

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.838 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 14824 of 2013

Along with

Interlocutory Application No.3571 of 2015

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1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar, New Secretariat, Patna.
 2. The Director, Higher Education, Human Resources Development Department, Government of Bihar, New Secretariat, Patna.

.... Respondents- Appellant/s

Versus

1. Shamima Akhtar, wife of Late Md. Shamsul Haque Moti @ Md. Shamsul Haque, R/o Village - Fatehpur, P.S.- Sabour, District - Bhagalpur.
2. The T.M. Bhagalpur University, Bhagalpur, through its Registrar.
3. The Vice Chancellor, T.M. Bhagalpur University, Bhagalpur.
4. The Pro Vice Chancellor, T.M. Bhagalpur University, Bhagalpur.
5. The Financial Adviser, T.M. Bhagalpur University, Bhagalpur.
6. The Finance Officer, T.M. Bhagalpur University, Bhagalpur.
7. The Principal, Sabour College Sabour, District - Bhagalpur.
8. The State Govt., Auditor T.M. Bhagalpur University, Bhagalpur.

.... Respondents- Respondent/s

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Appearance :

For the Appellant/s : Mr. Sita Ram Yadav, G. P.-16
Mr. Manoj Kumar, A.C. to G.P.-16

For the Respondent/s :

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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: 23-09-2016

Re.: Interlocutory Application No.3571 of 2015

The application is for condonation of delay of 68 days in filing of the present Letters Patent Appeal.

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.

Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.838 of 2015

The order dated 8th of January, 2015 passed by the learned Single Bench of this Court is subject matter of challenge in the present Letters Patent Appeal. Vide the said order; the learned Single Bench held that the writ applicant is entitled to get death-cum-retiral dues as her husband died while in service of Sabour College, Sabour, Bagalpur, under Tilka Manjhi Bhagalpur University.

As per facts on record, the husband of the writ applicant joined on 22nd December, 1982 as Accounts Clerk. Subsequently, Tilka Manjhi Bhagalpur University took control over the said college in the year 1986. The issue of absorption of the employees was settled by the Hon'ble Supreme court in a judgment reported as (2005) 9 SCC 129 (State of Bihar & others Vs. Bihar Rajya M. S. E. S. K. K.M. & others), but after the death of the deceased, the husband of the writ applicant, on 5th June, 2012, the retiral benefits were not paid to her, which led to her to file writ application before this Court.

Learned counsel appearing for the University before the Writ Court stated that the record of absorption could not be located by

the University. Therefore, the claim of the writ applicant for the retiral benefits cannot be examined. However, the learned Single Bench ordered the payment of retiral benefits in view of the fact that the deceased was drawing regular salary from the University, at least, since February, 2005.

Before this Court, learned counsel for the appellant vehemently argued that in the absence of best evidence, i.e. the record of absorption, the husband of the writ applicant cannot be treated to be a regular employee and thus, not entitled to retiral benefits.

We find such an argument is untenable. As per the writ applicant, her husband was appointed on 22nd December, 1982 and after the decision of the Supreme court in Bihar Rajya M. S. E.. S. K. K.M. & others's case (supra) , the employees of the private institutions were absorbed. Still further, the deceased husband was getting regular salary continuously from February, 2005. In view of such facts, the burden of proof shifted to the appellants to rebut the factum of absorption of the husband of the writ applicant, but no evidence was produced. Therefore, the finding recorded by the learned Single Bench holding that the writ applicant is entitled to retiral benefits cannot be said to illegal in any manner.

The present Letters Patent Appeal is, therefore,
dismissed.



Sunil/-

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

AFR/NAFR	N. A. F. R.
CAV DATE	N. A.
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