IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.643 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 12327 of 2006
Along with
Interlocutory Application No.2795 of 2015

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1. The State of Bihar.
2. The Secretary, Personnel and Administrative Reforms Department, Bihar, Patna.
3. The Deputy Secretary, Personnel and Administrative Reforms Department, Bihar, Patna.
4. The Commissioner-cum-Secretary, Finance Commercial Taxes Department, Bihar, Patna.

.... Respondents-Appellant/s

Versus

Chandeshwar Prasad, son of Sri Hriday Prasad, resident of village-Khrka Telwa, P.O. Nauhatta, P.S.-Nauhatta, District-Saharsa, at present resident of Gazetted Flat No.12/12, Lal Bahadur Shastri Nagar, P.O. & P.S.-Shastrinagar, District-Patna at present working on the post of Under Secretary in the Building Construction Department, Bihar, Patna.

.... Petitioner- Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar Mandal, S.C.-24
Mr. Bipin Kumar, A.C. to S.C.-24

For the Respondent/s : None

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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: 15-07-2016

Re.: Interlocutory Application No.2795 of 2015

The application is for condonation of delay of 1 year 69 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.643 of 2015

The order dated 4th September, 2013 is subject matter of challenge in the present Letters Patent Appeal. The learned Single Bench has allowed the writ petition holding that the punishment of stoppage of one annual increment with cumulative effect is a major punishment.

2. We find that the present appeal is wholly misconceived, untenable and filed for the sake of it.

3. Learned counsel for the appellant argued that Rule 14 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 were amended on 20th of August, 2007 which alone clarified that withholding of increments of pay with cumulative effect will be a major penalty. It is argued that the Court has failed to notice this amendment; therefore, the punishment imposed prior to amendment does not require any interference.

4. We find that the counsel is not well informed. The Hon’ble Supreme Court way back in the case of Kulwant Singh Gill Vs. State of Punjab, 1991 Suppl (1) SCC 504 has held that withholding of increments with cumulative effect is a major penalty. The Hon’ble Supreme Court was examining the *pari materia* Rule as was in

existence prior to amendment of 20th of August, 2007. Thus the argument of the learned Counsel for the appellant does not require any consideration.

5. If the officers of the State decide to file an appeal in the teeth of the Supreme Court's order, we feel that the officer, who has taken a decision to file this Letters Patent Appeal, must be burdened with cost to file this frivolous appeal.

6. Consequently, the Letters Patent Appeal is dismissed with costs of Rs. 5,000/- (Rupees five thousand) to the Bihar State Legal Services Authority within one month. The State shall in turn recover the cost from the officer, who has decided to file an appeal.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

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