IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.891 of 2025
In
Civil Writ Jurisdiction Case No.10521 of 2022

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1. The Patna High Court through its Registrar General, Patna High Court.
2. Registrar General, Patna High Court.
3. The Convenor, Co-ordination Committee-cum- District and Sessions Judge, Patna, District- Patna.

... ... Appellant/s

Versus

1. Chandan Kumar S/o Ramesh Prasad Singh Resident of village and P.O.- Korai, P.S.- Garhpura, District- Begusarai (Bihar).
2. The State of Bihar, through the Chief Secretary, Government of Bihar.
3. The Law Secretary, Law Department, Govt. of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Piyush Lall, Advocate
For the State	:	Mr. S. Raza Ahmad, AAG-5 Mr. Alok Ranjan, AC to AAG 5
For Res. No. 1	:	Mr. Kumar Kaushik, Advocate Mr. Hemant Raj, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ALOK KUMAR SINHA

CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA)

Date : 24-03-2026

The present Letters Patent Appeal has been preferred by the appellants assailing the judgment and order dated 09.07.2025 passed by the learned Single Judge in C.W.J.C. No.

10521 of 2022, whereby the learned Single Judge, having held that the case of the writ petitioner–respondent No. 1 is squarely covered by the judgments and orders dated 19.04.2023 passed in L.P.A. No. 650 of 2022 and analogous cases, dated 18.01.2024 passed in L.P.A. No. 727 of 2023, and dated 16.12.2024 passed in L.P.A. No. 261 of 2024, has been pleased to allow the writ petition with a direction to the appellants to consider the case of the said respondent No. 1 and, if found otherwise eligible, to issue necessary orders of appointment and posting on the post of Clerk in the Civil Courts of Bihar, in accordance with law, by extending similar treatment as granted to other similarly situated candidates, and to complete the entire exercise preferably within a period of eight weeks from the date of receipt/production of a copy of the said judgment; the appellants, being aggrieved thereby, have preferred the present appeal praying for setting aside the aforesaid impugned judgment and order as being unsustainable in law

SUBMISSION OF THE APPELLANT

2. Learned counsel for the appellants submits that the impugned judgment and order dated 09.07.2025 passed in C.W.J.C. No. 10521 of 2022 suffers from manifest errors of law as well as of record and is liable to be set aside. It is contended that the learned Single Judge has failed to appreciate the settled

principles governing delay and laches in service jurisprudence and has erroneously entertained the writ petition filed by respondent No. 1 long after the expiry of the validity of the select panel/wait list dated 26.09.2018, which admittedly came to an end on 26.09.2020 under Rule 7 of the Bihar Civil Court Staff (Class III and IV) Rules, 2009.

3. It is submitted that respondent No. 1 approached the Court only on 22.07.2022, i.e., after a delay of more than one and a half years from the expiry of the panel, without offering any plausible explanation for such delay. Learned counsel contends that such belated approach clearly attracts the principles of delay, laches and acquiescence, rendering the writ petition itself not maintainable at the threshold. In this regard, reliance is placed on the settled position of law that a candidate cannot seek appointment from an expired panel by approaching the Court belatedly.

4. Learned counsel further submits that the learned Single Judge has failed to consider that the benefit of the judgment dated 19.04.2023 passed in L.P.A. No. 650 of 2022 and analogous cases was confined to those writ petitioners who had approached the Court within the validity period of the panel. It is argued that the said judgment was clearly in personam and not in rem, and

therefore could not have been extended to respondent No. 1, who admittedly did not approach the Court within the prescribed period. The attempt of the respondent to claim parity with those candidates, it is urged, is legally untenable. It is further submitted that the distinction between vigilant litigants and fence-sitters has been completely overlooked by the learned Single Judge. According to learned counsel, the writ petitioners in earlier cases had approached the Court in the years 2018–2019, during the subsistence of the panel, whereas respondent No. 1 remained silent and approached the Court only after the panel had lapsed. Such a person cannot be permitted to take advantage of the litigation pursued by others.

