

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.589 of 2011

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Sharda Devi wife of Rajendra Prasad, resident of village-Purana Bhojpur, P.S.
Dumraon, District-Buxar

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Social Welfare Department, Bihar, Patna
2. Commissioner, Patna Division, Patna
3. Director, Integrated Child Development Services, Social Welfare Department, Bihar, Pant Bhawan, Bailey Road, Patna
4. Special Officer, I.C.D.S. Directorate, Social Welfare Department, Bihar, Pant Bhawan, Bailey Road, Patna
5. District Magistrate, Buxar
6. District Welfare Officer, Buxar
7. Child Development Project Officer, Dumraon, Buxar

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Harshvardhan Shivsundaram, Advocate
Mr. Anil Kumar Singh, Advocate

For the State : Mr. Himanshu Kumar Akela, A.C. to PAAG-2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 30-08-2016

Heard Mr. Harshvardhan Shivsundaram, learned counsel for the petitioner and Mr. Himanshu Kumar Akela, Assisting Counsel to PAAG-2.

With the consent of the parties, the writ petition is being disposed of at the stage of admission itself.

The petitioner is aggrieved by the order dated 10.8.2010 passed by the Commissioner, Patna Division, Patna in Miscellaneous Appeal No. 54 of 2010 whereby the appeal has been dismissed on grounds that it was filed beyond the period of 30 days stipulated in the



order of this Court passed in CWJC No. 12428 of 2008 and is not accompanied with an application for condonation of delay. The order passed by this Court on the writ petition filed by the petitioner bearing CWJC No. 12428 of 2008 is annexed at Annexure-8 to the writ petition and the operative portion of the order runs as under:

“ If the petitioner files any such application within a period of 30 days, let the same be considered and disposed off by a reasoned and speaking order within a maximum period of four months from the date of receipt / production of a copy of this order without going into issues of limitation.”

The petitioner obtained the certified copy of the order on 23.2.2010 and the appeal was filed on 25.3.2010 before the Commissioner. According to the Commissioner, it was filed beyond the period of 30 days and since it is not accompanied with a petition for condonation of delay that he has proceeded to dismiss the appeal.

I have heard learned counsel for the parties and I have perused the records. The opinion recorded by the Commissioner in the order impugned is not correct. Even when the Commissioner has taken note of the fact that the certified copy of the order was granted to the petitioner only on 23.2.2010 yet he has committed an error of record in calculating the period of 30 days thereafter. No doubt the appeal was filed on the 30th of the day but it was within the period so

granted by this Court in the order passed in CWJC No. 12428 of 2010 and thus there was no necessity to file any condonation application since its requirement had already been waived of by this Court in the order passed on the writ petition. In my opinion, it is a mistake in calculating the period of 30 days which has resulted in the impugned order.

For the reasons so discussed, the order dated 10.8.2010 passed by the Commissioner, Patna Division, Patna cannot be upheld and is accordingly set aside. The Miscellaneous Appeal No. 54 of 2010 stands restored to its file. The matter is remitted back to the petitioner for the consideration of the appeal on its merit and its disposal in accordance with the direction passed by this Court in CWJC No. 12428 of 2010. The petitioner would appear before the Commissioner, Patna Division, Patna, along with the copy of this order on or before 09th of September, 2016 when he shall proceed to dispose of the matter in terms of the directions of this Court stipulated in the order passed in CWJC No. 12428 of 2010 and within the period so prescribed thereunder.

The writ petition is allowed.

(Jyoti Saran, J)

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