

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.466 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 5450 of 2010
Along with
Interlocutory Application No.2116 of 2015

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1. Dhananjay Kumar Mishra, son of Sri Buddhdeo Mishra, resident of Village Patsa, P.S. Hasanpur, District- Samastipur.
 2. Prabhash Kumar Rai, son of late Yugehwar Rai, resident of Village- Pachiyari Tola Tabhka, P.O. Pandit Tola Tabhaka, P.S. Bibhutipur, District- Samastipur.
 3. Ranjeet Kumar Choudhary son of Late Dev Narayan Choudhary, resident of Village- Garh Sisai, P.S. Suaira, P.S. Vidyapati Nagar, District- Samastipur.

.... Petitioners-Appellants

Versus

1. The State of Bihar through Principal Secretary, Human Resource Development Department, Government of Bihar, Patna.
2. The Principal Secretary, Human Resource Development Department, Government of Bihar, Patna.
3. The District Magistrate, Samastipur.
4. The District Education Officer, Samastipur.
5. The District Superintendent of Education, Samastipur.

... ... Respondents-Respondents.

6. Sanjeeta Kumari @ Sangeeta Kumari, daughter of Sri Ram Balak Choudhary, resident of Village - Chakdaulat, P.S. Ujiarpur, District- Samastipur.

.... Petitioner-Performa Respondent

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Appearance :

For the Appellants : Mr. Jitendra Kumar Roy, Advocate

For the Respondents No.1 to 5 : Mr. Kinkar Kumar, S.C. 27
Mr. Sushant Praveer, A.C. to S.C.-27

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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: 19-05-2016

Re.: Interlocutory Application No.2116 of 2015

The application is for condonation of delay of 105 days in filing of the present appeal.

2. For the reasons mentioned in the application, we find that sufficient cause is shown by the appellant to condone such delay. Consequently, the delay in filing of the present Letters Patent Appeal is condoned.

3. Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.466 of 2015

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 14th October, 2014 in C.W.J.C. No.5450 of 2010, whereby the claim of the appellants for grant of regular pay scale of Rs.3050-4590/- as admissible to an employee holding Class-III post was declined.

2. The appellants were the applicants for appointment on compassionate grounds. Their names were recommended by the District Compassionate Appointment Committee. However, none could be appointed because there was no post available. The appellants filed a writ application before this Court such as C.W.J.C. No.2225 of 2007. This Court passed an order on 01.04.2011. The relevant extract of the said order read thus:

“That being so, when the learned Senior Counsel for the petitioners has stated before this Court that the petitioners have no object and are ready to accept the appointment on the post of *Prakhand Shikshak*/Panchayat Shikshak, this Court would direct the respondents to do the needful by considering the case of the petitioner nos. 2 to 12 and take a final decision with regard to their compassionate appointment within a period of six months from the date of receipt/production of a copy of this order.”

3. During the pendency of the writ petition, the appellants were appointed as *Prakhand* Teacher. One of the appointment letters dated 18.11.2008, attached as Annexure-2 to the writ application, clearly stipulates that the appellant shall be paid fixed amount of Rs.4,000/- per month.

4. It is thereafter, the appellants filed the writ application leading to the present Letters Patent Appeal claiming regular pay scale. Such claim has been declined for the reason that the appellants were appointed under Bihar Panchayat Elementary Teachers (Appointment & Service Conditions) Rules, 2006 (hereinafter referred to as ‘Rules’) which contemplates only the payment of fixed salary.

5. Learned counsel for the appellants relies upon a Supreme Court order in Civil Appeal No.5090 of 2013 (*Vishwanath Pandey Versus State of Bihar & Others*) decided on 02.07.2013 wherein the Court has directed to pay regular pay scale to a teacher, who was appointed as *Prakhand* teacher under Rules.

6. We do not find any merit in the present Letters Patent



Appeal. The appellants were not appointed against Class III post under the State Government because no post was available for the appellants. No candidate can be appointed if there is no post, which is pre condition for any appointment. In view of the fact that certain posts were available for *Prakhand* teachers in the schools being run by the local bodies governed by the Rules, the appellants were appointed in the year 2008, even when the earlier writ petition filed by the petitioner was pending.

7. Such writ application was disposed of when the counsel for the appellants stated before the Court that they are ready to accept the appointment on the post of *Prakhand* teacher. In fact, they were already appointed. The appellants did not dispute the grant of fixed salary in such writ petition. Once the appellants have accepted the appointment, they are estopped to claim regular pay scale as they were not appointed under the State Government but under the Panchayat where there is only fixed salary contemplated under the Rules. Still further, if the appellants were aggrieved against the fixed salary, they should have raised such objection in the earlier writ application filed by them. Once the appointment is accepted in the earlier round of litigation, the appellants cannot be permitted to dispute their appointment on fixed salary after decision in the second round of litigation.

8. The order referred to by learned Counsel for the appellants is of no help as the appellants in that case were not before the

Court and their claim for regular pay scale could not be raised in an earlier round of litigation.

9. We find that the Letters Patent Appeal is, in fact, misuse of the process of the Court. Consequently, the same is dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

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