

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.889 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 3727 of 2009**

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Sanjay Sharma, Resident of Village- Ahiai, P.S.- Rajapakar, District- Vaishali.

.... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat.
2. The Secretary-cum-Commissioner of Fishery Department, Government of Bihar, Patna.
3. The Joint Director of Fishery Department, Government of Bihar, Patna.
4. The District Fishery Officer, Motihari.
5. The Chief Executive Officer, Fishery Department Office, Bettiah.
6. The District Magistrate, Motihari.
7. The Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bipin Kumar, Advocate.

For the Respondent/s : Mr. Bindhyachal Rai, Advocate.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 10-11-2016

Re.:I.A. No. 3366 of 2016

The application is for condonation of delay of 1 year 119 days in filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory Application, we are satisfied that the appellant has shown sufficient cause to seek condonation of delay of 1 year 119 days in filing the present Letters Patent Appeal.

3. Consequently, Interlocutory Application No. 3366 of 2016 is allowed and delay of 1 year 119 days in filing the Letters

Patent Appeal is condoned.

Re.: L.P.A. No. 889 of 2016

The order dated 3rd of November, 2014 passed by the learned Single Bench of this Court in C.W.J.C. No. 3727 of 2009 is subject matter of challenge in the present Letters Patent Appeal.

2. The appellant is the son of the deceased Sachida Nand Sharma, an employee of the State, who died on 29th of November, 2013 after filing of the present writ application.

3. The deceased was appointed as Clerk in the year 1965 and was transferred on 2nd of September, 1982 to the office of the Chief Executive Officer, Fishery Development Department, Bettiah. The deceased employee did not comply with the transfer order and continuously abstained from duty. In the meantime, he attained the age of superannuation in the year 1997. It is thereafter, in the year 2009, the present writ application was filed for release of retiral benefits which has since been dismissed by the learned Single Bench.

4. The argument of learned counsel for the appellant is that no action was taken by the department after he abstained from duty which absence from duty was said to be on account of his eye problem, which ultimately led to his blindness. Thus, the deceased employee is entitled to the retiral benefits having served the State for 18 years before he abstained from duty.

5. We have heard learned counsel for the parties and find no merit in the present Letters Patent Appeal.

6. The learned counsel for the appellant relies upon a Division Bench judgment of this Court reported as Sobhana Das Gupta Vs. The State of Bihar & Another, 1974 (7) PLJR 382 to contend that on account of absence from duty, the deceased employee cannot be denied retrial benefits.

7. The deceased employee abstained from duty in the year 1982 and attained the age of superannuation in the year 1997 but the appellant filed the writ application in the year 2009. It is not the case that any punitive action has been taken by the department on account of absence from duty without conducting any regular inquiry but a case of abandonment of service by the appellant since the year 1982. He remained absent for 15 years before he attained the age of superannuation in the year 1997. The employee has not invoked the jurisdiction of this Court for almost 12 years after attaining the age of superannuation. It is the deceased employee who by his conduct has abandoned the service. Therefore, legal heirs cannot claim any retiral benefits only for the reason that the order of punishment was not passed by the department during the life time of the employee.

8. The judgment referred deals with a situation, where on account of absence from duty, an order of termination was passed but

without conducting any enquiry. Such is not the situation in the present case. The employee abstained from duty for 15 years before, attaining the age of superannuation and later waited for 12 years to initiate any action for the redressal of his grievances.

9. In view thereof, we do not find any merit in the present Letters Patent Appeal. The same is dismissed.

(Hemant Gupta, ACJ)

(Ahsanuddin Amanullah, J)

P.K.P.

AFR/NAFR	A.F.R.
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