5. Learned counsel also submits that the learned Single Judge erred in holding that respondent No. 1 was not a fence-sitter merely because his writ petition was pending when subsequent developments took place. It is contended that the relevant consideration is the date of approaching the Court vis-à-vis the validity of the panel, and not the pendency of earlier litigations. The delay in approaching the Court cannot be condoned on the ground that other litigations were pending or that subsequent reliefs were granted to other candidates. It is further argued that the learned Single Judge has failed to consider that similarly

placed candidates who approached the Court after the expiry of the panel were denied relief by coordinate Benches in C.W.J.C. No. 1063 of 2024 and C.W.J.C. No. 4175 of 2024 on the ground of delay and laches. The case of respondent No. 1, it is submitted, stood on identical footing and ought to have been dismissed on the same ground. The impugned judgment, by taking a contrary view, has resulted in inconsistency in judicial approach.

6. Learned counsel for the appellants next submits that the reliance placed by respondent No. 1 on subsequent judgments, including L.P.A. No. 727 of 2023 and L.P.A. No. 261 of 2024, is misplaced. It is contended that those cases arose out of writ petitions which had been filed within time, and the question therein was only of continuation or extension of relief. The condonation of delay in L.P.A. No. 261 of 2024, it is submitted, was in a distinct factual context where the party had already approached the Court earlier, and therefore the same cannot be invoked to justify the initial delay of respondent No. 1 in approaching the writ Court. It is also submitted that the learned Single Judge has erred in extending the principle of parity without appreciating that equality cannot be claimed in illegality or in disregard of statutory limitations. Merely because certain candidates with lesser marks were appointed pursuant to judicial

orders obtained by them within time, respondent No. 1 cannot claim appointment as a matter of right after the expiry of the panel.

7. Learned counsel further contends that the learned Single Judge failed to consider that the writ petition was not maintainable even on the ground that no prior representation or demand had been made by respondent No. 1 before approaching the Court, which is a sine qua non for issuance of a writ of mandamus. It is also urged that the impugned judgment does not take into account the subsequent developments, namely the issuance of Advertisement No. 01 of 2022 for filling up 3325 vacancies under the new Rules of 2022. It is submitted that the selection process pursuant to the said advertisement has already progressed substantially, and third-party rights have accrued in favour of candidates who have participated therein. In such circumstances, any direction to consider respondent No. 1 for appointment under the earlier selection process would unsettle the entire recruitment framework and prejudice the rights of numerous candidates.

8. Learned counsel submits that once the new Rules of 2022 came into force and fresh vacancies were advertised thereunder, the earlier vacancies stood subsumed within the new recruitment process, and no direction could have been issued to fill

such vacancies under the old Rules of 2009. The impugned judgment, it is contended, overlooks this crucial legal position. It is, therefore, submitted that the impugned judgment proceeds on an erroneous application of law relating to delay and laches, misinterprets the scope of earlier Division Bench judgments, and wrongly extends benefits meant for diligent litigants to a belated claimant. It is thus submitted that the judgment under appeal is unsustainable in law and deserves to be set aside.

SUBMISSION OF THE RESPONDENT-PETITIONER

9. Per Contra, learned counsel appearing for the respondent–writ petitioner supports the impugned judgment and order dated 09.07.2025 and submits that the same does not suffer from any legal infirmity warranting interference in the present appeal. It is contended that the learned Single Judge has rightly directed the appellants to consider the case of the respondent for appointment and to extend to him the same benefit as has already been granted to similarly situated candidates pursuant to the judgments rendered by the Division Bench in L.P.A. No. 650 of 2022 and analogous cases, L.P.A. No. 727 of 2023 and L.P.A. No. 261 of 2024.

10. Learned counsel submits that the facts are largely undisputed. Pursuant to Employment Notice No. 01/2016 dated 07.02.2016, the respondent had participated in the entire selection

process, namely the preliminary examination, mains examination and interview, and had secured 74.25 marks. Although he narrowly missed the cut-off for the unreserved category, his name figured in the waiting list at serial no. 28, which was subsequently obtained under the Right to Information Act. It is contended that despite the clear mandate under Rule 7(12), (13) and (14) of the Bihar Civil Court Staff (Class III and IV) Rules, 2009, no proper panel was operated by the authorities for filling up existing and anticipated vacancies arising within the validity period of two years. It is further submitted that as many as 273 vacancies arose due to non-joining of selected candidates, yet the authorities failed to fill up such vacancies from the panel in accordance with the Rules and the terms of the advertisement. This illegality has already been recognised by the Division Bench in its judgment dated 19.04.2023 passed in L.P.A. No. 650 of 2022, wherein it was categorically held that the respondents were obliged to operate the panel and make appointments against such vacancies.

