

Letters Patent Appeal No 1245 of 2012
IN
Civil Writ Jurisdiction Case No 22612 of 2011

In the matter of an appeal under Clause X, Appendix E of the Letters Patent Appeal and Part 1 of the Patna High Court Rule.

Md Qamar Quaraishi Aged About 67 Years S/O Late Md Yusuf Quraishi R/O Mohalla Kadirabad, P.O. Lalbagh, P.S. L.N.M.U. Campus, Town And District Darbhanga.

.... Appellant/s

Versus

1. The State Of Bihar Through Special Secretary, Department Of Health, Government Of Bihar, New Secretariat, Patna.
2. The Special Secretary, Department Of Health And Family Welfare, Government Of Bihar, New Secretariat, Patna.
3. The Director in Chief, Public Health Service, Department Of Health and Family Welfare, Government of Bihar, New Secretariat, Patna.
4. The Director, Public Health Institute, Patna.
5. The Principal, Darbhanga Medical College and Hospital, Laheria Sarai, Town and District Darbhanga.

.... Respondent/s

CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HON'BLE MR JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH)

Heard the learned counsel for the appellant and the State.

2 The appellant was the writ petitioner. In the writ petition, the appellant had claimed that right from the time he was in service and, thereafter, he has been representing to the authorities that he was entitled to time bound promotion but no decision was being taken.

The learned Single Judge dismissed the writ petition on grounds of laches though observing that if the respondents so think, they could consider granting the writ petitioner the relief as sought for by him. Being aggrieved by this, the present intra-Court appeal has been filed.

3 To us, the first question that the State ought to have been asked why was there no response to petitioner's representations in which he had been claiming a right which he was statutorily entitled to. State is obliged to respond. State could have pointed out that the right as claimed by the employee, the writ petitioner was not valid but it could certainly not keep mum. We must not forget that State is to be a model employer. State is a welfare State. It has to do what is just and legal without forcing citizens or its employees to battle it out in the Courts.

4 Therefore, we find that it is first the duty of the State to show as to why it did not respond and why it does not think that the writ petitioner was entitled to the relief sought for. It is well settled that delay and laches are grounds to deny the relief but it is equally well settled that this does not come in way when no third party rights are adversely affected. It is equally well settled that Writ Court entertains writ petitions even after period of limitation ordinarily prescribed for such cause of action has expired. It is equally true that even though the period may not expire, the Writ Court may refuse to

entertain if there is a delay which affects third parties. Reliance, in this connection, may be placed on the decision rendered in the case of **Anil Kumar Gupta –Versus- State of Bihar & Others** since reported in (1969) 1 Supreme Court Cases 110 which is noticed with approval in the case of **Tilokchand Motichand –Versus- H B Munshi** since reported in (2012) 12 Supreme Court Cases 443.

5 These are all matters of discretion but when we come to a conflict between duty of the State and right of the citizen, it is the right of the citizen that has to prevail because State is bound by Article 14 of the Constitution and it cannot shirk its legal liability and get away from it on legal technicalities.

6 We, thus, have no option but to set aside the order passed by the learned Single Judge and direct the Additional Commissioner – cum- Special Secretary, Department of Health and Family Welfare, Government of Bihar and the Principal, Darbhanga Medical College and Hospital to immediately take up the representations of the writ petitioner with regard to his claim of grant of time bound promotion and one assured career progression with consequential benefits.

7 Let it be noted that the writ petitioner has by now retired about 10 years back. If any representation is filed by the writ petitioner giving details alongwith a copy of this order before the two authorities aforesaid, they would expeditiously consider the whole

matter and decide the same. They must pass speaking order and communicate the same to the writ petitioner within a period of six months from today.

8 This appeal is, accordingly, allowed.

(Navaniti Prasad Singh, J)

**Patna High Court,
The 20th of February 2015,
NAFR, M E Haque/-**

(Jitendra Mohan Sharma, J)

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