

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.768 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 23044 of 2011

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1. The State of Bihar through the Principal Secretary, Minor Irrigation Department, Govt. of Bihar, Patna
 2. The Principal Secretary, Minor Irrigation Department, Govt. of Bihar, Patna
 3. The Additional Secretary, Minor Irrigation Department, Govt. of Bihar, Patna
 4. The Chief Engineer, Minor Irrigation Department, Bihar, Patna
 5. The Chief Engineer, Minor Irrigation Department, Muzaffarpur.
 6. The Director, General Provident Fund, Pant Bhawan, Bailey Road, Patna.
 7. The Districts Provident Fund Officer, Muzaffarpur

.... Appellant/s

Versus

1. Parmeshwar Nath Mishra, Son of Late Devidyal Mishra, Resident of Village + P.O.- Sonbarsa, P.S.- Charpokhari, District Bhojpur.
2. The Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Subhash Chandra Mishra, S.C. 16
Mr. Pramod Kumar Singh, A.C. to S.C. 16

For the Respondent/s : Mr.

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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: 02-08-2016

Re.:I.A. No. 3161 of 2015

The application is for condonation of delay of 1 year 67 days in filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory Application, we are satisfied that the appellants have shown sufficient cause to seek condonation of delay of 1 year 67 days in filing the present Letters Patent Appeal.

3. Consequently, Interlocutory Application No. 3161 of 2015 is allowed and delay of 1 year 67 days in filing the Letters Patent Appeal is condoned.

Re.: L.P.A. No. 768 of 2015

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 6th of August, 2013 in C.W.J.C. No. 23044 of 2011, whereby the writ application has been allowed and the present appellants were directed to examine the claim of payment of retiral benefits to the writ applicant.

3. The writ applicant was appointed on 12th of November, 1973 as Accounts Clerk. He attained the age of superannuation on 31st of December, 2010. The claim in the writ application was for the payment of the retiral benefits.

4. The stand of the writ applicant was that the writ applicant was a mental patient and did not perform any duty from the year 2005 till the date of his superannuation but since no departmental proceedings were initiated before the superannuation of the writ applicant, therefore, the writ applicant is entitled to the retrial benefits.

5. The learned Single Bench found that since no proceedings were initiated for his continuous absence from 1997 to 2010 of the writ applicant, therefore, the said period is to be counted for the purposes of qualifying service. Liberty was given to the appellants to adjust absence period against the Earned Leave and also that he will not be entitled to any salary for the period of absence.

6. We have heard learned counsel for the appellants and find no error in the order passed by the learned Single Bench.

7. For long absence of the writ applicant, the appellants have failed to initiate any action during the period of absence or even after retirement. Once no disciplinary proceedings have been initiated against an employee for absence, the retrial benefits cannot be declined for the reason that he was absent from duty for long period. The direction of the learned Single Bench to hold that the writ applicant will not be entitled to salary and will not be entitled to Earned Leave is fair and reasonable.

8. We, therefore, dispose of the present Letters Patent

Appeal with a direction that the period of absence from July 1997 to December, 2010 will be regularized by grant of leave of the kind due to the writ applicant.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P.K.P./Anand
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