

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1458 of 2016
arising out of
Civil Writ Jurisdiction Case No. 18697 of 2014
with
Interlocutory Application No.5570 of 2016.

=====

Dr. Govind Prasad Srivastava, son of Late Bindeshari Prasad, resident of Mohalla-Kirankunj, Harishchandra Stadium Road, P.O.+P.S.+District- Nawada at presently posted as Dental Surgeon, Sadar Hospital, Nawada.

.... Appellant

Versus

1. The State of Bihar through Principal Secretary, Deptt. of Health, Bihar Patna.
2. The Executive Director, State Health Society, Bihar Patna.
3. The Regional Deputy Director, Health Service Magadh Division Gaya.
4. The District Officer-Cum-Chairman, District Health Society, Nawada.
5. The Civil Surgeon-Cum-Chief Medical Officer-Cum Member Secretary District Health Society, Nawada.
6. The Deputy Superintendent, Sadar Hospital, Nawada.
7. The Treasury Officer, Nawada.

.... Respondents

=====

Appearance :

For the Appellant	:	Mr. Arun Kumar Tiwari, Adv.
	:	Mr. Dhananjay Kumar Sahi, Adv.
For the State	:	Mr. Anirban Kundu-SC24

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)
Date: 19-12-2016

Re. Interlocutory Application No.5570 of 2016.

The application is for condonation of delay of 68 days
in filing of the present Letters Patent Appeal.

For the reasons mentioned in the application, we find
that sufficient cause is made out for condonation of delay.
Consequently, we condone the delay in filing of the present Letters



Patent Appeal.

Interlocutory Application stands allowed accordingly.

Re: Letters Patent Appeal No.1458 of 2016.

The challenge in the present Letters Patent Appeal is to an order dated 06.04.2016 passed by the learned Single Bench whereby, the writ application filed by the appellant for direction to the respondents to pay Rs. 30,000/- as honorarium w.e.f., 19th July, 2011 in terms of Annxure-6 remained unsuccessful.

The appellant superannuated from the post of Dental Medical Officer, Sadar Hospital Nawada on 28th of February, 2001. The appellant was appointed as Dental Surgeon, Sadar Hospital, Nawada, on contract basis vide communication dated 17th May, 2006 on consolidated fee of Rs. 500/- per day for a maximum of two days in a week. Subsequently, on 1st February, 2009, the days of services of Dental Surgeons such as appellant were enhanced from two days in a week to six days in a week at the rate of Rs. 500/- per day.

The State issued circular on 19th July, 2011 for directing to pay honorarium of Rs. 30,000/- per month to the Dental Surgeons at par the Medical Officers. The appellant claims benefit of such honorarium by way of representation submitted to the respondents. The appellant was informed by the Civil Surgeon on



19th August, 2015 that he can be paid such amount after deducting the pension amount. The grievance of the appellant is that he is entitled to Rs. 30,000/- honorarium per month without any deduction of pension at par the Medical Officers in terms of the circular issued.

The learned Single Bench dismissed the writ petition for the reason that the Circular dated 19th July, 2011 is applicable to Dental Surgeons not to retirees. It is applicable to the Dental Surgeons engaged for the first time on contract basis.

Learned counsel for the appellant referred paras 4 and 5 of the said circular to contend that the Dental Surgeons have been placed at par with the Medical Officers as it was decided to pay Rs. 30,000/- per month as honorarium, although there is no condition of deduction of the pension from the said amount. Therefore, the appellant is entitled to sum of Rs. 30,000/- as honorarium per month.

We do not find that such circular has any applicability to the retired Dental Surgeons such as the appellant. Para 4 of the circular noticed the fact that the Medical Officers and Dental Surgeons are being paid different amounts when engaged on contract basis, though, both are in the same pay-scale i.e., 9300-34800 and grade pay of 5400. Since the Medical Officers and



Dental Surgeons are said to be in the same pay-scale, therefore, it was decided to pay the same amount of honorarium. The said circular was issued to amend an earlier circular dated 23rd August, 2007 whereby the Dental Surgeons were ordered to pay Rs. 15,000/- per month as honorarium.

Though, the circular dated 23rd August, 2007 is not on record but the fact remains that in the circular Annexure-6 it is decided that the honorarium to Dental Surgeons and Medical Officers should be at par in view of the fact that they are in the same pay-scale. Admittedly, the pay-scale would be applicable in respect of an officer prior to superannuation. Thus the finding recorded by the learned Single Bench that the said circular does not pertain to retirees cannot be said to be illegal or unwarranted in any manner.

Learned counsel for the appellant refers to the Supreme Court judgment in the case of State of Punjab and others Vs. Jagjit Singh and others (Civil Appeal No.213 of 2013, decided on 26th of October, 2016) to contend that there cannot be any inequality in respect of nature of payment to the different categories of the employees may be ad hoc, work-charge, daily wages etc. We do not find any merit in the said argument as well. As observed earlier, the circular dated 19th of July, 2011 is not applicable to the retired employees who are drawing pension. The judgment rendered



in the case of Jagjit Singh (supra) is not applicable to the appellant as such judgment pertains to the payment of salary under the principle of ‘equal pay for equal work’ prior to retirement.

The appellant was engaged as per the terms and conditions mentioned in the letter of appointment -Annexure-1. The terms and conditions of the appointment are modified by the letter of appointment produced by the appellant as Annexure-2. The circular as contained in Annexure-6 is not applicable to the retired employees but is applicable to the doctors who are engaged to meet the requirement of state to provide medical services to people, therefore, benefit of such honorarium fixed in the said circular cannot be extended to retired employees such as the appellant, who are drawing pension after attaining age of superannuation.

We do not find any merit in the Letters Patent Appeal, accordingly, it is dismissed.

(Hemant Gupta, ACJ)

(Dinesh Kumar Singh, J)

Amrendra/Ashwini

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	22/12/2016
Transmission Date	

