

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.891 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 12914 of 2013
Arising out of
Interlocutory Application No.3755 of 2015

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1. Bhojpur Zila Parisad at Ara through its Chief Executive Officer.
 2. The Dy. Development Commissioner cum Chief Executive Officer, Bhojpur Zila Parisad, Ara.
 3. The Chairman, Bhojpur Zila Parisad, Ara.
- Respondents-Appellants
- Versus
1. Ram Kripal Bhagat, son of Late Mangru Bhagat, Resident of Village & P.O.- Parev, P.S.- Bihta, Distt- Patna.
- Petitioner-Respondent 1st Set.
2. The State of Bihar through the Chief Secretary, Govt. of Bihar.
 3. The Secretary, Panchayat Raj Department, Govt. of Bihar.
 4. The Director, Panchayat Raj Department, Govt. of Bihar.
- Respondents –Respondents 2nd Set.
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Appearance :

For the Appellants : Mr. Nikesh Kumar, Advocate

For the Respondents-State : Mr. Md. Irshad, A. C. to S.C.-1

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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: 12-08-2016

Re.: Interlocutory Application No.3755 of 2015

The application is for condonation of delay of 54 days in filing of the present Letters Patent Appeal.

2. For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters

Patent Appeal.

3. Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.891 of 2015

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 12th of January, 2015 whereby, the order of punishment of dismissal was set aside. The order of dismissal was on account of the second marriage of the writ petitioner-respondent no.1 herein which he solemnized 36 years before the departmental proceedings were initiated against him on a complaint made by the first wife.

2. The learned Single Bench found the punishment to be totally disproportionate and harsh in view of the fact that the allegations have been made after long lapse of time, therefore, the matter was remanded back to the Chief Executive Officer who was directed to pass an order considering the nature of misconduct committed by the writ petitioner and also in what manner, the first wife can be compensated.

3. Learned counsel for the appellants refers to an order passed by the Hon'ble Supreme Court in Khursheed Ahmad Khan Versus State of U. P. & Ors. (2015) 8 SCC 439 to contend that solemnizing the second marriage during the life time of first wife is a misconduct for which action can be taken against the employee

irrespective of his religious faith.

4. The said judgment has no applicability to the facts of the present case. In the aforesaid case, the proceedings were initiated against the employee soon after the employee solemnized second marriage in the year 2005. In the present case, the complaint was made after 36 years of marriage. It is also admitted by the learned counsel for the appellants that respondent no.1 has since retired. Therefore, the order of dismissal for misconduct in terms of the Conduct Rule, which has taken place 36 years back, has rightly been found to be harsh punishment.

5. In view of the said fact, we do not find any merit in the present Letters Patent Appeal. The same is, therefore, dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

AFR/NAFR	
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