

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1377 of 2018

In
Civil Writ Jurisdiction Case No.4290 of 2017

Sheshank Kumar, Son of late Mahendra Kumar Sinha, Permanent Resident of Mohalla-kanchan Bagh, P.O. and P.S.-Hisua, Distirct-Nawadah.

... .. Appellant/s

Versus

1. The Registrar General, Patna High Court, Patna
2. The District and Sessions Judge, Begusarai
3. The judge Incharge Administration, Civil Court, Begusarai.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Dinu Kumar, Adv.
Mr. Prashant Sinha, Adv.
For the Respondent/s : Mr. Mrigank Mauli, Adv.

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 25-09-2020

Heard learned counsel for the parties.

Re.:- I.A. No. 7439 of 2018/01 of 2018

The above mentioned Interlocutory Application has been preferred for impleading the Registrar General, Patna High Court as party respondent in the writ application. Though the Registrar General, Patna High Court was not made party respondent in the writ proceeding, however, considering the nature of issue involved, I.A. No. 7439 of 2018/01 of 2018 is allowed. Learned counsel for the appellant is permitted to implead the Registrar General, Patna High



Court as respondent in the writ application as well as in the present appeal.

Re.:- L.P.A. No. 1377 of 2018

The present appeal has been preferred against the judgment dated 24.08.2018, passed in C.W.J.C. No. 4290 of 2017 by the learned Single Judge, whereby the appellant's prayer for conducting special interview as also for considering his application for appointment on Class-IV employee in the Civil Court, Begusarai since he received interview letter on the date of interview itself due to postal delay, has been rejected.

The factual matrix of the case is that vide Advertisement no. 01 of 2016, the applications were invited for appointment on Class-IV post in the Civil Court, Begusarai. Accordingly, the appellant submitted his application along with requisite fee under the unreserved category. The appointment was to be made on the basis of interview only. The interview of the appellant was fixed on 16.11.2016 for which the interview letter of the appellant was dispatched by the concerned official of the Civil Court, Begusarai by post on 11.11.2016, but the appellant received the same on 16.11.2016 at Hisua, Nawada in the afternoon,



while the timing of interview was at 4.30 P.M. on 16.11.2016. Consequently, the appellant could not participate in the interview process. The appellant submitted a representation before learned District Judge, Begusarai on 21.11.2016 for conducting special interview on some further date but it was not considered and ultimately, the selection-cum-merit list was published on 17.12.2016. The appellant came to know that in a similar circumstance in the judgeship of Buxar, Bhojpur, Sheikhpura and Hajipur, the candidates who received interview letters with delay due to postal lapses, were allowed to appear in the interview. Ultimately, the appellant agitated his claim through a writ application being CWJC No. 4290 of 2017 but the learned Single Judge dismissed the writ application in view of the ratio laid down in the case of Shubham Kumar Vs. Bihar Public Service Commission through Chairman & Ors. reported in 2014(3) PLJR 661 wherein it has been held that on account of failure of postal department in serving letter of interview within time, no right would accrue in favour of the applicant to claim fresh interview.

Mr. Dinu Kumar, learned counsel for the appellant submits that the learned Single Judge has failed to



appreciate that the interview letter was transmitted to the appellant just about five days prior to the scheduled date of interview, hence reasonable time was not provided for transmission of the interview letter. Moreover, due to gazetted holidays, intervening in between 11.11.2016 and 16.11.2016, the appellant received the interview letter on 16.11.2016 at noon. It is further submitted that in other Judgeship, the candidates, who failed to appear on the date fixed for interview, were allowed to appear subsequently.

Learned counsel appearing on behalf of the Patna High Court submits that the appellant admittedly received the letter of interview on 16.11.2016 in the afternoon, but he chose to file representation in that regard only after five days i.e., on 21.11.2016, and now, the appointment process has already been concluded. Moreover, a third party right has already been created and in 2016, the appointments were done in accordance with the Bihar Civil Court Staff (Class III and IV) Rules, 2009 (hereinafter referred to as 2009 Rules), whereas now The Bihar Civil Court Officers and Staff (recruitment, promotion, transfer and other service conditions) Rules, 2017 (hereinafter referred to as 2017 Rules) have come into force wherein altogether a different kind of proceeding is



stipulated where the appointing authority is Registrar General, Patna High court instead of District Judge as stipulated in Rules, 2009.

