

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1315 of 2019

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Abhay Kumar Sinha, S/o Shri Manoranjan Prasad Sinha, resident of Village-
Ashok Nagar, Pokharia, P.S.-Begusarai, District-Begusarai.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of General Administration, Government of Bihar Patna.
2. The Principal Secretary, Department of General Administration, Government of Bihar Patna.
3. The Joint Secretary (Establishment), Department of General Administration, Government of Bihar Patna.
4. The Additional Secretary, Department of General Administration, Government of Bihar Patna.
5. The Secretary, Art, Culture and Youth Department, Government of Bihar, Patna.
6. The Director General, Bihar State Sports Authority, Moinul Haque Stadium, Rajendra Nagar, Patna.
7. The District Magistrate, Siwan.
8. The District Magistrate, Rohtas.
9. The District Magistrate, Purnea.
10. The District Magistrate, Patna.
11. The Secretary, All India Chess Federation, Hall No. 70, Jawaharlal Nehru Stadium Chennai.
12. The Secretary, All Bihar Chess Association, Mahendru, Patna.
13. Rajesh Kumar Sinha, S/o Late Mahesh Prasad, Clerk, through the District Magistrate, Siwan.
14. Ved Prakash Sinha, S/o Sri Upendra Lal, Clerk, through the District Magistrate, Rohtas.
15. Bipin Kumar Singh, S/o Sri Ranjit Prasad, Clerk, through the District Magistrate, Purnea.
16. Minki Sinha, S/o Sri Balkeshwar Prasad, Clerk, through the District Magistrate, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Nikhil Kumar Agrawal, Advocate
For the State	:	Mr. Saroj Sharma, Advocate
For the Resp No.16	:	Mr. Vibhuti Ranjan Sonvadra, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR



CAV JUDGMENT

Date : 20-03-2025

The petitioner is represented through Mr. Nikhil Kumar Agrawal, learned Advocate, the State through Mr. Saroj Sharma, learned Advocate and Mr. Vibhuti Ranjan Sonvadra, learned Advocate, appears on behalf of the private respondent no.16.

2. There is no representation on behalf of the respondents no. 13, 14 and 15.

3. The challenge in the present writ petition is made to an order dated 06.08.2015 contained in Memo No. 11368 to the extent whereby the recommendation has been made in favour of the private respondents for their appointment as Clerks; notwithstanding the fact that they are less meritorious and qualified than the petitioner as explicit in the gradation list, under the Special Quota Sports Category (Chess).

4. During the pendency of the writ petition, the petitioner has preferred Interlocutory Application No.1 of 2024 by adding bundle of reliefs, *inter alia*, seeking declaration from this Court that the change in selection criteria made by the respondents subsequent to issuance of the advertisement dated 08.12.2009 as well as after initiation of the selection process as arbitrary and illegal; and further to declare that bifurcation of



National Games into A and B only pertains to Clause-2(9) of the Bihar Outstanding Sportspersons Appointment Rules, 2009 (for brevity 'the Rules, 2009') relating to personal/individual competition.

5. The brief facts, germane for adjudication of the present lis, are that the Government of Bihar, exercising its power conferred under proviso to Article 309 of the Constitution of India, notified the Rules, 2009 for appointment of Outstanding Sportspersons. The aforesaid Rules, 2009 came to be notified on 18.12.2009 vide Notification No. 6086, which has further been amended vide Notification No. 3499 dated 30.03.2011. In pursuant to the said Rules, an advertisement was published on 31.03.2011 inviting applications for appointment of Outstanding Sportspersons on the post of Group-C and D of the State Government.

6. Having been found eligible, the petitioner applied for appointment against the said advertisement under the discipline of "Chess". A provisional, sports wise, list was published on 13.07.2011 by the General Administrative Department, Bihar, Patna, wherein the name of the petitioner figured at serial no.2. Thereafter, objections were invited and after considering the same, the final list was published on



16.11.2011. The name of the petitioner found place at serial no.3 in the final list. The copy of the provisional as well as final merit list have been placed on record as Annexures-P2 and P3. Notwithstanding the finalization of the merit list, the petitioner had not been called for and conversely appointment of others took place in the discipline of Chess.

7. Faced with such a situation, the petitioner made a verification and thereupon he came to know that there was a confusion among the respondent authorities with regard to the status of Championship between National-A and National-B.

8. To dispel such confusion, the Joint Secretary, General Administrative Department vide Letter No. 2105 dated 08.02.2012 requested the General Secretary of All India Chess Federation to clarify the status of players, who participated against donation in National-B Championship.

9. In response thereto, the All India Chess Federation clarified that the State Associations are permitted to send four players only in a National-B Championship based on merit selected from State Championship and this refers to individual events.

10. The aforesaid clarification led to issuance of fresh list of outstanding players in the category of Chess in the order



of merit, wherein the name of the petitioner was figured at serial no.8, obviously not within the consideration zone.

