

**2022 LiveLaw (SC) 250**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**K.M. JOSEPH; HRISHIKESH ROY, JJ.**

February 18, 2022

CIVIL APPEAL NO. 1517 OF 2022 (Arising out of SLP (C) No. 19950 of 2021)

**RAKESH KUMAR VERSUS THE STATE OF BIHAR & ORS.**

**Summary - Appeal against Bombay HC judgment which refused to interfere with cancellation of appointment of appellant judicial officer who could not join before prescribed date due to nationwide lockdown imposed in view of covid-19 pandemic - Allowed - It is not a case where there is a complete dearth of any explanation by the candidate - There was considerable confusion also about what a person could do and what a person could not do during the time of the lockdown. It was an unprecedented situation which affected the nation - Impugned notification quashed and appointment restored - The appellant will not be entitled to claim seniority/backwages.**

**Public Employment - Appointment - There is no absolute right with the candidate to insist that he should be permitted to join beyond the date - But there is no law which would support the cancellation of the candidature of the selected candidate if he seeks to join beyond a particular point of time. (Para 18,16)**

*For Appellant(s) Mr. M. Shoeb Alam, Adv. Ms. Fauzia Shakil, AOR*

*For Respondent(s) Mr. Azmat Hayat Amanullah, AOR Mr. Gaurav Agrawal, AOR*

**O R D E R**

Leave granted.

1. The appellant participated in the 30th Bihar Judicial Services Examination conducted pursuant to notification No. 6/18. He came to be appointed as probationary Civil Judge (Junior Division) on 06.01.2020. In terms of the notification by which he stood appointed, the appellant was to join on 31.01.2020. The appellant pointing out certain personal difficulties which consisted of the delivery date of his wife and the surgery of his father, sought extension till April, 2020 by letter dated 22.01.2020. The same came to be favourably considered and allowed vide letter dated 20.02.2020. It was informed that the appellant was granted time till April, 2020. Thereafter, it is the case of the appellant that the appellant was prevented from joining consequent upon the COVID 19 pandemic. Accordingly, the appellant sought time by letter dated 08.06.2020 addressed to District Judge, Darbhanga Civil Court, that he was stuck in Nagpur and still stranded and that he will join at the directed place as soon as possible. Thereafter, he again wrote letter dated 20.06.2020 wherein reference was given of letter dated 20.02.2020 and that he was given time till April, 2020 but he could not join on account of lockdown and was stuck in Nagpur and he sought permission to join on 20.06.2020.

**2.** According to him, he booked a rail ticket for travel, firstly on 15.06.2020, and again booked second ticket on 15.06.2020. But these bookings were got automatically cancelled since the tickets remained in waiting list. He further has a case that on 17.06.2020, he even booked flight ticket but could not board because of the diversion of route. It is, thereafter, that he paid a hefty sum to book a Scorpio bearing registration No. MH 40 AR 9112 and which dropped him at Bihar on 18.06.2020. He immediately rushed to his place of posting at Darbhanga. It is, accordingly, that he made a representation on 20.06.2020. The aforesaid facts are sought to be made good by not only the representation dated 20.06.2020 but from the subsequent representation which he has placed on record which is dated 01.09.2020. The response elicited from the Registrar General of the High Court was as follows:

“With reference to your letter dated 08.06.2020 and 20.06.2020, regarding prayer for allowing to join service as Probationary Civil Judge (Junior Division) at Biraul (Darbhanga), I am directed to say that no plausible explanation for delay is forth coming.”

**3.** This led to a fresh representation by the appellant dated 13.07.2020, wherein he sought approval for the joining:

“With all respect, I beg to state that I am submitting explanation for condoning the delay. I went to Darbhanga on 8th July, 2020 with an application for joining where I was told that approval from Hon’ble High Court citing your reason as ‘No Plausible explanation’ originally I went to Darbhanga and reported in the office of District & Sessions Judge, Darbhanga on 20.06.2020 for joining.

Kindly approve for joining for which I shall be highly obliged.”

**4.** It is again followed up by another representation which is dated 25.07.2020 wherein he had *inter alia* sought approval for his joining as he was late due to being stuck in the lockdown at Nagpur explanation of which had been submitted.

**5.** There is yet another representation dated 12.08.2020 to the Registrar General wherein he stated as follows:

“With due respect I Rakesh Kumar 12.08.2020 submit and pray for joining as Probationary Civil Judge as directed at Biraul (Darbhanga). Kindly approve for my joining as I am late due to stuck in the nationwide lockdown at Nagpur. Explanation for this has been submitted on 13.07.2020 Spd Post No. EF-376409592 In and 25.07.2020 SP No. EF 640757673 IN through Speed Post.

