

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 16171 of 2021

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Shanichar Bind Son of Sri Bhola Bind Resident of Mohalla - Mohanpur, P.S.- Jamalpur,
Dist- Munger.

..... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Urban Development Department, Government of Bihar, New Secretariat ,Patna.
2. The Deputy Secretary to the Government, Urban Development Department, Patna.
3. The Joint Secretary, Urban Development Department, Government of Bihar, New Secretariat, Patna.
4. The District Magistrate, Munger.
5. The Nagar Nigam Munger through its Town Commissioner, Munger.
6. The Town Commissioner, Nagar Nigam, Munger.

..... Respondent/s

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A. Constitution of India – Article 226 – Delay and Latches - inordinate delay of 7 years – no legal obligation to entertain such petition – Equity aids the vigilant and not those who slumber over their rights- Petition - fit to be dismissed. (*Referred to:- Chennai Metropolitan Water Supply & Sewerage Board & Others Vs. T.T. Murali Babu (2014) 4 SCC 108 ; State of Uttranchal & Anr. Vs. Shiv Charan Singh Bhandari & Others 2013 AIR SCW 6627 ; C. Jacob Vs. Director of Geology & Mining & Anr. AIR 2009 SC 264 ; State of Jammu and Kashmir Vs. R.K Zalpuri & Others AIR 2016 SC 3006 ; State of Tamil Nadu Vs. Seshachalam (2007) 10 SCC 137 ; P.S. Sadasivaswamy Vs. State of Tamil Nadu (1975) 1 SCC 152 ; Naresh Kumar Vs. Department of Atomic Energy and Others (2010) 7 SCC 525) (Para- 5,6 & 8).*

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6. The Town Commissioner, Nagar Nigam, Munger.

... .. Respondent/s

Appearance:

For the Petitioner : Mr. Sanjay Kumar, Advocate
For the State : Mr. Subash Prasad Singh, GA-3
Mr. Indeshwari Prasad Mandal, AC to GA-3

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 24-01-2024

The present writ petition has been filed
seeking the following reliefs:-

*(i) For issuance of an appropriate order/s,
direction/s and writ/s for quashing memo
no. 10342 dated 28.07.2014 whereby and
whereunder the service of the petitioner as
Safai Coolie has been terminated on the*



ground that it was against the advertisement dated 02.08.1998 and 03.08.1998.

(ii) For issuance of an appropriate order/s, direction/s and writ/s to the respondents to reinstate the petitioner as Safai Coolie in Municipal Corporation, Munger and give him back wages as per direction issued by Hon'ble Patna High Court in LPA No. 624/2013 on 23.01.2014 and specially in last but one paragraph of the order which is as follows "Needless to state that if the appointment of any of the respondents is found to be valid he shall be entitled to reinstatement and continuity service on all its aspects including seniority, back wages etc."

2. The brief facts of the case, according to the petitioner, are that the respondent-Municipal Corporation, Munger issued an advertisement on 02.08.1998 and 03.08.1998, inviting applications from eligible candidates for appointment as 4th grade employees on different posts, pursuant where to the petitioner had applied and was appointed as Safai Coolie, vide letter dated 09.11.1999, whereafter the petitioner had been



discharging his duties, however, suddenly a letter dated 21.06.2006 was issued by the Deputy Secretary, Urban Development Department to the Executive Officer, Munger Nagar Parishad stating therein that the appointment made by the then Special Officer was illegal, hence it was directed that the services of the said 23 employees, including the petitioner should be terminated, whereafter vide letter dated 20.07.2006, the Executive Engineer, Munger Nagar Parishad had terminated the services of the said 23 employees, including the petitioner, which was challenged in CWJC No. 8888 of 2006.

3. In the meantime, the Dy. Secretary, Urban Development Department, Bihar, Patna had considered the matter afresh and passed an order dated 31.08.2009, holding that the appointment of the said 23 employees made in the year 1999 was though made by the Special Officer, Munger Nagar Parishad, but prescribed procedure was not followed. The said order dated 31.08.2009 was challenged by the petitioner and others by filing a



writ petition, bearing CWJC No.11436 of 2009, which was disposed off by a co-ordinate Bench of this Court, by an order dated 25.07.2011 and the matter was remanded back to the Deputy Secretary, Urban Development Department for passing a fresh order in accordance with law, whereafter the Dy. Secretary, Urban Development Department had passed an order dt. 10.10.2011, again holding that the aforesaid appointments made in the year 1999 by the then Special Officer, Munger Nagar Parishad had not been made on the basis of category wise quota fixed for various classes, no roster clearance was obtained, no interview board was constituted and no merit list was prepared, hence are illegal.

4. The aforesaid order dt. 10.10.2011 was then challenged by the petitioner and others by filing a writ petition, bearing CWJC No.383 of 2012, which was allowed by an order dated 14.09.2012 and the petitioner along with others were directed to be reinstated with all consequential benefits, however, the said order dated 14.09.2012 was challenged in



appeal, bearing LPA No.624 of 2013 and the learned Division Bench of this Court, by an order dated 23.01.2014, had remanded the matter back to the Principal Secretary, Department of General Administration, who was directed to nominate a Senior Class-1 Officer to hold a proper enquiry and pass a reasoned and a speaking order, regarding specific and clear finding with regard to each of the incumbents. In pursuance to the said order dated 23.01.2014, an enquiry was held by the Special Secretary to the Government and findings were recorded by him in his enquiry report/Order dated 28.07.2014, however, as far as the petitioner is concerned, it has been found that his appointment was made against an unadvertised post, hence his appointment has been held to be not legal. It is this Order dated 28.07.2014 which has been challenged by way of the present writ petition in the year 2021.

5. At the outset, the learned counsel for the respondent-State has raised a preliminary objection with regard to maintainability of the



present writ petition, inasmuch as the present writ petition has been filed belatedly after a great delay of about 7 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 respondent-State 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. In fact, in 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,** 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. In **Chennai Metropolitan Water Supply & Sewerage Board & Others** (Supra), the Hon'ble Supreme Court has held that belated challenge to the Order of dismissal from service by approaching the court after a delay of four years' does not deserve any indulgence and on the ground of delay alone, the writ court should have thrown the petition overboard at the very threshold.

7. I have heard learned counsel for the parties and perused the material on record.

8. Considering the principles laid down by the



Hon’ble Apex Court, in a catena of judgments, as aforesaid, as also considering the maxim “*equity aids the vigilant and not those who slumber over 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 reasonable explanation, whatsoever for the inordinate delay of about 7 years, which has taken place in approaching this Court, hence I deem it fit and proper to dismiss the present writ petition on the ground of delay and laches alone.

9. The writ petition stands dismissed.

(Mohit Kumar Shah, J)

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