11. Learned counsel submits that the respondent cannot be treated as a fence-sitter, as he had approached this Court at an appropriate stage. Initially, he filed an interlocutory application on 09.05.2022 in the pending writ petition filed by similarly situated candidates and thereafter, upon being advised that intervention in

support of the writ petition was not permissible, he filed the present writ petition on 22.07.2022. It is thus argued that the respondent had asserted his rights even before the dismissal of earlier writ petitions on 29.09.2022 and much prior to the decision of the Division Bench dated 19.04.2023. Therefore, he cannot be said to have approached the Court belatedly after the outcome of earlier litigation.

12. It is further contended that the benefit of the judgment dated 19.04.2023 has, in fact, been extended by the authorities to several candidates who were similarly situated and even to those who had secured lesser marks than the respondent. Learned counsel points out that pursuant to various notices issued in the years 2023 and 2024, candidates securing marks as low as 69 in the unreserved category have been appointed. The respondent, having secured higher marks and being placed higher in the waiting list, is thus entitled to similar treatment.

13. Learned counsel also places reliance on the subsequent developments, including the order passed in the contempt proceedings, whereby even those writ petitioners who had not preferred appeals were granted the benefit of the Division Bench judgment. Further, in L.P.A. No. 261 of 2024, the Division Bench condoned substantial delay and extended the same relief to

the appellant therein, observing that similarly situated persons ought not to be denied relief merely on the ground of delay. It is submitted that these developments clearly demonstrate that the benefit of the judgment has not been confined strictly to the original appellants, but has been extended to all similarly situated candidates.

14. It is further argued that the reliance placed by the appellants on the judgment of the Hon'ble Supreme Court in **State of U.P. vs. Harish Chandra** reported in **(1996) 9 SCC 309** is misplaced and distinguishable on facts. In that case, the appointments made beyond the validity of the panel were held to be illegal, whereas in the present case, the Division Bench has categorically held that the failure to operate the panel within the prescribed period was itself illegal. Thus, the subsequent appointments made pursuant to judicial directions cannot be termed as illegal, and the respondent is entitled to be considered on the same footing.

15. Learned counsel further submits that the principles laid down by the Hon'ble Supreme Court in cases relating to parity and equal treatment, including those in **State of Uttar Pradesh & Ors Vs. Arvind Kumar Srivastava & Ors reported in (2025) 1 SCC 347** and **Lt. Col. Suprita Chandel vs. Union Of India &**

Ors reported in **2024 SCC Online SC 3664**, squarely apply to the facts of the present case. It is contended that once a Court has granted relief to a set of similarly situated persons, the same benefit ought to be extended to others unless there are distinguishing features. In the present case, no such distinguishing feature exists, particularly when the respondent had approached the Court at an appropriate stage and has been diligently pursuing his remedy. It is also contended that the respondent had no opportunity to assert his rights earlier since the waiting list was never officially published. The non-publication of the waiting list deprived him of the chance to seek timely redressal. Moreover, it is submitted that the respondent has now become age-barred and cannot participate in subsequent recruitment processes, thereby causing irreparable prejudice if relief is denied.

16. Learned counsel further submits that the contention of the appellants regarding creation of third-party rights under the subsequent Advertisement No. 01 of 2022 is misconceived. It is argued that the present claim pertains to vacancies arising out of the earlier selection process and governed by the 2009 Rules, and the same cannot be defeated by a subsequent recruitment process, particularly when the illegality in not operating the earlier panel has already been judicially recognised. It is lastly submitted that

the learned Single Judge has exercised equitable jurisdiction under Article 226 of the Constitution and has merely directed consideration of the respondent's case in accordance with law, without issuing any straightaway direction for appointment. Such a direction, it is urged, is just, reasonable and in consonance with the principles of fairness and equality. It is, therefore, urged that the present appeal, being devoid of merit, be dismissed and the impugned judgment and order be affirmed.

