

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 1846 of 2012

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Saraswati Devi W/O Chhabila Singh R/O Vill-Sohani Patti, P.S.-Buxar, Town And District-Buxar

.... Appellant/s

Versus

1. The State Of Bihar Through The Commissioner-Cum-Secretary, Department Of Agriculture, Government Of Bihar, New Secretariat Building , Patna
2. The Cane Commissioner , Government Of Bihar, New Secretariat Building , Patna
3. The Assistant Director, Cane Development , Samastipur
4. The Deputy Director (Seed Analysis) Directorate Of Agriculture, New Secretariat Building , Patna
5. The Agriculture Officer, Intensive Sugar Cane Development Scheme, Hassanpur Samastipur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Sanjay Kumar Verma, Advocate

For the Respondent/s : Mr Anil Kumar Sinha, GA 9 with
Mr Pawan Kumar, AC to GA 9

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 29-02-2016

The present Letters Patent Appeal is directed against the order passed by the learned Single Judge on 22nd of July 2011 whereby writ petition, claiming retrial benefits on account of service of her husband, remained unsuccessful.

As per appellant, her husband went missing in the year, 1986 but she came to know an order of punishment having been passed after she filed writ petition before this Court being CWJC



No. 6076 of 2007 claiming retiral dues of her husband. As per the facts on record, an order of dismissal was passed on 19th of March, 1990 and that said order was communicated on the address which finds mention in the present writ application. Learned Single Judge has drawn a presumption that the official acts have been duly and regularly performed and that the order has been duly communicated to her husband.

Learned counsel for the appellant vehemently argued that the appellant was never informed of the order of dismissal passed on 19th of March, 1990. The order of dismissal, after her husband went missing in the year, 1986 is not tenable in law. Therefore, she claims retiral dues from the date when she filed earlier writ petition.

We do not find any merit in the argument raised. Her husband went missing in the year 1986. Therefore, the presumption of his death could not be raised before the expiry of seven years in terms of Section 108 of Evidence Act, 1872. The appellant claims retiral dues from the date her husband went missing in the year 1986. But the cause of action would arise soon after the presumption of death could be raised i.e. after 7 years in the year 1993 but the first writ petition was filed in the year 2007.

The present writ application has rightly been

dismissed on account of delay and laches. We do not find any error in the order of the learned Single Judge. The Letters Patent Appeal is dismissed.

(Hemant Gupta, J)

(Navaniti Prasad Singh, J)

Rajiv/MEH

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