

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.889 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 6871 of 2014
Along with
Interlocutory Application No.3767 of 2015

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1. Navin Kumar, son of Sri Raghupati Lal, resident of village- Balat, P.S.- Rahika, District- Madhubani.
 2. Ram Vinay Kumar, son of Sri Nakchandi Singh, resident of village- Parasurampur, P.S- Paliganj, District- Patna.

.... Petitioners-Appellants

Versus

1. The State of Bihar.
 2. The Principal Secretary, Cabinet Secretariat Department, Bihar, Patna.
 3. The Deputy Secretary, Cabinet Secretariat Department, Bihar, Patna.
- ... Respondents... Respondents 1st Set.
4. Jitendra Kumar Sinha, son of Sri Rabindra Nath Sinha, resident of village & P.O.- Rahui, District- Nalanda.
 5. Vijay Kumar Lal Das, son of Late Ganpati Lal Das, resident of village- Balat, P.S.- Rahika, District- Madhubani.
 6. Pramod Kumar Prasad, son of Late Chandrasekhar Prasad, resident of village- Mai, P.O. & P.S.- Hilsa, District- Nalanda.

.... Respondents –Respondents 2nd Set.

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Appearance :

For the Appellants : Mr. Dilip Kumar Tewari, Advocate

For the Respondents-State : Mr. Tripurari Nath Ambastha, A.C. to S.C.-26

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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: 12-08-2016

Re.: Interlocutory Application No.3767 of 2015

The application is for condonation of delay of 9 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.889 of 2015

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 5th of January, 2015 whereby the writ application filed by the appellants were dismissed.

2. The appellants were engaged as casual workers in the year 1989 without following the procedure prescribed by law. Their services were terminated on 31st of August, 1996.

3. The appellants challenged the termination by preferring CWJC No.9579 of 1996 which was dismissed. Letters Patent Appeal No.100 of 1998 was also preferred which was dismissed on 1st of April, 1998. Special Leave to Appeal (C) No.11979 of 1998 was preferred which was dismissed by the Hon'ble Supreme Court on 10th of August, 1998 when the following order was passed:-

“We have heard Sri K. B. Sinha, the learned senior counsel appearing for the petitioners and we have perused the impugned judgment of the High Court as well as the record. In our opinion, no case is made out for interference with the impugned judgment by this Court. The special leave petition is, therefore, dismissed. But in case any appointments are being made against any vacancies, the petitioners can apply and if they so apply, the matter of age may not be treated as a disqualification for considering their applications.”

4. The grievance of the appellants is that the posts are lying vacant in the Department, but no step was being taken by the Department to make appointment. The relevant plea raised in the writ petition read as under:-

“20. That thereafter although the sanctioned posts in the Department were lying vacant, however, no step was taken by the respondents for several years to make appointments on those vacant posts and as such the petitioners who had worked in the Department for more than 240 days, could not be able to apply for their appointment in the Department.

28. That from aforesaid facts it is crystal clear that although the posts were lying vacant in the Department, however, as no step was taken by the Department to make appointment on those vacant posts so the petitioner could not be able to apply for their appointment in the light of the aforesaid order of the Hon’ble Supreme Court.”

5. We find that mere fact that there exist vacancies will not confer any right on the appellants to seek appointment. When the liberty is granted that in case, any appointments are being made against any vacancies, the appellants can apply, it means that there has to be a public advertisement and in the said public advertisement, the appellants can apply and will be considered. The age was not to be treated as disqualification. Such order was passed in the year 1998, but there is no process of appointment undertaken. The appellants, thus, cannot claim any right of consideration when the State Government has not decided to fill up the vacant posts.

6. We do not find any merit in the present Letters Patent Appeal. The same is, therefore, dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

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