IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.338 of 2021
In
Civil Writ Jurisdiction Case No.8130 of 2020

CNR No. BRHC010343182021

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Satish Kumar, Son of Mahendra Choudhary resident of Bijli Colony, P.S.- Jahanabad, District- Jahanabad, Bihar Presently residing at Jaganpura, P.S.- Ramkrishna Nagar, District- Patna, Bihar

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resource Department, Government of Bihar, Patna
2. The Joint Secretary, Water Resource Department, Government of Bihar, Patna
3. The Chairman, Bihar Public Service Commission, Jawaharlal Nehru Marg, Patna, Bihar
4. The Secretary, Bihar Public Service Commission, Jawaharlal Nehru Marg, Patna, Bihar

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Ambuj Kumar Chandra, Advocate.
For the Respondent/s : Mr. Awadhesh Kumar Singh, G.A-01.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE ALOK KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 23-11-2026

Re.: I.A. No. 01 of 2026

Learned counsel for the appellant presses I.A.No. 01 of 2026 for condoning the delay of 03 days in preferring this appeal.

2. For the reasons stated in the interlocutory application, the delay in preferring this appeal is condoned.

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3. Interlocutory Application No. 01/2026 stands allowed.

Re.: L.P.A.No. 338 of 2021

4. Heard learned counsel for the appellant who appeared through virtual mode and learned counsel for the State.

5. The present *intra court* appeal has been preferred against the order dated 22.03.2021 passed in C.W.J.C. No. 8130 of 2021, whereby the writ petition preferred by the appellant came to be dismissed.

6. The brief facts of the present case are that the appellant had participated in a selection process for appointment to the post of Assistant Engineer pursuant to Advertisement No. 1/2006 issued by the Bihar Public Service Commission (BPSC) under the Scheduled Caste (SC) category but was unsuccessful, having secured one mark less than the prescribed cut-off marks. Subsequently, he participated in another selection process conducted in 2014, pursuant to which he was appointed as an Assistant Engineer and is presently continuing in service. The case of the appellant is that he should be considered for appointment under the 2006 Advertisement as certain seats remained vacant. It is further the case of the appellant that a similarly situated person has been given similar relief by the

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Hon’ble Supreme Court.

7. The learned Single Judge after considering the facts and circumstances of the case, dismissed the writ petition, and observed that the appellant had not raised any grievance against his non-selection on the basis of 2006 Advertisement at the appropriate time. The relevant paragraphs of the impugned order are reproduced as under:

> *“It is the case of the petitioner that one Vinit Prakash of General Category, who had participated in the selection process of 2006, had secured 12 marks less than the cut off marks. Raising a claim that he should be appointed against a post which remained vacant due to non-joining of candidates, he had approached this Court by filing a writ petition, which was rejected by a Division Bench of this Court by an order dated 29.03.2012 passed in C.W.J.C. No. 7128 of 2010 (Vinit Prakash Vs. The State of Bihar and Others). The said Vinit Prakash approached Supreme Court giving rise to Civil Appeal No. 8358 of 2013 arising out of S.L.P.© No.16332 of 2012, which was disposed of by an order dated 16.09.2013 with a direction to the respondent State of Bihar to consider his case for appointment on the post which was left vacant as the last candidate selected had not joined. The Supreme Court made it clear in the said order that the said order was made in peculiar facts and circumstances of the case and shall not be treated as a precedent. The petitioner claims in the present writ application that his case should also be considered for appointment against vacancy advertised in 2006 and he should be granted seniority accordingly as he had missed the chance of selection by only one mark, whereas said Vinit Prakash had secured 12 marks less than the cut off for General Category.*
>
> *I have heard Mr. Ambuj Kumar Chandra, learned counsel appearing on behalf of the petitioner, Mr. Anjani Kumar, learned AAG-4 for the State of Bihar and Mr. Ashok Kumar*

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> *Choudhary, learned counsel representing the BPSC. I have also perused the counter affidavit filed on behalf of the State of Bihar and the petitioner's rejoinder to the said counter affidavit.*
>
> *In my opinion, this application is completely misconceived. By no stretch of imagination, the petitioner's case can be considered for his appointment on the basis of 2006 advertisement. The petitioner at any point of time.*
>
> *This application has no merit and is accordingly dismissed."*

8. Being aggrieved by the aforesaid order passed by the learned Single Judge, the appellant, has preferred the present *intra* court appeal.

9. Learned counsel appearing on behalf of the appellant submits that the case of the appellant is fit to be considered on the grounds of equity. Learned counsel further submits that the appellant is a bona fide candidate, and he should be considered for appointment on the basis of 2006 Advertisement in parity with the order passed by the Hon'ble Supreme Court.

10. Learned counsel appearing on behalf of the respondents submits that the learned Single Judge has rightly passed the impugned order. Learned counsel submits that the appellant has never raised objection at the appropriate time regarding the 2006 Advertisement. Learned counsel, therefore, submits that the appellant has no enforceable right to claim appointment under the 2006 Advertisement.

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11. We have heard learned counsel for the parties, and perused the materials available on record. The limited issue that arises for consideration before this Court is that whether the order of the learned Single Judge warrants any interference in the facts and circumstances of the present case.

12. The Hon'ble Supreme Court *vide* order dated 16.09.2013, passed in **S.L.P.(C) No. 16332 of 2012**, had granted relief to a third person, who was similarly situated as the appellant. However, it was made clear that it was passed in peculiar facts and circumstances of the case, and it was not to be treated as precedent. The relevant paragraphs of the said order are reproduced as under:

> *"It is reiterated that therefore, the appellant does not have any legal right to claim an appointment. In any event there is no vacancy on which the appellant can be accommodated.*
>
> *We are of the considered opinion that in view of the aforesaid instructions, the appellant, strictly speaking, may not have a legal right. However in equity, the respondents certainly ought to consider the claim made by the appellant without treating the said consideration as a precedent.*
>
> *We dispose of this appeal with a direction to the respondent-State to consider the appellant for appointment on the post which was left vacant as the last candidate selected had not joined.*
>
> *It is made clear that the aforesaid order is made in the peculiar facts and circumstances of the case and shall not be treated as a precedent.*
>
> *With the above observations, this appeal is disposed of."*

13. Thus, the Hon'ble Supreme Court had given a one

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time relief to the concerned person on the ground of equity, which was not to be treated as a precedent. As such, the appellant cannot be given benefit of the order passed by the Hon'ble Supreme Court.

14. The appellant herein also claims the benefit on the ground of equity. However, in the present case, the appellant did not approach the concerned court for his non-selection under the 2006 Advertisement at the appropriate time. The appellant approached the concerned authorities only in the year 2020 with a delay of more than 10 years. Further, the appellant has been subsequently selected in an another advertisement and is continuing in service. In these facts and circumstances of the case, we are not inclined to grant relief to the appellant on the ground of equity.

15. We are, therefore, of the considered opinion that the appellant has been unable to substantiate the grounds of the present appeal, and has been unable to dislodge the findings of the learned Single Judge. There is no illegality or perversity in the order of the learned Single Judge so as to warrant interference of this court.

16. Accordingly, the present *intra* court appeal stands dismissed.

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17. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

(Alok Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
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