IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1615 of 2016

IN

Civil Writ Jurisdiction Case No. 17455 of 2013

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1. Sita Ram Yadav S/o Late Sudam Yadav Orderly Peon at District Probation Office, P.O. Camp Jail Campus, P.S. Tilkamanjhi, District - Bhagalpur.

.... Appellant/s

Versus

1. The Union of India through Secretary, Ministry of Law, Justice and Company Affairs (Legislative Department), 4th Floor, A - Wing, Shastri Bhawan, New Delhi - 110001.
2. Election Commission of India, Nirvachan Sada, Ashoka Road, New Delhi - 110001.
3. The State of Bihar, through the Principal Secretary, Department of Election, Government of Bihar, Patna.
4. The Director General Prison, Govt. of Bihar, Patna.
5. Election Commission of Bihar, Department of Election, Govt. of Bihar, 7, Sardar Patel Marg, Patna.
6. The Chief Election Commissioner, Department of Election, Govt. of Bihar, 7, Sardar Patel Marg, Patna.
7. The Deputy Chief Election Commissioner, Bihar, Department of Election, Govt. of Bihar, 7, Sardar Patel Marg, (Mangles Road), Patna.
8. District Election Officer-Cum-District Magistrate, Bhagalpur.
9. Chief Probation Officer (Home) Prison Department, District Probation Office, District - Bhagalpur.
10. The Chief Medical Officer-Cum-Civil Surgeon, District - Bhagalpur.
11. The Prof. and Head, Department of Physical Medicine and Rehabilitation (PM & R) Patna Medical College Hospital, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Purushottam Kumar Jha
Mr. Avanindra Kr. Jha, Advocates

For the UOI : Mr. S.D.Sanjay, ASG
Mrs. Kanak Verma, CGC

For the Election Commi.: Mr. Siddhartha Prasad, Advocate

For the State : Mr. Mahtab Alam, AC to SC 20

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 07-08-2017

Delay in filing the Letters Patent Appeal is condoned.

Limitation Petition (I.A. No. 6549 of 2016) stands

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disposed of.

Seeking exception to an order dated 18.5.2016 passed by the Writ Court in CWJC No. 17455 of 2013 this appeal has been filed under Clause 10 of the Letters Patent.

The appellant was on election duty and while performing the duty suffered an accident and consequently it was his case that he was entitled to ex-gratia payment in accordance with the circular of the Finance Department dated 1.4.2009. The appellant was subjected to medical examination to find out the percentage of disability as the scheme in question contemplated a provision that in case of death or permanent disability when the disability exceeds 40% certain ex-gratia would be granted. The appellant was subjected to medical examination by the concerned Medical Board and after medical examination in one of the certificates it was found that his medical disability is 40% and in another certificate there was overwriting and cancellation, the disability indicated as 25% was cancelled and made 40%. This gave cause to doubt in the mind of the competent authority and therefore the competent authority directed medical examination of the appellant by the Head of the Department, Physical Medicine & Rehabilitation (PM & R), Patna Medical College, Patna and the appellant without any objection, as directed by the competent

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authority, appeared before this authority for medical examination where he was subjected to medical examination by the Head of the Department, Physical Medicine & Rehabilitation, Patna Medical College, who gave his opinion certificate dated 19.11.2013 indicating the percentage of disability as 30% to 35%.The report submitted by the Head of the Department reads as under:

> "Examination of right lower limb:
>
> (a) Post traumatic stiffness in Right Foot with Hallux Valgus and painful MP/IP joints of all lesser toes due to overcrowding/clawing.
>
> (b) there is no as such calf wasting.
>
> (c) Assumes inverted foot during stance phase, avoiding toe off.
>
> (d) X-Ray exam of right ankle and foot dated 18.11.2013 showed no signs of fracture (fracture healed) with normal talocrual and subtalar joint.
>
> (e) Non healed infected uncer over sold of foot corresponding with Head of 1st Metatarsal Bone.
>
> Impression: The uncer is causing difficulty in walking right now. But it would heal under proper management/care if kept under supervision of Surgeon and by using protective devices.
>
> Disability Percent: Between 30% to 35% (Between thirty percent to thirty five percent)
>
> Permanent."

When on the basis of this certificate ex-gratia was

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denied to the appellant, the appellant filed the writ petition in question and the Writ Court after evaluating various aspects of the matter found that the action of the respondents is in accordance with law and it needs no interference. The appellant did not object when he was subjected to medical examination by the Head of the Department. He submitted himself for medical examination and in the absence of any material regarding the mala fide manner of the medical examination by the Head of the Department, the learned Writ Court dismissed the writ petition. However, without interfering into the matter following observations have been made:

> "When the order was dictated, it is submitted by Mr. Jha that the petitioner would, at his own cost, get another certificate with regard to his disability from the recognized research Medical Institute and apply afresh. He may do so in accordance with law. The writ application is devoid of merit. Dismissed."

Before us the only question canvassed was that once in the circular in question dated 1.4.2009, it is stipulated that the certificate has to be issued by the Medical Board and when the certificate issued by the Medical Board indicates that the percentage of disability is 40%, the circular being binding on the Department, there was no necessity or requirement for referring the matter for further medical examination and the action taken for

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referring the matter for further medical examination is an act contrary to the circular dated 1.4.2009 and therefore the same certificate cannot be given effect.

We are unable to appreciate the aforesaid contention. First of all the notification dated 1.4.2009 is in the form of guidelines in the matter of payment of compensation or ex-gratia to persons who suffer accident or die in the course of performance of election duty. It is neither statutory rule nor a statutory regulation binding on the Department.

In the facts and circumstances of the case, when the case of the appellant was being examined, two certificates came on record both issued by the same Board and there was discrepancy in the certificates. After taking note of the discrepancy, a reasonable decision was taken by the competent authority to refer the matter to an independent authority to ascertain the ratio of disability by the Head of the Department, Physical Medicine & Rehabilitation (PM & R), Patna Medical College, Patna and based on the report of such an authority, impugned action was taken. We see no reason to make indulgence into the matter, until and unless contrary material to show that the impugned decision taken on the basis of certificate issued by the Head of the Department, Physical Medicine & Rehabilitation indicated lack of bona fide or uncalled for reason as

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may be specified, on the contrary we find that the medical certificate issued by the Board simply says that on examination they found that there is appropriate percentage of disability. However in the detailed report submitted by the Head of the Department, Physical Medicine & Rehabilitation as is reproduced hereinabove there are scientific reasons indicated for assessment of the disability. That being so, if the authorities have taken decision on bona fide consideration based on the opinion of the Head of the Department of PMCH finding 30-35% disability, we find the aforesaid reason to be reasonably meeting the requirement of law and no error in the order passed by the writ court warranting reconsideration. Accordingly, we dismiss the appeal.

The option given in the last part of the order of the writ court is still available to the appellant to be availed in accordance with law.

(Rajendra Menon, CJ)

S.Pandey/- **(Anil Kumar Upadhyay, J)**

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.08.2017
Transmission Date	

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