

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1219 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 562 of 2014
Along with
Interlocutory Application No.5180 of 2015
And
Interlocutory Application No.5181 of 2015**

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Brajesh Kumar Ojha, son of late Budheshwara Nand Ojha, resident of village Chikani, P.O. and P.S.- Ramgarhwa, Dist. East Champaran, presently posted as District Education Officer, Samastipur.

.... Respondent- Appellants

Versus

1. Kapileshwar Prasad Rai son of late sonman Rai resident of village Hetanpur, P.O.- Madhopur, P.S.- Patory, District- Samastipur.

.... Petitioner-Respondent 1st Set.

2. The State of Bihar through the District Magistrate, Samastipur.
3. The District Programme Officer (Estt.) Samastipur.
4. The Sub Divisional Education Officer, Mohanpur, Samastipur.
5. The Area Education Officer Mohiuddinagar, Samastipur.
6. The Block Education Extension Officer, Mohanpur, Samastipur.
7. The Block teacher, Drawing and Disbursing Officer, Mohanpur, Bindgama, Samastipur.
8. The Accountant General, Bihar, Patna.

.... Respondents- Respondents

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Appearance :

For the Appellant : Mr. Basant Kumar Choudhary, Senior Advocate
Mr. Mithilesh Mowar, Advocate

For the Respondents-State : Mr. Anil Kumar Sinha, A.C. to S.C.-5

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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: 25-04-2016

Re.: Interlocutory Application No.5180 of 2015

The present Letters Patent Appeal is filed by the then District Education Officer, Samastipur, who has been made liable to pay interest on delayed payment of retiral benefits along with other officers.

Keeping in view the averments made in the application we deem it appropriate to condone the delay of 68 days in filing of the appeal as sufficient cause is made out for condonation of delay.

Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.1219 of 2015

The order dated 10th of February, 2015 passed by the learned Single Bench of this Court in C.W.J.C. No.562 of 2014 is subject matter of challenge in the present Letters Patent Appeal, particularly, paragraph 10 which read as under:-

“10. It goes without saying that since delay in payment of the retirement benefit of the petitioner is totally attributable to the District Education Officer, Samastipur, he will be also liable to pay interest from his pocket on the amount of retirement benefit at the rate of 5% per annum for the period of February 2006 and till the date of payment as per the notification of the Finance Department being Notification No. 3155 dated 7.11.1981. The present D.E.O. having paid such amount of interest from his pocket to the petitioner would be at liberty to realize the same on proportionate basis from his predecessors in office who had been posted as D.E.O., Samastipur since February 2006 or any one other erring officer and/or employee found responsible for causing delay in making payment of retirement benefit to the petitioner.”



Learned counsel for the appellant contends that the appellant has no mechanism to recover the amount of interest from the other officers, many of whom have retired and are senior, without taking recourse to the civil suit. In fact, on the other hand, if the State is directed to make recovery even out of the retiral benefits payable to the retired officers, it will serve the intent of the order passed by the learned Single Bench.

We have heard learned counsel for the parties and find that the direction to deposit the amount of interest by the appellant from his pocket and then to realize the same on proportionate basis from his predecessors in office is required to be modified to read as under:-

The erring officials, who have delayed the retiral benefits, shall pay the amount of interest for the period each one of them has delayed the payment of retiral benefits. If any of the officers fails to pay the said amount, the State Government shall recover the amount from the salary or the pension payable in accordance with law after serving a show notice. The amount, so realized, shall be disbursed to the writ applicant as and when the amount is realized by the State Government.

The Letters Patent Appeal stands disposed of accordingly.

Re. : Interlocutory Application No.5181 of 2015

The Interlocutory application has become infructuous since the main Letters Patent Appeal stands disposed of.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

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Transmission Date	