

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.458 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 5756 of 2006**

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1. The State of Bihar
 2. The Secretary Labour Employment and Training Department, Government of Bihar, Patna.
 3. The Secretary Personnel and Administrative Reforms Department, Government of Bihar, Patna.
 4. Sri Rai Madan Kishore, Deputy Secretary, Labour Employment and Training Department, Government of Bihar, Patna.

.... Appellants

Versus

Kusheshwar Das, Son of Sri Singheswar Das, resident of Village- Mokama Gurudev Tola, P.S.- Mokama, District- Patna at present posted as Assistant Director, Director of Social Security and Disabilities, Social Welfare Department, Government of Bihar, Patna.

.... Respondent

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Appearance :

For the Appellants : Mr. Kunal Tiwary, A.C. to G.A. 3
For the Respondent : Mr. Alok Kumar Sinha, Sr. Advocate.
Mr. Bholu Kumar, Advocate.
Mr. Ashish Sinha, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 18-05-2016

Re.:I.A. No. 2091 of 2015

The application is for condonation of delay of 2 years 167 days in filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory Application, we are satisfied that the appellant has shown sufficient cause to seek condonation of delay of 2 years 167 days in filing the

present Letters Patent Appeal.

3. Consequently, Interlocutory Application No. 2091 of 2015 is allowed and delay of 2 years 167 days in filing the Letters Patent Appeal is condoned.

Re.: L.P.A. No. 458 of 2015

The order dated 19th of July, 2012 passed by the learned Single Bench of this Court in C.W.J.C. No. 5756 of 2006 is subject matter of challenge in the present Letters Patent Appeal, whereby the order of the State Government dated 9th of March, 2006 was set aside with further direction that no departmental proceedings be initiated against the writ applicant.

2. The writ applicant remained absent from duty for a long period of time. In pursuance of the direction of this Court in C.W.J.C. Nos. 5975 of 1996 and C.W.J.C. No. 11903 of 1998, the State Government recorded a finding that the period of absence i.e. from 01.07.1985 to 22.05.1997 will be treated as break in service and also ordered a departmental proceeding against the writ applicant. Soon thereafter the writ applicant filed the present writ application. The learned Single Bench rightly found that the order dated 9th of March, 2006 (Annexure-12 to the writ application) ordering break in service as also to start disciplinary proceeding is contradictory. Thus, the learned Single Bench quashed the said order with a further direction



that since no departmental proceeding has been initiated even after the impugned order of the Commissioner passed in the year 2006, it will be inappropriate now to permit such departmental proceedings for an event that took place for over 15 years back. It has been further found that applicant has been punished enough as he has been denied salary for the period 01.07.1985 to 22.05.1997 as he has not worked during the said period.

3. The writ applicant having remained absent for a long period could not lay claim for salary. Such is the finding recorded by the Learned Single Judge as well. Therefore, it is not the punishment which has been inflicted upon by the department for long absence of period. It is a natural consequence of long absence departmental proceedings are bound to be initiated so that the act of indiscipline by an employee, such as, the writ applicant, do not go unpunished. The finding of the learned Single Bench that though the Commissioner passed order in the year 2006, the departmental proceedings have not been initiated is not made out inasmuch as soon after the order was passed, the writ application was filed in the month of May, 2006. Once the matter was pending before this Court, any initiation of proceedings would have an act of impropriety. Therefore, non-initiation of proceedings on account of pendency of the writ application cannot be a ground for restraining the department from

initiating departmental proceedings against the writ applicant.

4. Consequently, the Letters Patent Appeal is partly allowed. The order of the learned Single Bench holding that no departmental proceedings shall be initiated against the writ applicant is set aside. The appellants are directed to initiate departmental proceedings against the writ applicant in accordance with law expeditiously.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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