I am trying to contact the concerned office but due to lockdown it could not be possible. It is therefore requested that your honour be kind enough to approve my joining.”

**6.** This led to a further response from the Registrar General dated 13.8.2020. It was thereby communicated that the High Court had been pleased to observe that the representation of the appellant did not require reconsideration. Thereupon, the appellant became a little bit more elaborate in his representation dated 29.08.2020 which reads as follows:

“I tender my apology that I was not able to join in time. I was granted extention through Letter No. 11961 dated 20.02.2020 till April, 2020. In March I went to Nagpur in connection with a household function. I was stuck in complete lockdown imposed in Nagpur. After few days Nagpur was declared as “Red Zone” where no communication was allowed. Postal service was not in operation. As soon as I got opportunity I send speed post a letter [EM465835504IN] from Nagpur (Kamthi H.O.) on 10.06.2020 (Letter attached).

I got an opportunity to buy train ticket for 15th June, 2020, 17 June, 2020 (3 tickets). But unfortunately I could not travel as only confirmed seat passengers were allowed to board the train and I was not allowed to board the train. Air ticket was also taken (Tickets annexed) my father was with me who is a retired employee from Central Govt.

Finally, in these tough circumstances I decided to travel by road route. I hired a taxi to travel 1100 KM long at the cost of Rs.26000/- I gave a detailed explanation for delay on 13.07.2020 (Annexed).

I tender apology before my lordship for this act of negligence of mind and prepared to be careful in future.

Kindly consider my case sympathetically lordship this is the case of my life career. Your lordship may be pleased to exonerate the delay which was caused unknowingly.

For this act of kindness, I shall be highly obliged."

**7. This was again followed up by further representation dated 01.09.2020. It reads as follows:**

"May I bring to your kind notice that after my appointment as Probationary Civil Judge (Junior Division) on 06.01.2020, I was posted at Biraul, Darbhanga vide letter dated 21.01.2020. However, on my request, I was granted extension for joining until April, 2020 considering the first pregnancy of my wife and ailment of my father.

In the meanwhile, I had to go to Nagpur for some compelling reasons where I got stuck because of imposition of nationwide lockdown on 24.03.2020. The city of Nagpur was so deeply infected with COVID 19 that the whole city was soon declared as "Red Zone". The movement in the city was so paralyzed that I had no occasion to even visit the local post office for needful communication.

It was only upon the notification of "Unlock 1.0" w.e.f. 01.06.2020 that I somehow booked my rail ticket for travel to Patna first on 15.06.2020 and then again booked two tickets on 17.06.2020. However, all these three bookings got automatically cancelled since the tickets remained in waiting list. On 17.06.2020, I even booked flight ticket but could not board because of diversion of route. Lastly, I was constrained to pay a hefty sum to book a Scorpio, bearing registration no. MH 40 AR 9112, which dropped me at Bihar on 18.06.2020. I immediately rushed to my place of posting at Darbhanga, wherefrom I was reverted to High Court to seek permission for joining afresh. In furtherance of my request letter sent to the High Court on 08.06.2020 and application submitted before the District & Sessions Judge, Darbhanga, your good office, vide letter no. 29415 dated 06.07.2020, informed me that "no plausible explanation for delay is forthcoming". Pursuant thereto, I again sent my representation to your good office on 13.07.2020, whereafter I was communicated vide letter no. 32072 dated 13.08.2020 that "representation does not require reconsideration".

In the aforesaid background, may I please have the leave to seek forgiveness for my inadvertent negligence/mistake and invoke compassion from our glorious institution? The whole chaos was essentially due to this unprecedented pandemic and, as such, I can only urge the Hon'ble High Court to consider my case with mercy considering the extraordinary circumstances in which we are placed today.

I hope you would consider that I belong to a very marginalized section of the society and have worked extremely hard for years together to compete and qualify in the prestigious judicial service. My father is very ill and is in continued treatment at Chennai. After having fractured backbone, my mother is completely bedridden since 2018. I am also father of a baby girl, who was born on 02.04.2020. Due to the pandemic, I could not be even with my wife at the time of her first delivery. Needless to say, all of them are dependent on me.

Considering the aforesaid extraordinary facts and circumstances, I beg before my mother institution to kindly consider my case with compassion, grant forgiveness for my inadvertent mistake and condone the delay in my joining as Probationary Civil Judge (Junior Division). I sincerely assure that given an opportunity, I will surely work hard to evolve myself as an asset to the institution. And for this act of kindness, I shall ever remain obliged."