ISSUES FOR CONSIDERATION:

(i) Whether the writ petition filed by the respondent–writ petitioner was liable to be dismissed on the ground of delay, laches and acquiescence, particularly in view of the expiry of the panel/wait-list dated 26.09.2018 under Rule 7 of the Bihar Civil Court Staff (Class-III & IV) Rules, 2009?

(ii) Whether the respondent–writ petitioner can be treated as a "fence-sitter" disentitled to relief, or whether he had approached the Court with sufficient diligence so as to claim consideration?

(iii) Whether the learned Single Judge was justified in directing consideration of the respondent's case for appointment, in light of Rule 7 of the 2009 Rules and the

admitted position that candidates with lower merit have already been appointed pursuant to judicial orders?

(iv) Whether the impugned judgment and order dated 09.07.2025 suffers from any legal infirmity, perversity or error apparent on the face of the record warranting interference by this Court in exercise of its Letters Patent Appellate jurisdiction?

FINDINGS:

Finding on Issue no.(i)

Whether the writ petition filed by the respondent–writ petitioner was liable to be dismissed on the ground of delay, laches and acquiescence, particularly in view of the expiry of the panel/wait-list dated 26.09.2018 under Rule 7 of the Bihar Civil Court Staff (Class-III & IV) Rules, 2009?

17. At the outset, it needs to be examined whether the writ petition filed by the respondent–writ petitioner was maintainable in the teeth of the settled principles governing delay, laches and acquiescence, particularly when the select panel/wait-list dated 26.09.2018 had admittedly exhausted its statutory life on 26.09.2020 under Rule 7(13) of the Bihar Civil Court Staff (Class-III & IV) Rules, 2009.

18. From the undisputed facts on record, it emerges that the respondent–writ petitioner approached this Court by filing the present writ petition only on 22.07.2022. Even if his earlier attempt by way of filing I.A. No. 04 of 2022 on 09.05.2022 is taken into account, the same was also after the expiry of the two-year validity period of the panel, which came to an end on 26.09.2020. Thus, there is a clear and unexplained delay of more than one and a half years in invoking the writ jurisdiction.

19. It is well settled that though no rigid period of limitation applies to proceedings under Article 226 of the Constitution, the principles of delay and laches are nonetheless applicable with full force. The Hon'ble Supreme Court in ***State of U.P. vs. Harish Chandra*** *reported in* ***(1996) 9 SCC 309***, while dealing with a claim arising out of an expired select list, categorically held that no mandamus can be issued for appointment once the select list has lapsed. In paragraph 10 of the said judgment, it has been observed that:

> *"10. Notwithstanding the aforesaid Statutory Rule and without applying the mind to the aforesaid Rule the High Court relying upon some earlier decisions of the Court came to hold that the list does not expire after a period of one year which on the face of it is erroneous. Further question that arises in this context is whether the High Court was*

justified in issuing the mandamus to the appellant to make recruitment of the Writ Petitioners. Under the Constitution, a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provision of law or to do something which is contrary to law. This being the position and in view of the Statutory Rules contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included in the select list prepared on 4.4.87 and the list no longer survived after one year and the rights, it any, of persons included in the list did not subsist. In the course of hearing, the learned counsel for the respondents, no doubt have pointed out some materials which indicate that the Administrative Authorities have made the appointments from a list beyond the period of one year from its preparation. The learned counsel appearing for the appellants submitted that in some cases pursuance to the direction of the Court some appointments have been made but in some other cases it might have been done by the Appointing Authority. Even though we

are persuaded to accept the submission of the learned counsel for the respondents that on some occasion appointments have been made by the Appointing Authority from a select list even after the expiry of one year from the date of selection but such illegal action of the Appointing Authority does not confer a right on an applicant to be enforced by a Court under Article 226 of the Constitution. We have no hesitation in coming to the conclusion that such appointments by the Appointing Authority have been made contrary to the provisions of the Statutory Rules for some unknown reason and we deprecate the practice adopted by the Appointing Authority in making such appointments contrary to the Statutory Rules. But at the same time it is difficult for us to sustain the direction given by the High Court since, admittedly, the life of the select list prepared on 4.4.87 had expired long since and the respondents who claim their rights to be appointed on the basis of such list did not have a subsisting right on the date they approached the High Court. We may not be understood to imply that the High Court must issue such direction, if the writ Petition was filed before the expiry of the period of one year and the same was disposed of after the expiry of the statutory period. In view of the aforesaid conclusion of ours it is not necessary to deal with the question whether the stand of the State Government that there existed one vacancy in the year 1987 is correct or not."

