

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.285 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 4120 of 2006

Along with

Interlocutory Application No. 1300 of 2014

- =====
1. The State of Bihar
 2. The Inspector General of Prison, Home (Prison) Department), Govt. of Bihar, Patna
 3. The Director, Administration (Prison), Govt. of Bihar, Patna
 4. The Superintendent, Special Central Jail, Bhagalpur
 5. The Superintendent, Sub-Jail, Banka

.... Appellant/s

Versus

Chhabi Chandra Das, S/O Late Kartik Das, Resident Of Village- Barhauna, P.S. Barahat, District- Banka

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Anjani Kumar, AAG 6
Mr. Sanjay Prasad, AC to AAG 6
For the Respondent/s : Mr. Satish Chandra Mishra, Advocate.
Md. Nurul Hoda, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 28-06-2016

Re.: Interlocutory Application No. 1300 of 2014

The application is for condonation of delay of one year and seventy days in filing of the appeal.

For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, the delay of one year and seventy days in filing of the appeal is condoned.

Interlocutory Application stands disposed of.

Re.: Letters Patent Appeal No. 285 of 2014:

The State has preferred the present Letters Patent Appeal aggrieved against the order passed by the learned single Bench of this Court on 29.06.2012, whereby the appellants were directed to accept the rejoining of the writ applicant on the post of Dresser, but, it was held that, he will not be entitled for any remuneration for the period he was out of service.

The fact, out of which, the present appeal arises, is that the writ applicant was appointed as Dresser in the Sub Jail, Banka. The initial appointment was for six months, but he continued from time to time till 30.10.2004 when his services and many others were terminated.

Two separate writ applications were filed which were decided on 02.11.2005. One by the Trade Union, of which the writ applicant was a member, in which the orders of termination dated 30.10.2004 was also impugned. The writ application was allowed setting aside the orders of termination and directing the respondent no. 3 therein to take a fresh decision on the issue of regularization and absorption of the petitioners in accordance with Government communication dated 14.08.1997.

Pursuant to the said order, since the order of regularization was not passed, a writ application, being CWJC No.

15186 of 2004, was filed by some of the similarly situated employees. The writ application was disposed of on 29.06.2005 directing the writ petitioners to be reinstated and absorbed. But no benefit was given to the writ applicant as he was not party to the said writ application.

Learned Single Bench found that the order of termination against that writ applicant has been set aside by this Court on 02.11.2005 and subsequently, similarly situated employees have been ordered to be reinstated, but the same benefit has not been granted to the writ applicant, therefore, to maintain parity, the writ application was allowed.

We do not find any error in the order passed by the Learned Single Bench. The order of termination of all the employees was set aside by the Learned Single Bench on 2.11.2005. Subsequently, benefit has been conferred to those writ applicants who chose to file CWJC No. 15186 of 2004. The writ applicant was not the writ petitioner like along with other similarly situated employees, therefore, benefit did not accrue to him. Hence, he filed subsequent writ application, which has been allowed by the order impugned in the present appeal.

Since, the similarly situated employees have been treated in a particular manner of having been reinstated and absorbed in service and, therefore, the writ applicant cannot be treated

differently. To maintain parity and in view of earlier order passed, the order of the Learned Single Bench cannot be said to be suffered from any illegality. The appeal is thus dismissed.

However, it is clarified that the writ applicant will not be entitled for any remuneration from the date of his termination i.e., 30.10.2004 till the date of decision of the learned single Bench i.e., 29.06.2012. He shall be paid wages from the said date.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

U			
---	--	--	--