Considering the rival submissions of the parties, it is admitted position that the appellant received interview letter on 16.11.2016 but he chose to submit a representation, only after five days on 21.11.2016 and thereafter the writ application was preferred on 21.3.2017, whereas the appointment process had attained finality on publication of merit list on 17.12.2016. Hence, on the ground of delay itself, the claim of the appellant cannot be considered.

The delay has always been considered vital point for not interfering in the matter while exercising jurisdiction under Article 226 of the Constitution. There cannot be a fixed yardstick for rejecting such claim on the ground of delay. Such exercise of discretion depends upon the facts and circumstances of each case.

In the present case, the appellant not only chose to intimate the appointing authorities with regard to delayed receiving of interview letter after five days of its receipt but chose to challenge the same through a writ application after four months of his cause of action being arisen. A useful



reference in this regard will be a case of State of M.P. Vs. Nandlal Jaiswal, reported in (1986) 4 SCC 566. Paragraph 24 of the judgment reads as follows:

“24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which



always weighs with the High Court in deciding whether or not to exercise such jurisdiction.....”

Above all, prior to 18.5.2017, for appointment of Class III and IV post in Civil Courts of Bihar, 2009 Rules were applicable, where the appointing authority was District and Sessions Judge of the respective Civil Court, as was stipulated under Rule 5 of the said 2009 Rules. 2017 Rules came into force vide Memo No. 2709 dated 18.5.2017 whereby Rule 23 of the 2009 Rules was repealed and as per Rule 2(ii) of the 2017 Rules, for appointment on Class IV post, the Registrar General of this Court has become the appointing authority. Moreover, in the case of Shubham Kumar (supra) while considering the Supreme Court judgment, a Division Bench of this Court held that delayed receiving of interview letter due to laches on the part of the postal department does not give right to the candidate to claim the acceptance of his application for appointment after stipulated time schedule. Paragraph nos. 14 to 18 of the judgment read as follows:

“14. We are afraid, we are unable to agree with Mr. S.D. Sanjay. The advertisement in question expressly provided that the applications should be sent either by Speed Post or by Registered Post and that the applications shall be



received at the office of the Commission at Patna latest by 5 O'clock in the afternoon on 23rd June 2011. It also specified that in case, on account of delay by the Postal Department, the applications were received by the Commission after the specified date, such applications would not be accepted by the Commission. In view of these specific instructions to the candidates, the Commission is not obliged to receive / accept the applications received after the specified date and time, irrespective of the date it was delivered to the Postal Department.

15. We are also of the opinion that the principle of 'Agency' invoked by the Hon'ble Supreme Court cannot be invoked in the cases like the present one. Had the Postal Department been the agent of the Commission, the Commission would be required to accept the delivery to the Postal Department as the delivery to itself. On the contrary, in the advertisement itself the Commission disowned any liability for the delay by the Postal Department. In our view, the above referred judgment of the Hon'ble Supreme Court is not applicable to the facts of the present case; nor the view taken by the Orissa High Court is a correct proposition. We are of the opinion that the Orissa High Court has failed to appreciate that the Hon'ble Supreme Court had decided the matter in an entirely different context. The principle is, therefore, not



applicable in the matter before us.

16. In the matter of T. Jayakumar (Supra), the dispute related to the appointment of Extra Departmental Branch Post Master in the Postal Department. The Hon'ble Supreme Court upheld the action of the Postal Department in rejecting the application made by the respondent no. 1 on the ground that the first application made by the respondent no. 1 was defective and the second application made by him was received after the last date for receipt of the applications mentioned in the advertisement.

17. Same is the view expressed by the Hon'ble Supreme Court in the matter of S. Krishna Chaitanya (Supra) and by the Division Bench of this Court in the matter of Manas Kumar Sinha (Supra) and is followed in the matters of Sri Krishna Nandan Sah Vs. Union of India & Ors. [2012 (3) PLJR 173] and in Mohan Jee Yadav Vs. The State of Bihar & Ors. [2012 (4) PLJR 995].

18. Now that we have held that the decision of the Hon'ble Supreme Court is not applicable to the facts of the present case; the judgment of the Orissa High Court is not a binding precedent; the only binding precedents are the judgment of the Hon'ble Supreme Court in S. Krishna Chaitanya (Supra) and of this Court in the matter of Manas Kumar Sinha (Supra). In view of the aforesaid binding precedents, the petition should fail. The



petitioner having failed to deliver the application by the specified date, his candidature has rightly been rejected by the Commission.”

The decision referred to above squarely covers the case of the petitioner and as such, in view of the discussions made above, we do not find any merit in this appeal and accordingly, this LPA is dismissed.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Amrendra/-Anil/

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