

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.487 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 15561 of 2015
Along with
Interlocutory Application No.2095 of 2016**

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Dr. Husne Ara Begam, wife of Late M. Wahajuddin, resident of Islam Nagar, P.S.-
Araria, District- Araria.

.... Petitioner- Appellant/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Joint Secretary, Health, Government of Bihar, Patna.
4. The Director-in-Chief, Health Services, Government of Bihar, Patna.

.... Respondents-Respondent/s

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Appearance :

For the Appellant/s : Mr. Shabbir Ahmad, Advocate
Mr. Anil Kumar Saxena, Advocate

For the Respondent/s : Mr. Vikas Kumar, A.C. to A.G.

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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: 10-08-2016

Re.: Interlocutory Application No.2095 of 2016

The application is for condonation of delay of 20 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.487 of 2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 13th of January, 2016 whereby, the transfer of the appellant from Purnea to Patna was not interfered with.

2. The learned Single Bench has found that the appellant is posted at the same place for the last 30 years and, that she has been transferred to Headquarters where her wide and deep experience and seniority can be utilized. The Court did not find any reason to interfere with the order of transfer.

3. A perusal of the writ petition shows that on 24th of August, 2015, two separate transfer orders were issued; one in respect of six doctors, including the present appellant; and another in respect of nine doctors. Admittedly, the appellant is posted at Purnea for the last 30 years; may be in different positions, but the fact remains that she has not been out of Purnea for the last 30 years. Therefore, the transfer at this stage where experience and seniority can be utilized at the Headquarters cannot be said to be suffering from any patent illegality.

4. The argument of learned counsel for the appellant is that the transfer is actuated by *mala fide* as one Clerk Md. Mumtaz Alam, who was transferred, but on the recommendation made by the

Secretary to the Minister of Health, Bihar, his transfer was cancelled. It is contended that the appellant made a complaint against the said Clerk, but instead of transferring him, the appellant has been transferred.

5. We do not find any merit in the said argument. The cancellation of transfer of a Clerk has no connection with the transfer of the appellant, who is a senior doctor and whose services have been desired in the Headquarters. It is in the administrative exigency, the transfer has been affected. Though the appellant alleges *mala fide* against Md. Mumtaz Alam or the Secretary to the Health Minister, but none of them has been impleaded as party. No inference of *mala fide* can be derived from the averments made in the writ petition. The transfer of the appellant is in the administrative exigency which does not call for any interference in the present Letters Patent Appeal. The same is, therefore, dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

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