[Emphasis Supplied]

20. Therefore, it can be inferred that even if certain appointments were made beyond the life of the select list, such illegal acts would not confer any enforceable right upon others to seek similar relief through Court.

21. Similarly, in ***Chairman/Managing Director, U.P. Power Corporation Ltd. vs. Ram Gopal*** *reported in* ***(2021) 13 SCC 225***, the Hon'ble Supreme Court reiterated that a candidate who approaches the Court after expiry of the validity of a select list cannot claim appointment merely because others with lesser merit, who were vigilant and approached the Court in time, have been granted relief. The Court emphasized that delay defeats equity and that stale claims ought not to be entertained in writ jurisdiction.

22. Applying the aforesaid principles to the facts of the present case, it is evident that the respondent–writ petitioner did not assert his rights within the subsistence of the panel. In contrast, the writ petitioners in C.W.J.C. Nos. 21219 of 2018 and 6259 of 2019 had approached the Court during the validity of the panel itself, i.e., within the two-year period. It is this distinguishing factor which weighed with the Division Bench while granting relief to them in L.P.A. No. 650 of 2022. Thus, the foundation of the relief granted in those cases was timely assertion of rights,

which is conspicuously absent in the case of the present respondent.

23. The contention advanced on behalf of the respondent that he had filed an interlocutory application in the year 2022 while earlier writ petitions were pending does not improve his case. The cause of action, if any, had arisen when the panel was in force and vacancies allegedly remained unfilled. The respondent, however, chose not to approach the Court during that period and remained indolent. The mere pendency of other litigations cannot extend the life of a statutory panel nor can it revive a stale cause of action.

24. The reliance placed by the respondent on ***State of U.P. vs. Arvind Kumar Srivastava (Supra),*** is also misplaced. While paragraph 22.2 of the said judgment does lay down that similarly situated persons should ordinarily be treated alike, it equally carves out a clear exception in cases of delay and laches. The Hon'ble Supreme Court has specifically held that:

> *"22.2 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."*

25. Therefore, those people cannot claim parity and are liable to be treated as fence-sitters. The present case, in the considered view of this Court, falls squarely within the said exception.

26. Likewise, the reliance on ***Lt. Col. Suprita Chandel vs. Union of India (Supra),*** is distinguishable on facts. In that case, the Hon'ble Supreme Court was dealing with a situation where the benefit of a judgment was denied on the ground that it was confined only to the original applicants, despite there being no element of delay or acquiescence attributable to the claimant. In the present case, however, the respondent's claim is hit at the threshold by inordinate delay in approaching the Court after expiry of the panel. Therefore, the principle of automatic extension of benefit cannot be invoked to defeat the settled doctrine of laches.

27. It is also significant to note that coordinate Benches of this Court, in C.W.J.C. No. 1063 of 2024 and C.W.J.C. No.

4175 of 2024, have rejected identical claims raised by similarly situated candidates on the ground of delay and laches. The respondent's case stands on no better footing and, in fact, suffers from the same infirmity. The submission that the authorities themselves were at fault in not operating the panel in terms of Rule 7 does not entitle the respondent to seek relief after the expiry of the panel. Even assuming there was an illegality on the part of the authorities, the law is well settled that such illegality must be challenged within a reasonable time. A litigant cannot be permitted to sleep over his rights and thereafter seek equitable relief at his convenience.

28. In view of the aforesaid discussion, this Court is of the considered opinion that the writ petition filed by the respondent–writ petitioner was clearly barred by delay, laches and acquiescence, having been instituted after the expiry of the statutory period of validity of the panel/wait-list dated 26.09.2018. The learned Single Judge, with respect, erred in overlooking this fundamental aspect and in entertaining the writ petition despite the respondent's belated approach.

29. Accordingly, this issue is answered in favour of the appellant.

Finding on Issue no.(ii)

Whether the respondent–writ petitioner can be treated as a "fence-sitter" disentitled to relief, or whether he had approached the Court with sufficient diligence so as to claim consideration?

