this Court, the remaining vacancies have already been advertised, therefore, employment notice no. 01 of 2022 issued on 13.09.2022; thus a fresh selection process for appointment to the post of clerks in Civil Court of Bihar be reduced accordingly.

16. Reliance has also been placed on a decision rendered in the case of *State of U.P. & Ors. Vs. Harish Chandra & Ors., (1996) 9 SCC 309* as also in the case of *Chairman/Managing Director, Uttar Pradesh Power Corporation Limited & Ors. Vs. Ram Gopal, (2021) 13 SCC 225*, wherein the Court held that limitation does not apply strictly to writ proceedings, nevertheless such rights cannot be enforced after inordinate delay. Caution has been made that writ Courts should be reluctant to interfere in exercise of discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence sitters cannot be allowed to barge into courts and cry for their rights at their convenience and vigilant citizens ought not to be treated alike with mere opportunists.



17. Having heard the submissions set forth by the learned Advocate for the parties and before answering the issue framed in the present case, it would be pertinent to take note of the view expressed by the Apex Court on the issue of delay, laches and acquiescence as also who are the persons who can be termed as fence sitter. The learned co-ordinate Bench of this Court while negating the prayer of the petitioner in CWJC no. 1063 of 2024 and CWJC No. 4175 of 2024 has taken note of the decisions rendered by the Apex Court in the case of ***Shiba Shankar Mohapatra & Ors. Vs. State of Orissa and Ors., (2010) 12 SCC 471***, wherein the Court reiterated the settled proposition of law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the Court is guilty of delay and the laches. The Court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallizes in the interregnum.

18. The Apex Court in the case of ***Arvind Kumar Srivastava*** (supra) cautioned that the Court should be very slow



in granting relief to the incumbent specially when the claimants lost time and did not rise to the occasion in time for filing the writ petitions by holding; “Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be



extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

19. The Hon’ble Supreme Court in the case of ***Lt. Col. Suprita Chandel*** (supra) while hearing the appeal preferred against the order of the Armed Forces Tribunal whereby the appellant has been denied his claim by treating the earlier order of the Tribunal only confined to the petitioners of the said case and could not form a precedence and thereby, rejected the representation of the appellant, is held to be patently erroneous. The Apex Court precisely held that only because the Armed Forces Tribunal (Principal Bench) granted relief to the petitioners, it did not prohibit the department from considering similarly situated persons.

20. Reiterating the legal position in ***Amrit Lal Berry Vs. Collector of Central Excise, New Delhi & Ors., (1975) 4 SCC 714***, the Court held that It is a well settled principle of law that where a citizen aggrieved by an action of the government department has approached the court and obtained a declaration of law in his/her favour, others similarly situated persons ought to be extended the benefit without the need for them to go to



court. Emphasizing the aforementioned principle, the Court also took note of decision in *K. I. Shephard & Ors. Vs. Union of India & Ors., (1987) 4 SCC 431*, wherein the Court while reinforcing the above principle held that some of the excluded employees have not come to court. There is no justification to penalise them for not having litigated. They too shall be entitled to the same benefits as the petitioners. The Hon'ble Court finally held that no doubt, in exceptional cases where the court has expressly prohibited the extension of the benefit to those who have not approached the court till then or in cases where a grievance in personam is redressed, the matter may acquire a different dimension, and the department may be justified in denying the relief to an individual who claims the extension of the benefit of the said judgment.

21. In the light of the aforesaid proposition, now coming to the facts of the case in hand, there is no dispute that the petitioner had initially approached the Court by filing I.A. No. 04 of 2022, which came to be finally withdrawn as their cannot be any intervention application to support the writ petition or to claim the identical relief. Taking liberty the petitioner has filed the present writ petition on 26.07.2022.



Admittedly at that point of time, even the earlier writ petition bearing CWJC No. 6259 of 2019 and CWJC No. 21219 of 2018 were pending consideration before this Court. Subsequent to the filing of the present writ petition, both the aforementioned writ petitions came to be rejected on 29.09.2022 and thereupon, the petitioners of the said writ petitions preferred LPA No. 650 of 2022 and other analogous appeals, and finally the appeals were allowed vide order dated 19.04.2023 with a direction to offer appointment to the candidates with whom the petitioner is seeking parity.

22. It is the admitted position that during the pendency of this writ petition, all the development has taken place and altogether 75 candidates whose names have been placed in the wait-list, they have been offered appointment. Nonetheless many of them have secured lesser marks than the petitioner. The reliance of the respondents that the persons who preferred CWJC No. 1063 of 2024 and CWJC No. 4175 of 204 came to be rejected on account of delay and laches by holding them as fence sitter do not find merit and the case of the petitioner cannot be equated with those. In both the cases, the petitioner waited till the decision of LPA No. 650 of 2022 and



other analogous cases and approached this Court after lapse of more than five years of arising of cause of action and about one year of passing of the decision of the LPA No. 650 of 2022. Thus, the Court held that the petitioners kept sleeping over his right for long and woke up only when he had the impetus from the judgment rendered by the Division Bench of this Court in the case of ***Prince & Ors. Vs. The State of Bihar & Ors.***, in LPA No. 650 of 2022.

23. It is not in dispute that while allowing the LPA No. 650 of 2022 and other analogous cases, the learned Division Bench held that the respondent authorities failed to take appropriate steps to give effect to Sub-rule 12, 13 and 14 of Rule 7 of the Rule, 2009 and thus, executive decision cannot be override statutory rules. Thus, there was laches on the part of the respondent authorities in not giving effect to Rule 7 relating to operation of the wait-list or panel which shall remain valid for a period of two years and further the existing vacancies so also the anticipated vacancies occurring within the aforementioned period and was required to be filled up among the candidates in the set manner in order of merit.

24. It is also the admitted position that the petitioner



secured 28 position in the wait-list and much above the candidates, who have been offered appointment in pursuant to the order of this Court passed in LPA No. 650 of 2022 and other analogous cases and further in LPA No. 727 of 2023. But his case has been resisted on account of delay and laches, notwithstanding the fact the petitioner has been pursuing his case even before the initial writ petition bearing CWJC No. 21219 of 2018 and CWJC No. 6259 of 2019 came to be rejected. Hence in the opinion of this Court, in no circumstances the petitioner can be held to be a fence sitter. This Court is also conscious of the fact that the plea of issuance of fresh advertisement bearing No. 01 of 2022 was also available with the respondents at the time when the matter was under consideration before the learned Division Bench but was overruled; and even till date no third party right has been created during interregnum period.

25. This Court thus, hereby, held that the case of the petitioner is squarely covered with those of the decision rendered by the learned Division Bench in LPA No. 650 of 2022 with other analogous cases and LPA No. 727 of 2023 as well as LPA No. 261 of 2020.



26. Accordingly, the writ petition stands allowed.

27. The concerned respondent is hereby directed to consider the case of the petitioner, in view of the discussions made hereinabove and if the petitioner is otherwise eligible, issue necessary order in accordance with law and accord the similar treatment, as has been extended to the similarly situated candidates. The entire exercise must be completed preferably within a period of eight weeks, from the date of receipt/production of a copy of this order.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.07.2025.
Transmission Date	NA

