IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1289 of 2016
IN
Civil Writ Jurisdiction Case No. 12092 of 2015

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1. Maroon Khatoon, Wife of late Asgar Ali resident of village- Dannagar, Station Road, P.S. - Town, District- Khagaria.
2. Md. Guddu Son of late Asgar Ali resident of village- Dannagar, Station Road, P.S.- Town, District- Khagaria.

.... Appellants

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
2.Chief Engineer (Mechanical), Public Health Engineering Department, Government of Bihar, Patna.
3. Superintending Engineer, Public Health Engineering Circle, Saharsa.
4. Executive Engineer, Public Health Engineering Division, Khagaria.
5. The District Magistrate cum Chairman, District Compassionate Appointment Committee, Khagaria.

.... Respondents

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Appearance :
For the Appellants : Mr. Rajendra Narayan, Sr. Advocate
Mr. Bhola Kumar, Advocate
For the Respondents : Mr. Amarendra Kumar, AC to AAG 15

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)
Date: 19-11-2016

Heard learned counsel for the appellants and learned counsel for the respondents.

2. The order dated 17th of May, 2016 passed by learned Single Bench in CWJC No. 12092 of 2015 is the subject matter of challenge in the present Letters Patent Appeal whereby the claim for compassionate appointment after death of Asgar Ali on 23rd of November, 1999 remained unsuccessful.

3. Though the learned Single Bench has taken into consideration that Asgar Ali was a work charged employee as a

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Nalkoop Khalasi in Public Health Engineering Department and he never came to be regularized and therefore the claim for compassionate appointment cannot be entertained but learned counsel for the appellants refers to an order dated 5th of May, 2010 passed in CWJC No. 1880 of 2007 wherein Asgar Ali was treated as class IV employee. It is contended that such order has attained finality when the Special Leave Petition was dismissed by the Supreme Court.

4. Even if Asgar Ali is to be considered a regular employee, still his legal heirs are not entitled to seek compassionate appointment on account of long delay in invoking the jurisdiction of Court. The employee died on 23rd of November, 1999 but the claim for compassionate appointment was made 17 years later.

5. It is well settled that appointment on compassionate ground is to meet immediate financial stringency faced by the heirs of the deceased employee. The financial stringency does not survive for 17 years. Therefore, the request of the legal heirs of Asgar Ali to seek compassionate appointment has rightly not been interfered with.

6. At this stage, learned counsel for the appellants points out that earlier, the legal heirs had filed writ petition in 2007 which was withdrawn with liberty to file fresh writ petition in view of the

pending dispute regarding status of Asgar Ali as work charged employee or regular employee. Therefore, the delay cannot be treated as 17 years.

7. We do not find that withdrawal of the writ petition in the year 2007 would confer any additional benefit to explain delay in filing of the present petition to the legal heirs of the deceased. The fact is that the appellants had withdrawn their earlier writ petition. The withdrawal of the writ petition will not stop the running of time against the appellant nor will it remove the financial stringency of the family. The appellants have invoked jurisdiction of this Court seeking compassionate appointment after 17 years of death of the work charged employee. Therefore the same has rightly not been interfered with.

8. We do not find any error in the order passed by learned Single Bench which may warrant any interference by this Court in the present intra court appeal. The Letters Patent Appeal is accordingly dismissed.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

B.T/-

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