30. The next question which arises for consideration is whether the respondent–writ petitioner can be treated as a "fence-sitter" and thereby disentitled to relief, or whether he had approached the Court with due diligence so as to claim consideration.

31. At the outset, it would be apposite to note that the concept of a "fence-sitter" has been consistently explained by the Hon'ble Supreme Court to denote those persons who, despite having a cause of action, choose not to assert their rights within a reasonable time and approach the Court only after others have succeeded in similar litigation. Such persons are ordinarily denied relief on the ground of delay, laches and acquiescence.

32. In ***State of U.P. vs. Arvind Kumar Srivastava,*** *reported in* ***(2015) 1 SCC 347***, the Hon'ble Supreme Court, while laying down the principle of parity, carved out a clear exception in paragraph 22, observing that those who do not challenge the wrongful action in time and wake up only after seeing the success of others, cannot claim the benefit of such judgments. The Court

held that such persons are to be treated as “fence-sitters” and their claims can be legitimately rejected on the ground of delay and acquiescence.

33. Similarly, in ***Shiba Shankar Mohapatra vs. State of Orissa,*** *reported in* ***(2010) 12 SCC 471,*** the Apex Court reiterated that a person who sleeps over his rights and allows the situation to settle cannot be permitted to disturb the same at a belated stage. The Court cautioned that stale claims should not be entertained, particularly where rights of others have crystallized in the meantime.

34. Applying the aforesaid principles to the present case, it is evident that the respondent–writ petitioner did not approach the Court during the subsistence of the panel/wait-list, which remained valid till 26.09.2020. On the contrary, the candidates who were granted relief in earlier rounds of litigation had approached the Court in the years 2018–2019 itself, i.e., within the validity period of the panel, asserting their rights in a timely manner.

35. The respondent, however, chose not to take recourse to legal remedy during this crucial period. His first attempt to intervene was made only on 09.05.2022 by filing I.A. No. 04 of 2022, which too was subsequently withdrawn. Thereafter, the writ

petition came to be filed on 22.07.2022. By this time, not only had the panel expired nearly two years earlier, but even the earlier writ petitions had already been heard and were on the verge of being decided.

36. The submission advanced on behalf of the respondent that he cannot be treated as a fence-sitter because he approached the Court before the decision in L.P.A. No. 650 of 2022 does not merit acceptance. The relevant consideration is not whether he approached the Court before or after the appellate judgment, but whether he asserted his rights within the period when the cause of action was alive. In the present case, the cause of action arose during the validity of the panel, yet the respondent failed to act within that period. The distinction between vigilant litigants and fence-sitters is thus clearly borne out from the record. The earlier writ petitioners were vigilant and approached the Court at the appropriate time, whereas the respondent remained passive and approached the Court only after a considerable lapse of time. The fact that he filed the writ petition before the appellate decision does not erase the delay which had already occurred.

37. The reliance placed by the respondent on the judgment in ***Lt. Col. Suprita Chandel vs. Union of India (Supra)*** is also distinguishable as discussed in previous issue. In that case,

the Court extended the benefit to similarly situated persons in the absence of delay attributable to them. However, the said judgment itself recognizes that in exceptional cases, particularly where delay and acquiescence are present, the benefit may be denied. The present case clearly falls within such exception.

38. Further, the contention that the waiting list was not formally published and therefore the respondent could not assert his rights earlier cannot be accepted as a valid explanation. The respondent was fully aware of his participation in the selection process and the outcome thereof in 2018. The non-publication of the waiting list did not prevent other similarly situated candidates from approaching the Court in time, which further weakens the respondent's plea.

39. In the considered opinion of this Court, the conduct of the respondent reflects that he chose to remain on the sidelines and did not assert his rights when the opportunity was available. It is only after considerable delay that he approached the Court seeking parity with those who had been vigilant. Such conduct squarely attracts the doctrine of fence-sitting as explained by the Hon'ble Supreme Court.

40. Accordingly, this Court holds that the respondent–writ petitioner is liable to be treated as a "fence-sitter" and is not

entitled to claim relief on the basis of parity with those candidates who had approached the Court with due diligence. This issue is, therefore, answered in favour of the appellant.

