

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.1326 of 2014**

**In**  
**Civil Writ Jurisdiction Case No. 7789 of 2005**

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1. The State of Bihar.
  2. The Director, Health Services, Bihar, Patna.
  3. The Addl. Secretary to the Govt. of Bihar, Health Medical Education and Family Welfare Department, Bihar, Patna.
  4. The Joint Secretary, Health Department, Bihar, Patna.
  5. The Dy. Secretary, Health Department, Bihar, Patna.
  6. The Dy. Director, Health Service Department, Bihar, Patna.
  7. The Regional Dy. Director of Health, Kosi Division, Saharsa.
  8. The Civil Surgeon-cum-Chief Medical Officer, Madhepura.
  9. The C.S. cum C.M.O., Supaul.
  10. The Incharge Medical Officer, Referral Hospital, Udakishunganj, District- Madhepura.

.... .... Appellants

Versus

Dr. Binod, son of Sri Kameshwar Prasad Choudhary, R/o Village- Bari Nagar, P.S.- Barari, District- Katihar

.... .... Respondent

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**Appearance :**

For the Appellants : Mr. Prabhat Kumar Singh, S.C.-12  
Mr. Sanjeev Kumar Singh, A.C. to S.C.-12  
For the Respondent : Mr. Ajit Kumar Singh, Advocate

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE I. A. ANSARI**

**ORAL ORDER**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

5      07-01-2015

**Re: I.A. No.7265 of 2014**

In this interlocutory application the prayer is to condone the delay of three years 26 days in preferring the Letters Patent Appeal against the order and judgment dated 4.7.2011 rendered by the learned single Judge in C.W.J.C. No.7789 of 2005.

In the application it is stated that after the copy of the

judgment was received, the department examined the matter and has taken decision to prefer appeal. It is stated that the matter was pending for quite some time in the office of the Advocate General and consequently some delay has occurred in filing the L.P.A.

No counter affidavit is filed on behalf of the respondent to the interlocutory application though the delay is enormous.

We are satisfied with the reasons explaining the delay in preferring the appeal stated in the interlocutory application. The delay is condoned.

I.A. No.7265 of 2014 stands disposed of.

**L.P.A. No.1326 of 2014**

This Letters Patent Appeal has been preferred against the judgment and order dated 4.7.2011 rendered by the learned single Judge in C.W.J.C. No.7789 of 2005.

The sole respondent herein was working as Incharge Medical Officer, Referral Hospital, Udakishanganj, in the district of Madhepura between 15.5.1991 and 30.10.1992. During his tenure, he placed order, on the Government Medical Store Depot, Kolkata for supply of medicines. Medicines were received and, in turn, supplied to the needy persons, as per the prescriptions.

A show cause notice dated 14.8.1996 was issued to the respondent by the appellants alleging that he placed the orders for



supply of medicines, without there being any authority. The respondent submitted the explanation to the show cause. Seven years thereafter the respondent was placed under suspension. He filed C.W.J.C. No.10829 of 2003 against the order of suspension. The writ petition was disposed of through order dated 19.4.2004 with a direction to the appellants to serve copy of the chargesheet on the respondent within the stipulated period. Accordingly, chargesheet was served on the respondent and the departmental enquiry was conducted. The enquiry officer submitted report holding that the charges framed against the respondent are proved. However, it was observed that there was no allegation or proof as to misappropriation of any amount, by the respondent.

Taking the report of the enquiry officer, into account, the disciplinary authority passed the order dated 11.1.2005 dismissing the respondent from service. The same was challenged in the writ petition (C.W.J.C. No.7789 of 2005).

The contention of the respondent is that at no point of time, any objection was raised for placing the order and even there was no charge of misappropriation of the amount. It was urged that no objection was raised during the audit. Alternatively, it was pleaded that the punishment of dismissal is disproportionate to the charges.

The appellants opposed the writ petition by filing counter affidavit. According to them, respondent was not competent to place order for supply of medicines, and on account of acts of omission on his part, the Government has incurred loss to the extent of several lakhs.

The learned single Judge allowed the writ petition by taking the view that finding of the enquiry officer was based on no evidence and that there is not even a charge of misappropriation of money. He has also taken into account, the delay that occurred at various stages. The said order is challenged in this appeal.

Heard Mr. Prabhat Kumar Singh, learned Standing Counsel No.12, appearing for the appellants, and Mr. Ajit Kumar Singh, learned counsel for the respondent.

The charge against the respondent was only in relation to the placing of orders for supply of medicines. It was not the case that the order was placed on any unrecognized agency or that it was placed for any unapproved medicines. Admittedly, the medicines were received.

Lack of seriousness on the part of the appellants in the matter is evident from the fact that though the purchase order was placed in the year 1991-92, show cause notice was issued in 1996 ignoring the fact that no audit objection was raised at any point of

time. The order of suspension itself was issued seven years thereafter, without there being any chargesheet. It was on the intervention of the Court through order dated 19.4.2004 in CWJC No.10829 of 2003 that the chargesheet was served.

The only allegation against the respondent is that he placed order for supply of medicines. The enquiry officer has undertaken extensive discussion. The only basis for him to hold that the charge is proved was that the respondent was not competent to place order. It is not understandable as to what objection can be taken if a Medical Officer places order for supply of medicines. In a way it reflects lapses on the part of the superior authorities in failing to place orders for supply of medicines. Except the perception of the enquiry officer, there was no evidence whatever, to hold that the charge was proved.

The record discloses that the medicines were received after the respondent was transferred to different place. The Medical Officer Incharge, who received the medicines, did not point out any defect as to the schedule of supply or quality of medicines. It was clearly stated that the medicines were supplied to the needy persons on prescription.

Though delay by itself may not defeat the disciplinary proceedings, it is a significant factor, to be taken into account. It

has already been mentioned that five years after supply of medicines, show cause notice was issued and charges were framed eight years thereafter. Without appreciating the matter from the correct perspective, the disciplinary authority dismissed the respondent from service. It is difficult to hold that mere placing orders for supply of medicines would constitute any act of misconduct. It was not even mentioned that the superior of the respondent took exception to the placing of order by the respondent. Assuming that there was any deviation from the prescribed procedure, it became necessary for the respondent to place order, for the proper functioning of the hospital. At any stage, the punishment was beyond any semblance of proportion, even if the charge is taken as proved.

We are not inclined to interfere with the order passed by the learned single Judge. The appeal is, accordingly, dismissed. The interlocutory application, if any, shall also stand disposed of. There shall be no order as to costs.

**(L. Narasimha Reddy,CJ)**

**(I. A. Ansari, J)**

PNM  
**A.F.R.**  

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