

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.798 of 2015

Along with

Interlocutory Application No. 3357 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 9297 of 2013

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Asha Devi w/o Late Dev Narayan Paswan R/o Village- Matiyari, P.S.- Forbesganj,
District- Araria

.... Appellant/s

Versus

1. The State of Bihar through the District Magistrate, Araria.
2. The District Magistrate, Araria
3. The Sub- Divisional officer, Forbesganj, Araria.
4. The Block Development Officer, Forbesganj, Araria.
5. The Superintendent of Police, Araria.
6. The S.H.O., Forbesganj Police Station Araria.

.... Respondent/s

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Appearance :

For the Appellant	:	Mr. Mrigank Mauli with Mr. Sanjay Kumar Sharma with Mr. Prince Kumar Mishra, Advocates
For the State	:	Mr. Binod Kumar, AC to GP 10

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 03-08-2016

Heard learned counsel for the parties.

Re.: Interlocutory Application No. 3357 of 2015

2. The Interlocutory Application has been filed seeking condonation of 16 days delay in filing of the Letters Patent Appeal.

3. Upon hearing learned counsel for the parties and considering the averments made in the Interlocutory Application, we find that sufficient cause has been shown for delay in filing of the appeal. Consequently, the delay in filing of the Letters Patent

Appeal is condoned.

4. Interlocutory Application No. 3357 of 2015 stands disposed off.

Re.: Letters Patent Appeal No. 798 of 2015

5. The present intra court appeal under Clause X of the Letters Patent of Patna High Court has been filed against the order dated 2nd December, 2014 passed by the learned Single Bench by which C.W.J.C. No. 9297 of 2013 filed by the appellant has been dismissed.

6. The appellant is the wife of late Dev Narayan Paswan, who was Chowkidar in Circle No. 4/2 under Forbesganj Police Station in the district of Araria. He is asserted to have attained the status of government servant with effect from 01.01.1990, as per the policy of the State Government. He died on 07.08.1996. The appellant claims to have applied for compassionate appointment in the year 2000 but her request was turned down in the meeting convened for the said purpose on the ground that her husband was placed under suspension in the year 1989 and after following due procedure, he was removed from service in 1989 itself. It is further the stand that her husband never became a government servant. Thus, the Superintendent of Police, Araria communicating such position on 2.07.2002. The appellant was informed of such decision on 24.09.2002. The same was once again

communicated to her on 01.11.2012.

7. The appellant being aggrieved by the said decision moved before this Court in C.W.J.C. No. 9297 of 2013. The writ application was dismissed on 02.12.2014. It is said order which has given rise to the present Letters Patent Appeal.

8. Learned counsel for the appellant submits that her husband was in employment, though under suspension, when he died. He became a government servant and with effect from 01.01.1990. He submits that the appellant was diligently pursuing the matter and had applied within time for compassionate appointment and being an illiterate widow, she kept waiting for positive response from the respondents. It is submitted that the name of the appellant's husband finds mention in the cashbook in the Circle Office, Forbesganj and, thus, the stand of the respondents that he was dismissed in 1989 is not correct. He submits that for the first time the appellant was conveyed the rejection of her claim for compassionate appointment in the year 2012 as the earlier orders were never communicated to her and, thus, soon after communication in the year 2012, she had approached the Court. Therefore, her claim for appointment cannot be said to be suffering from delay and laches.

9. Learned counsel for the respondents submits that the stand of the authorities is consistent right from the year 2000



with regard to the husband of the appellant being suspended and thereafter discharged in the year 1989. The said stand was reiterated in the year 2002 as well as 2012. It is submitted that the plea of ignorance by the appellant of approaching the Court after more than 16 years of the cause of action having arisen is too long a period to justify any appointment on compassionate ground for the reason that such appointment is a special mode of appointment with the specific object of providing immediate relief to the dependant family members of the deceased who may be in financial distress. In the present case, such a situation does not seem to be prevailing. It is further submitted that the appellant's husband, though admittedly being suspended in the year 1989, did not approach the authorities or the Court for any relief during his life time for a period of 7 years. Such fact is indicative of the fact that he was no more in employment.

10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, we do not find any merit in the present appeal. The husband of the appellant admittedly at the time of his suspension was engaged on contractual/honorarium basis and was not in government service. It is also an admitted position that such suspension was never revoked. Moreover, there has been no evidence produced on behalf of the appellant to show that her late husband got any

payment/remuneration in the capacity of a Chowkidar as regular employee since his suspension in the year 1989; rather the relevant copies of the cashbook for the period 1989-90 of the Circle Officer, from where the payment was made to the Chowkidars, clearly indicates that no payment was made to the late husband of the appellant. Therefore, there being no cogent and reliable material to show that the late husband of the appellant was in service on 01.01.1990. This is coupled with the fact that the appellant has invoked the writ jurisdiction after over 16 years of the cause of action having arisen. Therefore, we do find any infirmity in the order of the authorities denying appointment on compassionate ground to the appellant, and the writ petition has rightly been dismissed by the learned Single Bench.

11. Accordingly, the Letters Patent Appeal, being devoid of merit, stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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