**8.** This led to the communication dated 21.10.2020 by the Registrar General to the appellant. Therein with reference to past representations seeking condonation of the unavoidable delay and request for permission to join the services, it was communicated that the prayer did not find favour with the Court. Finally, it culminated in the issuance of notification dated 10.12.2020 wherein the appellant figures at serial No. 3 of candidates whose appointment stood cancelled since they have not submitted joining in the services.

**9.** This led to the writ petition which generated the present appeal. The appellant sought to quash the notification dated 10.12.2020 and the communications dated 06.07.2020, 13.08.2020 and 21.10.2020. Mandamus was sought to consider joining/posting of the appellant. After pleadings were settled, the High Court had dismissed the writ petition.

**10.** The High Court in the impugned order took the view that the case of the appellant did not require any consideration and the approach of the appellant appeared to be more than casual. It is further found that even during lockdown, he could inform the authority through email and his first representation was as late as 08.06.2020 when he informed that he was stuck in Nagpur.

**11.** We have heard Shri Shoeb Alam, learned counsel for the appellant, Mr. Gaurav Agarwal, learned counsel on behalf of respondent No. 3 and we have also heard Mr. Azmat H. Amanullah, learned counsel for the respondent-State.

**12.** Learned counsel for the appellant would point out that this is a case where the appellant was prevented from joining on account of reasons beyond his control. In other words, he was granted extension to join by April, 2020. The appellant would have joined but for the fact that COVID 19 struck the nation. In the first version of COVID 19 lockdown, the conditions in Nagpur where he was, were so stringent that he could not even go to the post office. He was not in a position to undertake communications immediately with the Court. The appellant was making attempts to go over but it was simply not possible in the circumstances in which he was placed. He would however, point out that the High Court has proceeded as if the appellant has produced no details. He would point out that the High Court may not be correct in its finding that the appellant has not furnished details in regard to the appellant's attempt to reach Durbhanga without delay.

**13.** The High Court has proceeded on the basis that copies of the railway and air tickets have not been submitted before the authorities which stood enclosed in the writ petition. He would submit that this finding is not correct as according to him, he has produced the relevant material along with representations dated 29.08.2020 and 01.09.2020. He would further point out that a perusal of the counter affidavit of the

High Court would indicate that the High Court had taken a decision dated 16.10.2020 by which it had recommended for the cancellation of the appointment of the appellant. But this decision was not communicated to the appellant. He has further pointed out that the appellant was not put on notice before the decision was taken.

**14.** Learned counsel for the appellant also pointed out that the appellant hails from a marginalized section of society. He belongs to the Scheduled Caste community. He would implore that the aspirations of the appellant may not be jettison on account of circumstances which prevented him from joining as was required.

**15.** Mr. Gaurav Aggarwal, learned counsel for the respondent High Court, would oppose the appeal. He would point out that he would support the impugned order. He further submits that there are vacancies and proceedings are afoot for appointment to the 31st batch. Mr. Azmat Hayat Amanullah, learned counsel for the respondent-State, would essentially support the stand of the High Court.

**16.** We would notice in the first place that there is no statutory provision which declares or commands that beyond a certain point of time, a selected candidate cannot be permitted to join. There is no provision pressed before us which is in the form of a statutory prescription. In other words, there is no law which would support the cancellation of the candidature of the selected candidate if he seeks to join beyond a particular point of time.

**17.** Undoubtedly, the matter appears to be governed by the terms of the notification. It is open to the Court to grant extension and extension was granted by communication dated 20.02.2020 to join by April, 2020. The question that appears for our consideration is whether this is a case where, in the absence of a statutory prescription, in the circumstances which are projected to exist, the respondent-High Court should have permitted the appellant to join. The delay beyond April, 2020, consists of seven weeks. It is not a case where there is a complete dearth of any explanation by the candidate. According to the appellant, the appellant was in Nagpur at the time when lockdown No. 1 was declared. The fact that COVID 19 was prevalent in the country and travel restrictions were put in place is a matter of which the Court can take judicial notice. The appellant has purported to produce material along with the representations is another aspect which cannot be ignored. The impugned order insofar as it proceeds on the basis that no material was produced along with the representation does not appear to be correct.

**18.** It is no doubt true that there is no absolute right with the candidate to insist that he should be permitted to join beyond the date. We reiterate that this would be so even in the absence of statutory rule. We are dealing with services of judicial officer who is expected to undergo training. In fact, there are certain deadlines which have been fixed by this Court in litigation relating to appointment/recruitment of judicial officers. So, it is not as if we can describe the orders of the High Court refusing to permit the appellant to join as a perverse or totally illegal decision.