11. The concerned authorities in order to resolve the issue, as apprised by the petitioner, a meeting of Selection Committee under the Chairmanship of Principal Secretary, General Administrative Department was held on 03.04.2012 and it was resolved to recommend the name of one Neha Singh, whose name was placed at serial no.3 in a Junior National Championship for appointment. On 29.07.2013, the authorities further recommended the name of Minki Sinha, who was at serial no.5 on the ground that she had participated in National-A Championship. Similarly, vide letter no. 9044 dated 23.06.2015, three other players, namely, Rajesh Kumar Sinha, who had secured 11th position, Ved Prakash Sinha, 14th position and Bipin Kumar Sinha, 15th position from Chess discipline were called for the interview; nonetheless, they were less meritorious than the petitioner.

12. Adverting to the aforesaid facts, Mr. Nikhil Kumar Agrawal, learned Advocate for the petitioner contended that the authorities had failed to appreciate that after 1986, none of the players (Men) from Bihar had participated in National-A Championship whereas it is Annual Championship. Hence, it



cannot be said that the team of the State of Bihar is not participating in National Championship since 1986. Moreover, National Championship A and B refers to individual championship while the petitioner was in the national team event, which also makes him eligible for being appointed according to the rules which govern the appointment. Taking note of the infirmities with respect to non-consideration of National-B Championship as national event, even the team events/participation at national level was ignored; the Chess Association had filed a detailed representation clarifying the difference between the National-A and B Championship. Confronted with such a situation, the department took a decision to review the matter and for the said purpose, a meeting was called for by the Principal Secretary, General Administrative Department with the Selection Committee. It has been clarified by the All India Chess Federation that, “the National Challenger Championship (National-B) is indeed a National Championship, which allows selected players from the State and Others, who could not get selected to participate in the National Championship, as a special (donor) entries submitted through their respective State Associations”.

13. Mr. Agrawal, learned Advocate for the petitioner



further argued that there is other limb of submission that the team event is different from National-A and B Championship. The petitioner, even as per the final selection list dated 16.11.2011 was selected on the ground of the team event, which amply indicates the fact that the team events were duly considered for preparation of the final merit list. The third merit list which was duly prepared on 20.04.2012 is nothing but full of infirmities, as it did not take into consideration the team events.

14. Referring to the Rules, 2009, emphasis has been made that the merit list for appointment of Outstanding Sportspersons having requisite educational qualification as well as qualification with respect to sports discipline shall be prepared keeping in view the seniority list mentioned in Annexure-1, which talks about the priority list of sports person for appointment. Referring to Clause-4.9 of the Rules, 2009, it is further contended that to make the appointment procedure transparent, provisional merit list was to be published and after considering the objections, final merit list was to be issued and only on the basis of that final list, appointment was to be made in accordance with seniority, but the same has given a complete go by and the respondent authorities after completing the entire



selection process, reopened the matter by inviting opinion from the Federation and issued another revised merit list, tinker with so many infirmities, as noted hereinabove.

15. The action of the respondent authorities suffers from vice of arbitrariness and, in fact, they changed the criteria/qualification in the selection process, which is deprecated by the Hon'ble Supreme Court in umpteenth number of cases. Reliance has also been placed on a Constitution Bench decision of the Apex Court in the case of **Tej Prakash Pathak and Others v. Rajasthan High Court and Others [(2025) 2 SCC 1]**, wherein the Court held that the earlier decision rendered in the case of **K. Manjusree Etc. v. State of A.P. and Another [(2008) 3 SCC 512]**, laid down good law "that the eligibility criteria for being placed in the select list, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness. Reliance has also been placed on a decision of the Apex Court rendered



in **Anil Kishore Pandit v. The State of Bihar and Others**
[Civil Appeal No. 1566 of 2024/2024 SCC Online SC 332] on
the issue raised hereinabove.

16. Refuting the submissions made on behalf of the petitioner, learned Advocate for the State primarily opposed the relief(s) sought for in the present writ petition on the ground of delay and laches, as the petitioner has preferred the present writ petition after about seven years of the publication of the final merit list. It is contended that, at present, so far the Rules, 2009 (as amended) related to appointment of Outstanding Sportspersons in service of State Government is concerned, it does not exist. The decision not to consider the claim of the players of National-B, is taken by the department based upon the letter of the Federation, which made it clear that the State Associations were permitted to fill up four entries in National Challengers (previously it was called National-B) based on merit. These four players were recommended by the State Associations to participate as donor/special entries by paying Rs.10,000/- (as per existing financial regulations). On the basis of the above noted report, the Selection Committee took a decision that the candidates, who have stood 1st, 2nd and 3rd position in Chess discipline and the candidates, who have



represented the State of Bihar in Senior National-A Competition will be considered. The players of National-B of merit list of Chess have been ousted. Based upon the aforesaid decision, the selection were completed and all the candidates who were found entitled in terms of the aforesaid decision were duly selected on the basis of final merit list.

