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IN THE HIGH COURT OF JUDICATURE AT PATNA  
 Civil Review No. 299 of 1999  
 Bihar State Subordinate Service  
 Selection Board Examinees Confederation  
 Vrs.  
 The State of Bihar & ors.  
 For the Petitioner : Mr. Abhimanyu Sharma

3. 3.5.2000

Limitation matter has been put up for consideration. In order to find out the efficacy of condoning the delay, I called upon the counsel to satisfy the Court regarding prima facie merit of the case so that the condonation of delay could serve some useful purpose. Counsel declined to make any submission on merit. He confined himself to the issue of limitation.

This review petition is directed against judgment and order of this Court dated 30.3.99 in batch of two petitions, MJC No. 242/93 and C.W.J.C. No. 5009/93. The petitioners earlier challenged the said judgment and order before the Supreme Court in SLP (Civil) No. 4274/99. The SLP was dismissed on 2.9.99 in the following terms:-

Limitation Act, 1963 commences from "the date of the decree or order". Learned Senior Counsel appearing for the petitioner in S.L.P. (C) No. 4274/99 submits that there is a factual mistake in the order of the High Court, namely, that the Report of Sri Biswas was confined only to one particular advertisement and did not relate to other advertisements. It will be open to the petitioner to move the High Court by way of Review, in case there is any such mistake.

cannot be said that the limitation would run from the date of the order of the High Court, unless receipt of the copy of the order. The period subsequent to the date of the

Shri Abhimanyu Sharma, learned counsel for the petitioner, submitted that as the review petition has been filed pursuant to the order of the Supreme Court and the petitioner received copy of the order on 10.9.99, ~~and~~ limitation of 30 days would run from that date and hence the review petition filed on 4.10.99 i.e. within 30 days therefrom should be treated <sup>as</sup> within time. This is all that has been said, also, in the limitation petition, paragraph 5 of which runs as under:-

"That certified copy of the order of Hon'ble Supreme Court was received on 10.9.99 and within one month time receiving of the order of Hon'ble Supreme Court, the Review petition was filed in this Hon'ble Court on 4.10.99."

The submission in my opinion is misconceived. The limitation of thirty days for review of judgment by a court other than the Supreme Court under Article 124 of the Limitation Act, 1963 commences from "the date of the decree or order". Where the aggrieved party prefers appeal and eventually files review petition. Undoubtedly, the period spent between the dates of the order of the court below and the order of the appellate court may be excluded under section 14 of the Limitation Act. But it cannot be said that the limitation would run from the date of order of the appellate court, much less receipt of the copy of the order. The period subsequent to the date of the

order of the appellate court or receipt of copy of the order has to be explained because the prescribed period of thirty days had already expired before the appellate court passed order. It is like the period of limitation remaining in suspended animation during the pendency of the appeal before the appellate court. Even if the period between the date of order i.e. 2.9.99 and date of receipt of the copy of the order i.e. 10.9.99 is excluded there is no explanation whatsoever why the review petition was filed after 24 days therefrom. I am, therefore, of the view that the petitioner has failed to explain the delay of 24 days and he is not entitled to condonation.

However, intending not to confine myself to the issue of limitation alone lest it may result in injustice I have looked into, again, the prima facie merit of the case. It appears that in dismissing the connected cases i.e. MJC No. 242/93 and CWJC No. 5009/93 this Court not only relied on the report of the Biswas Committee; besides that, the Court gave as many as four to five grounds in reaching the adverse conclusion. The Court noted that panel for recruitment had been prepared more than a decade ago and in view of the decision of the Supreme Court in State of U.P. v. Ram Gopal Shukla, AIR 1981 Supreme Court 1041, it must be treated as having become stale and no direction could be issued for making any appointment

therefrom. The Court further noted that several similarly situate persons had been denied relief in CWJC Nos. 3280/91, 7141/91, 60/94 and so on. The Court further noted that as against the advertised vacancies numbering 876 as many as 3265 appointments had already been made. The Court noticed a Bench decision of this Court in *Indu Bhushan & ors. v. State of Bihar & ors.*, 1984 PLJR 302, and the decisions of the Supreme Court in *Shankarsan Dash v. Union of India*, AIR 1991 Supreme Court 1612, *State of Bihar v. Madan Mohan Singh & ors.*, AIR 1994 Supreme Court 765 and *State of Bihar v. The Secretariat Assistant Successful Examinees Union 1986 & ors.*, AIR 1994 Supreme Court 736. In *Shankarsan Dash (supra)* a Constitution Bench of Apex Court held that empanelment does not create any indefeasible right of being appointed. In *State of Bihar v. Madan Mohan Singh (supra)* the Apex Court held that appointment should not be made beyond the notified vacancies. The Secretariat Assistants' case (supra) related to appointment of graduate Level Assistants pursuant to advertisement no.11/85 from the panel prepared by the same very Bihar State Subordinate Services Selection Board, the agency which prepared the panels from which appointment was made in the present case. In that case the Supreme Court observed that the vacancies having been advertised in the year 1985, holding of the examination two years after and the declaration

of the result almost three years after the examination did not confer any right on the empanelled candidates to be appointed after 4-5 years of the examination.

The judgment of this Court was thus based on the decisions of the Supreme Court and not only on the report of the Biswas Committee. I therefore do not think it would make much difference whether the report of the Biswas Committee related to only one advertisement or more. I would nevertheless observe that the facts and circumstances in which different advertisements and selection were made in or about the same period, being more or less similar, the findings of the Committee cannot be altogether ignored for finding out the circumstances in which the selection pursuant to other advertisements was made. All said and done, the fact remains that the SLP was dismissed by the Supreme Court.

In the above premises, I am of the view that no purpose will be served by condoning the delay. The limitation petition is accordingly rejected and consequently the review petition is dismissed.

N.A.

*S.N.Jha*  
( S.N.Jha )

*True copy*

*10.5.2000*

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*[Signature]*

*10/05/2000*