**19.** Though, it is true, as noticed, that there is no absolute right, we cannot also be oblivious to certain facts.

**20.** There is non-adherence to relevant material produced by the appellant. The appellant admittedly belongs to a marginalized section of society. The High Court permitted extension to the appellant to join till April, 2020, on the basis of the request made by the appellant which included his request pointing out the need to have a surgery of his father conducted in Chennai and the other issue relating to the pregnancy of his wife. While it is true that, again, we are not oblivious of the fact that first representation made by the appellant is on 08.06.2020, even though deadline set by the High Court was that the appellant should join in April, 2020, we cannot ignore the reality, namely, that restrictions imposed consequent upon COVID 19 enveloping the nation were rather severe and stringent. Travel both by Air and by train was prohibited. It is not in dispute that flights were not permitted till 25.05.2020. It is not disputed that there were restrictions in the matter of travel by train and priority was given to migrants. Likewise, it is not in the region of dispute that unlock 1.0 came into effect from 01.06.2020. There were other restrictions in the form of pass to be secured for traveling outside the district where the person was located.

**21.** We would think this is not a case where the appellant was taking aid of a false case. There was considerable confusion also about what a person could do and what a person could not do during the time of the lockdown. It was an unprecedented situation which affected the nation to which Nagpur was certainly not impervious. We would think that, in the facts of this case, besides noticing also the fact that the appellant hailing from a marginalized community has been recruited and has been appointed to the judicial services of the State, we should take a view which conduces to justice in a larger sense and for his entry and for his continuation in service. This is apart from the claim being supported with material which was placed but apparently not considered.

**22.** The question would, however, then arises as to what would be the consequence of allowing the appellant to join and continue in service.

**23.** Mr. Shoeb Alam, learned counsel for the appellant, on the previous date of hearing, pointed out that the appellant will file an undertaking that he would not claim right to seniority except upon joining and he will undergo fresh training with the next batch.

**24.** The written undertaking on affidavit is today before us. Therein, the appellant has agreed to waive his claim to seniority and backwages:

**"UNDERTAKING ON AFFIDAVIT**

I, Rakesh Kumar, aged about 33 years (Male), S/o Shri Chandra Sekhar Paswan, R/o Village - Kashipur, P.S. - Samastipur Town, District-Samastipur (Bihar), presently at Samastipur do hereby solemnly swear and affirm as under:

1. I state that I am the Petitioner in the accompanying Special Leave Petition.
2. I state that in the event an order is passed by this Hon'ble Court to reinstate my service as Civil Judge (Junior Division) by setting aside or otherwise interfering with the impugned Order dated 26-10-2021 passed by the Hon'ble High Court of Judicature at Patna in CWJC No. NO.3835 of 2021, I undertake as under:

a. That I waive my claim for seniority and back wages from the date I offered to join as Civil Judge (Junior Division) at Biraul, Darbhanga from i.e. 08-06-2020 till the time of actual joining in service.

b. That I agree to undergo training with the next available batch.

c. That I will not claim any benefit contrary to the present undertaking at any time in the future.

3. That I am also ready and willing to undergo training with the next batch of recruits."

**25.** We are also persuaded in this case to interfere with the impugned order and grant relief to the appellant having regard to the terms of the undertaking which has been reduced to writing by the appellant and what is more contained in the affidavit made by the appellant which would appear to show his willingness and readiness to serve as a judicial officer.

**26.** The upshot of the above discussion is that the appellant will be entitled to the following reliefs:

The impugned judgment is set aside. We allow the writ petition. The impugned notification is quashed to the extent the appellant's candidature is cancelled. The impugned orders will stand quashed. The appointment of the appellant is restored subject to the following:

The appellant will not be entitled to claim seniority/ backwages as has been, in fact, held out by him in written undertaking which we have extracted.

The appellant will be granted posting within a period of four weeks from today. The appointment of the appellant will be subject to all the conditions which have been incorporated in written undertaking. The terms of the undertaking will be incorporated in the order by which he is permitted to join. The appellant must necessarily undergo the requisite training as will be found appropriate and ordered by the High Court.

We make it clear further that the appellant will be entitled to claim seniority only in terms of the undertaking and not under the provisions otherwise applicable to him. He will not be entitled to the seniority in accordance with the rules/provisions which would have otherwise applied to him.

**27.** The appeal is allowed as above.

**28.** Parties to bear their respective costs.