Finding on Issue no.(iii)

Whether the learned Single Judge was justified in directing consideration of the respondent's case for appointment, in light of Rule 7 of the 2009 Rules and the admitted position that candidates with lower merit have already been appointed pursuant to judicial orders?

41. The issue which now falls for consideration is whether the learned Single Judge was justified in directing consideration of the respondent–writ petitioner for appointment in the light of Rule 7 of the Bihar Civil Court Staff (Class-III & IV) Rules, 2009, particularly when it is an admitted position that certain candidates, securing marks lower than that of the writ petitioner, have already been appointed pursuant to judicial orders.

42. At the outset, it must be noted that Rule 7(12), (13) and (14) of the Rules, 2009 clearly envisage preparation of a common merit panel and its operation for a period of two years for the purpose of filling not only existing vacancies but also anticipated vacancies arising on account of non-joining, resignation, etc. The Division Bench, while deciding L.P.A. No.

650 of 2022 and analogous cases (order dated 19.04.2023), has already interpreted these provisions and returned a categorical finding that the authorities were under a statutory obligation to operate the panel for the said period and consider eligible candidates in order of merit.

43. However, the crucial question is not the existence of vacancies or the merit position alone, but whether such a direction for consideration can be extended to every candidate irrespective of the nature and scope of the earlier judgment.

44. From the submissions advanced on behalf of the appellants, it is evident that the benefit flowing from the judgment dated 19.04.2023 was extended only to those candidates who were parties to the earlier litigation or who had asserted their rights within a reasonable time. The appellants have consistently contended that the said judgment is ***one in personam*** and ***not in rem***. This distinction is of considerable importance. Even if it is accepted that certain candidates with lower marks have been appointed pursuant to orders passed in earlier rounds of litigation, although they came to the court within stipulated time frame, such appointments cannot automatically confer an enforceable right upon the present writ petitioner. The doctrine of equality enshrined

under Article 14 is a positive concept and does not envisage repetition of an illegality.

45. Further reliance has been placed by the respondent ***on Lt. Col. Suprita Chandel vs. Union of India (Supra)***. While the Hon'ble Supreme Court in the said case emphasized that similarly situated persons should not be driven to litigation repeatedly, the same was in the context where the earlier judgment was not restricted in its operation. In the present case, however, there is nothing to indicate that the Division Bench intended its judgment in L.P.A. No. 650 of 2022 to operate universally for all candidates irrespective of their conduct or delay. It is also important to bear in mind that the direction issued by the Division Bench was *for "consideration" of the cases of the appellants therein against vacancies arising within the validity period of the panel.* Such a direction was clearly confined to those who had approached the Court and cannot be stretched to revive a lapsed panel for all candidates at large.

46. The learned Single Judge, while directing consideration of the writ petitioner's case, appears to have been primarily influenced by the fact that candidates with lesser marks had already been appointed. However, such reasoning overlooks the settled legal position that parity cannot be claimed in illegality

or irregularity, and that each case must be tested on its own merits, including the conduct of the claimant and the scope of the earlier judicial directions.

47. In view of the aforesaid discussion, this Court is of the considered opinion that the learned Single Judge was not justified in issuing a direction for consideration of the writ petitioner solely on the ground that persons with lower merit had been appointed. The direction fails to appreciate the limited and person-specific nature of the earlier judgments, as well as the settled principle that Article 14 does not envisage negative equality.

48. Accordingly, the issue is answered in favour of the appellants, holding that the impugned direction for consideration of the respondent–writ petitioner for appointment is unsustainable in law.

Finding on Issue no.(iv)

Whether the impugned judgment and order dated 09.07.2025 suffers from any legal infirmity, perversity or error apparent on the face of the record warranting interference by this Court in exercise of its Letters Patent Appellate jurisdiction?

49. The last issue which arises for consideration is whether the impugned judgment and order dated 09.07.2025

passed by the learned Single Judge suffers from any legal infirmity, perversity or error apparent on the face of the record so as to warrant interference in exercise of the Letters Patent Appellate jurisdiction.

50. At the outset, it is well settled that the scope of interference in an intra-court appeal is not as narrow as that under Article 226 against administrative action, yet the Appellate Court would ordinarily interfere where the judgment under appeal is found to be contrary to settled legal principles, based on misapplication of law, or resulting in manifest injustice. A finding can be said to be perverse when it is either based on no evidence, ignores material evidence, or applies incorrect legal standards.

