

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.839 of 2015

Along with

Interlocutory Application No. 3560 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 19135 of 2013

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1. The State of Bihar through the Commissioner-cum-Secretary to Govt. Public Health & Engineering Department, Bisheshwaraiya Bhawan, Bailey Raod, Patna.
 2. The Chief Engineer (Mechanical), Public Health & Engineering Department, Bisheshwaraiya Bhawan, Bailey Raod, Patna.
 3. the Suprintending Engineer, Public Health & Engineering Circle, Patna.
 4. the Executive Engineer, Public Health Division, Hilsa, District- Nalanda.

.... Appellant/s

Versus

1. Asha Devi Wife of Late Virendra Paswan, resident of village- Amera, P.O.- Bhathar, P.S- Tharthari, District- Nalanda.
2. The Accountant General, Bihar, Birchand Patel Marg, Patna.

.... Respondent/s

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Appearance :

For the Appellants : Mr. Madhav Prasad Yadav, GP 23 with
Mr. Rajesh Kumar Sinha, AC to GP 23

For the Respondents :

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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: 09-08-2016

Re.: Interlocutory Application No. 3560 of 2015

The application is for condonation of delay of 201 days
in filing of the appeal.

For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, the delay of 201 days in filing of the appeal is condoned.

Interlocutory Application stands disposed off.

Re.: Letters Patent Appeal No. 839 of 2015

The order dated 15.07.2014 is the subject matter of challenge in the present Letters Patent Appeal. By the aforesaid order, this Court directed the decision to be taken by the present appellants within three months from the date of receipt of a copy of this order in respect of payment of family pension from 14th July, 1981 in light of a Division Bench judgment in the case of **State of Bihar & Others vs. Sheela Devi & Others** reported as **2013 (4) PLJR 552**.

One Virendra Paswan, husband of the respondent no. 1, (For short the 'applicant') was a Daily Wager under the Public Health Engineering Department, Government of Bihar. At one stage, he was taken to the Work Charge Establishment in the regular pay scale, but then the decision was undone.

In a writ petition filed by him bearing CWJC No. 486 of 2003, there was a direction to constitute a three-member committee and consider the claim of all such persons for regularization/absorption. In terms of the said direction, the State



Government decided to absorb Virendra Paswan on 28th November, 2006 but before an order could be served, Virendra Paswan died on 19th November, 2006. It is the said unfortunate death which led the State to resist the claim of the applicant for family pension for the reason that Virendra Paswan was not regularized during his life time, therefore, his wife is not entitled to family pension.

There is no dispute about the facts. Admittedly, Virendra Paswan was working as a Daily Wager since 14th July, 1981. In pursuance of a direction issued in the year 2003, the claim of the deceased has been considered and an order of regularization passed but unfortunately, before that date he passed away.

Though, technically the State may be correct in asserting that since the service of Virendra Paswan was not regularized during his life, therefore, after his death, the wife will not be entitled to family pension but the fact remains that Virendra Paswan was asserting his right of absorption for which he filed writ petition in the year 2003. In view of the order passed in the said writ petition, the order of absorption was passed. Since the order of absorption was passed in consequent to an order passed in the writ petition, we find that there is no such glaring lack of jurisdiction which may disentitle the applicant from the benefits of family pension as the rights of the deceased crystallized earlier.

In view thereof, we do not find any merit in the present Letters Patent Appeal and is, accordingly, dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P. Kumar/Anjani

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A