

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1405 of 2014
In
Civil Writ Jurisdiction Case No. 12860 of 2010

- =====
1. The State Of Bihar
 2. The Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna
 3. The Director, Secondary Education, Govt. of Bihar, Patna
 4. The Regional Deputy Director of Educaiton, Patna Division, Patna
 5. The District Education Officer, Patna

.... Appellants

Versus

Urmila Tiwary Wife of Late Arun Kumar Tiwary Resident of Village - New Damaria, P.S.- Gardanibagh, Road No. 21, New Kabristan, District -Patna

.... Respondent

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Appearance :

For the Appellant/s : Mr. Devedndra Kumar Sinha, Advocate

For the Respondent/s : Mr. Rajni Kant Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
AND
HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

3 13-01-2015 We have heard Mr. Devendra Kumar Sinha, learned Additional Advocate General No. 2, appearing for the appellants, and Mr. Rajni Kant Jha, learned counsel for the respondent.

I. A. No. 7902 of 2014 has been filed by the appellants, under section 5 of the Limitation Act, seeking condonation of delay of 1 year 04 days in preferring the present Letters Patent Appeal against the order, dated 26.07.2013, passed by a learned single Judge of this Court in C.W.J.C. No. 12860 of 2010.

Having considered the reasons assigned in the

present petition seeking condonation of delay, in preferring appeal, and having heard learned counsel for the parties, this Court is satisfied that the appellants were prevented by sufficient causes from preferring the appeal within time.

In view of the above, the delay of 01 year 04 days, in preferring the letters patent appeal, is hereby condoned.

I. A. No. 7902 of 2014 shall stand disposed of.

L.P.A. NO. 1405 OF 2014 :

The respondent herein, Smt. Urmila Tiwary, is widow of late Arun Kumar Tiwary, who, while functioning as a Class III employee, in the office of the appellant No. 5 herein, namely, District Education Officer, Patna, was dismissed, on 14.11.1998, on the ground that he had been illegally appointed.

Similar nature of orders of dismissal was passed against some other persons, employed by the Department of Education of the erstwhile State of Bihar. Some of the dismissed employees filed a writ petition and, on the direction of the Court to reinstate them and make payment of their *back wages*, the Government reinstated them in service and also paid their *back wages*.

Taking a cue from the reinstatement of other employees of his Department, the respondent's husband made a representation to the appellant No. 2, namely,

Principal Secretary, Human Resources Development Department, Government of Bihar, Patna, seeking reinstatement in service. Without much hesitation and demur, the appellants reinstated the respondent's husband, on 05.05.2006.

Thus, the respondent's husband remained out of service, from 14.11.1998 to 05.05.2006. As he has not been paid salary for the said period, he made another representation to the appellant No. 2, seeking payment of his *back wages*; but his representation was rejected by order, dated 25.07.2008. The respondent's husband, then, brought his grievance to this Court by way of a writ petition, made under Article 226 of the Constitution of India, which gave rise to C.W.J.C. No. 12860 of 2010.

By order, dated 26.07.2013, as a learned single Judge of this Court has allowed the writ petition directing the appellants to make payment of the salary of the respondent's husband for the period from 15.12.1998 to 04.05.2006, this appeal has been preferred.

While considering the present appeal, it needs to be noted that the reinstatement of the respondent's husband took place without any condition being attached thereto. Ordinarily, therefore, the respondent's husband was entitled to receive salary for the period from 15.12.1998 to 04.05.2006 unless the appellants could have shown that

during the said period, the respondent's husband was employed or had been working for gain and earning thereby, at least, the amount, which he had been receiving as salary, while he had been functioning as an employee of the State. At no stage, such a contention was raised.

When the appellants have not even pleaded that the respondent's husband was gainfully employed or worked for gain, during the period, when he was out of service, because of the order of dismissal, he ought to have been treated, on his reinstatement, as having not been dismissed and remained in service continuously notwithstanding the fact that he was out of service from 14.11.1998 to 05.05.2006.

In the circumstances indicated above, the respondent's husband was entitled to the relief of *back wages*, which he had claimed and this is the relief, which the learned single Judge has granted.

Situated thus, we see no reason to interfere with the order under appeal.

In the result and for the foregoing reasons, this appeal fails and shall accordingly stand dismissed.

Before parting with this appeal, we, however, allow the appellants a further period of three months, commencing from today, to make payment of the unpaid dues of the deceased husband of the respondent.

I.A. No. 7903 of 2014

In view of the dismissal of the appeal, no further order need to be passed in this interlocutory application and this interlocutory application shall stand disposed of accordingly.

(I. A. Ansari, J.)

(Chakradhari Sharan Singh, J.)

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