51. Examining the impugned judgment on the touchstone of the above principles, it appears that the learned Single Judge proceeded on two principal considerations: first, that the writ petitioner was similarly situated to those candidates who had succeeded in L.P.A. No. 650 of 2022 and analogous cases; and second, that candidates having lower marks had already been appointed and, therefore, denial of similar benefit to the writ petitioner would be discriminatory.

52. However, in arriving at the aforesaid conclusion, the learned Single Judge has failed to properly appreciate certain crucial aspects which go to the root of the matter.

53. Firstly, the learned Single Judge has treated the judgment rendered in L.P.A. No. 650 of 2022 as having a general or universal application, without examining whether the said judgment was intended to operate in rem or was confined to the parties before the Court. As has already been discussed, the direction issued therein was clearly for consideration of the cases of the appellants in those appeals. There is no indication that the Division Bench intended to extend the benefit automatically to all candidates forming part of the wait-list irrespective of their conduct or delay. The failure to draw this distinction has resulted in an erroneous extension of the benefit to the present writ petitioner.

54. Secondly, the learned Single Judge has placed substantial reliance on the fact that certain candidates with lower marks were appointed pursuant to judicial orders. While this factual position may not be in dispute, the legal inference drawn therefrom is flawed. The learned Single Judge, by directing consideration of the writ petitioner on the ground that persons with lesser marks have been appointed, has effectively applied the

doctrine of negative equality, which is impermissible in law. This, in the considered opinion of this Court, constitutes a clear error in application of settled legal principles.

55. Thirdly, the issue of delay and laches, though noticed, has not been adequately appreciated in its proper legal perspective. The appellants had specifically contended that the writ petitioner approached the Court after a considerable lapse of time and, therefore, could not claim parity with those who had been vigilant in asserting their rights. The Hon'ble Supreme Court in ***State of U.P. vs. Arvind Kumar Srivastava (Supra)*** has clearly held that though similarly situated persons are ordinarily entitled to equal treatment, this principle is subject to exceptions, particularly in cases involving delay, laches and acquiescence. Persons who wake up after long delay cannot claim the same relief as those who approached the Court in time.

56. The impugned judgment, however, proceeds to hold that the writ petitioner is not a fence-sitter without adequately reconciling this finding with the admitted timeline of events and the conduct of the petitioner. Such a conclusion, without proper analysis of the legal standards governing delay and acquiescence, renders the finding vulnerable.

57. Fourthly, the learned Single Judge has also not given due weight to the fact that the panel/wait-list in question had a statutory life of two years under Rule 7 of the Rules, 2009. Once the panel had lapsed, any direction for consideration would have to be strictly in accordance with law and cannot be issued in a routine manner, particularly when such direction has the effect of unsettling subsequent recruitment processes.

58. In view of the aforesaid discussion, this Court finds that the impugned judgment suffers from misapplication of law, particularly in relation to (i) the scope and applicability of the earlier Division Bench judgment, (ii) the impermissible reliance on negative equality, and (iii) inadequate consideration of delay and laches. These errors go to the root of the matter and cannot be said to be mere errors of appreciation.

59. Accordingly, it is held that the impugned judgment and order dated 09.07.2025 does suffer from legal infirmity and error apparent on the face of the record, warranting interference by this Court in exercise of its Letters Patent Appellate jurisdiction.

RELIEF:

60. In view of the discussions and conclusions arrived at on the issues framed hereinabove, this Court is of the considered opinion that the impugned judgment and order dated 09.07.2025

passed by the learned Single Judge cannot be sustained in the eyes of law, inasmuch as the same proceeds on an erroneous application of legal principles, extends the benefit of earlier judgments beyond their intended scope, and overlooks material aspects relating to delay, laches and the statutory framework governing the field. The reasoning so adopted does not stand to judicial scrutiny and has resulted in an unwarranted direction for consideration of the writ petitioner's case.

61. Accordingly, the appeal deserves to be and is hereby allowed; the impugned judgment and order is set aside, and the writ petition stands dismissed. There shall be no order as to costs.

(Alok Kumar Sinha, J)

I Agree.

(Sangam Kumar Sahoo, CJ)

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CAV DATE	12.03.2026.
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