

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.631 of 2016

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Vijay Kumar Mishra, S/o Late Ashok Kumar Mishra, resident of Village and P.O.-
Hitalpur, Police Station-Hajipur, District-Vaishali.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Road Construction Department, Government of Bihar,
Patna.
3. The Engineer-in-Chief-cum-Special Secretary, Road Construction Department,
Government of Bihar, Patna.
4. The Chief Engineer, National Highway, Road Construction Department,
Government of Bihar, Patna.
5. The Superintending Engineer, National Highway, Works Circle Road
Construction Department, Government of Bihar, Patna.
6. The Executive Engineer, National Highway Division, Gulzarbagh, Patna.
7. The District Level Compassionate Committee, Patna through its Chairman-
cum-District Magistrate, Patna.
8. The District Magistrate, Patna, District-Patna.
9. The Deputy Collector, Establishment, Patna Collectorate, Patna.

.... Respondents-Respondent/s

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Appearance :

For the Appellant/s : Mr. S. K. Agrawal, Advocate
Mr. Shanti Pratap, Advocate
Mr. Arvind Kumar Verma, Advocate
For the Respondent/s : Mr. S. S. P. Yadav, S. C. 14

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 18-07-2017

Seeking exception to an order dated 10.03.2016 passed by
the Writ Court in Civil Writ Jurisdiction Case No.6250 of 2014; this
appeal has been filed by the petitioner under Clause 10 of the Letters
Patent.

Petitioner Vijay Kumar Mishra is the son of late Ashok
Kumar Mishra, who was working in the Road Construction Department,



and died in harness in the year 1989. When compassionate appointment was not granted to him, he approached this Court in the writ petition in question in the year 2014 and the writ petition having been dismissed on the ground of delay in approaching the Court, this appeal has been filed under Clause 10 of the Letters Patent.

However, learned counsel for the petitioner pointed out that while dismissing the writ petition on the ground of delay, the learned Writ Court lost sight of various factual aspects of the matter which go to show that there was no delay in filing of the writ petition. He invites our attention to say that initially when father of the petitioner expired in the year 1989, the petitioner was a minor and, therefore, his mother Smt. Indu Devi submitted representation claiming compassionate appointment and retiral benefits in the year 1997 and when these were not granted to her, she approached this Court initially by filing a writ petition being CWJC No.523 of 2009. The said writ petition was dismissed for want of prosecution on 17.05.2011 and thereafter Miscellaneous Jurisdiction Case being MJC No.3241 of 2011 was filed for restoration. This was also dismissed on 13.10.2011. Thereafter, based on the liberty granted, the second writ petition was filed being CWJC No.20118 of 2011 which was disposed of on 31.01.2013 directing the respondents to consider the claim and take a decision. In pursuance to the same, the claim was considered and vide



Annexure-C dated 20th of May, 2013, the Superintending Engineer recommended for grant of compassionate appointment either to the petitioner's mother Indu Devi or the petitioner in an appropriate post and it was directed that the matter be placed before the District Level Compassionate Appointment Committee. When nothing was done, the present writ petition was filed which, accordingly, was dismissed on the ground of delay.

Learned counsel for the appellant emphasizing on the aforesaid facts argued that the learned Writ Court did not take these factual aspects, particularly recommendations made vide Annexure-C on 20th of May, 2013 after orders were passed on 31.01.2013 in CWJC No.20118 of 2011 and ignoring these facts as the writ petition has been dismissed, there is an error apparent on the face of record and patent illegality.

Even though, learned counsel for the respondents by referring to the counter affidavit tried to refute the aforesaid contentions, but we find that the facts as narrated above are correct and in fact after the orders were passed on 31.01.2013 in CWJC No.20118 of 2011, Vide Annexure-C on 20th May, 2013, a recommendation was made and when this recommendation was not acted upon for a period of about one year, the petitioner filed the writ petition in question being CWJC No.6250 of 2014 before this Court on 21st March, 2014 and by ignoring all these



factual aspects which have bearing on the issue in question, the learned Writ Court has committed an error in dismissing the writ petition. There is no delay as canvassed by the learned Writ Court, on the contrary the issue was alive and when on 20th of May, 2013, the Superintending Engineer had directed for placing the matter before the District Compassionate Appointment Committee, the question of delay does not arise and in all fairness and to do justice, the matter should have been referred to the District Level Compassionate Appointment Committee to take a decision on the recommendation made by the Superintending Engineer on 20th May, 2013 as indicated hereinabove. This having not been done, we find that the learned Writ Court has committed an error in dismissing the writ petition on the ground of delay.

Accordingly, we allow the appeal and set aside the order dated 10.03.2016 passed by the learned Writ Court in Civil Writ Jurisdiction Case No.6250 of 2014 and pass the following order:

On petitioner's filing a certified copy of the order along with relevant materials before the Superintending Engineer, respondent No.5, who has passed the order Annexure-C dated 20th May, 2013, the Superintending Engineer shall place the matter before the District Level Compassionate Appointment Committee and ensure that a decision is taken by the said Committee within three months from the date of receipt of a certified copy of the order.



With the aforesaid, the appeal stands allowed and disposed
of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.07.2017
Transmission Date	