17. It has also been apprised to this Court that the Committee also resolved in its meeting that in future, the marks should be affixed/determined for appointment of all discipline and, accordingly, the Committee submitted its draft for amendment of Rules and on the basis thereof, the Bihar Outstanding Sportsperson Appointment Rules, 2014 was notified vide Notification No. 16646 dated 04.12.2014. It is further contended that the appointment has taken place from the amended merit list, which was published on 20.04.2012 wherein the name of the petitioner did not find place; hence, his name has rightly not been recommended for appointment.

18. Learned Advocate for the State has further argued that the reliance placed by the petitioner on a decision of the Apex Court in the case of **Anil Kishore Pandit** (supra) was related to a dispute regarding the minimum age prescribed in the advertisement, which was later on changed. However, the



present case is based on a policy decision of the Government.

19. This Court has anxiously heard learned Advocate for the respective parties and also perused the relevant rules and the materials available on record.

20. From perusal of the Rules, 2009, there is no confrontation that the appointment of the Outstanding Sportspersons was to be made on the basis of the seniority position of the final merit list, which shall be finalized and issued after proper consideration of the complaint/objection.

21. It would be worth mentioning here that mere empanelment of a candidate does not give indefeasible right in favour of a candidate to be appointed or confer a right to a job. It simply reflects that the candidate is considered qualified based on their performance and is listed as eligible for potential selection, but the final decision on appointment rests with a recruiting authority.

22. Rules, 2009, especially Clause 4.3 emphasized the primacy of seniority list based upon requisite educational qualification as well as qualification with respect to sports discipline. Clause 4.4 crystallized that selection shall be made on the basis of best achievement amongst the several achievements secured by a sportsperson. Further, Clause 4.6



stipulates the preferences in case of tie on the basis of sports achievement, making it clear, *inter alia*, that the personal achievement shall be treated as larger against the team achievement. Coming to the priority list of sportsperson for appointment of Outstanding Sportspersons, appended as Annexure-I to the Rules, 2009, there is no iota of confusion that the personal achievement has been given due weightage.

23. The Rules in question, which govern the selection procedures relating to appointment of the Outstanding Sportspersons in different discipline, including the sports of Chess only postulates the qualification. However, this does not whisper about the equivalence of the degree/certificate obtained by a sports person. For the said purpose, the State, who is the employer has every right to get it clarified by an authority, who would have competence and expertise in this respect.

24. Faced with such a situation, if the General Administrative Department and the Selection Committee sought an opinion with regard to the status of National-B Championship and on receipt of the opinion, if a fresh decision is taken, this Court does not find it impermissible in law; nonetheless, it should be done soon after the publication of provisional list and before the finalization of final merit list but



in no circumstances, it can be termed that the same would amount to changing the rules of game in the mid way, which at all is not permissible. All the more, the issue has already been stood settled by the Apex Court and recently it has been emphasized in **Tej Prakash Pathak** (supra), wherein the Court concluded that the eligibility criteria for being placed in the select list, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness. The Court further ruled that recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/ non-arbitrary and has a rational nexus to the object sought to be achieved.

25. The opinion of the All India Chess Federation, would also be worth mentioning, which in clear terms says that “National Challenger Championships (National B) is indeed a



National Championship which allows selected players from the State and Others, who could not get selected to participate in the National Championships as special (donor) entries submitted through their respective State Associations.” The afore-noted position of the participant of National ‘B’ Challengers Championship in Chess discipline clearly keeps him in special capacity, whose name is recommended by the State Association, in case he would not have been selected for National Championships.

26. Further, this Court has been reminded that the Rules, 2009 (as amended up to year 2012) have already been repealed under Clause-7 of the newly notified Bihar Outstanding Sportsperson Appointment Rules, 2014, on 4th December, 2014; although with a repeal and savings clause; which made it clear notwithstanding such repeal, anything done or any action taken under the said circular/resolution/rules/instructions prior to coming into force of these rules shall have no adverse effect.

27. This Court is also not oblivious of the fact that the final amended merit list was published long back in the year 2012 and the present writ petition came to be filed after a delay of about seven years.

28. It is trite law that a belated service related claim



ought to be rejected on the ground of delay and laches, except where wrong is continuing, creates a continuing source of injury.

29. In **Shiv Dass v. Union of India and Others [(2007) 9 SCC 274]**, the Apex Court observed that “*the High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.*”

30. The issue of belated service related claims vis-a-vis continuing wrongs and recurring successive wrong have also been crystallized by the Apex Court in the case of **Union of India and Another v. Tarsem Singh [(2008) 8 SCC 648]**.

31. On all these counts, noted hereinabove, this Court does not find any good ground to invoke the jurisdiction of this Court while exercising the prerogative writ jurisdiction.



Accordingly, the present writ petition stands dismissed.

32. No order as to cost(s).

33. Pending application(s), if any, shall stand disposed off.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	10-02-2025
Uploading Date	21-03-2025
Transmission Date	

