

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1435 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 22270 of 2011**

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1. Dilip Kumar Mehta, Son of Dharamdeo Mehta, at Panighatta, P.O.- Baltar, P.S.- Azamnagar, District- Katihar.
 2. Pankaj Kumar, Son of Sri Yogendra Yadav, Resident of Fatehpur, P.O.- Fatehpur, P.S.- Bihariganj, District- Madhepura.
 3. Sanjay Kumar Singh, Son of Sri Sudama Prasad Singh, Resident of village- Lakhanpur, P.O.- Rajapatti Kothi, P.S.- Mashrak, District- Chapra (Saran).

.... Petitioners-Appellants

Versus

1. The Union of India through the Director General National Aids Control Organization (NACO), Ministry of Health and Family Welfare, Government of India, New Delhi.
2. The Director General, National Aids Control Organization (NACO), Ministry of Health and Family Welfare Govt. of India, New Delhi.
3. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
4. The Bihar State Aids Control Society, State Health and Family Planning Sansthan, Sheikhpura, Patna through its Deputy Director (ICTC).
5. The Deputy Director, Bihar State Aids Control Society, State Health and Family Planning Sansthan, Shiekhpora, Patna.
6. The Additional Project Director, Bihar State Aids Control Society, State Health and Family Planning Sansthan, Shiekhpora, Patna.
7. The Project Director, Bihar State Aids Control Society, State Health and Family Planning Sansthan, Sheikhpura, Patna.

Respondents-Respondents

8. Md. Jawed Anwar, son of Mushtaque Ahmad, Resident of village + P.O.- Mahuawa, P.S.- Piprahi, District- Sheohar.
9. Prem Prakash Mehta, Son of Shankar Prasad, Resident of Goshala Road, P.O.- sonali, P.S.- Kadawa, District- Katihar.
10. Anil Kumar, Son of Sri Ambika Singh, Resident of village- Kapharpur, P.O.- Berka, P.S.- Makhdumpur, District- Jehanabad.
11. Rishi Kumar Mandal, son of Shree Jagannath Mandal, Resident of village- Bansara, P.O.- Pachadhi, Via- Rayam, District- Darbhanga.
12. Binod Kumar Roy, Son of Sri Maheshwar Prasad Roy, Resident of village- Raghapur Hat, P.O.- Raghapur, Via- Kharik, District- Bhagalpur.
13. Sudha Sandhya, D/o Late Dr. Manoranjan Jha, Resident of Mohalla Ward No. 13, Gangjala, Saharsa, P.S.+District- Saharsa.
14. Khurshiduzzaman, Son of Badruzzaman, Resident of Mohalla- Kali Bagh, Bettiah, District- West Champaran.
15. Ajajul Haque, Son of Anamul Haque, Resident of Mohalla- Bahadurpur, New Water Tank, Ward No.26, P.O.+P.S.+District- Samastipur
16. Rajesh Kumar Sharma, Son of Jay Prakash Sharma, Resident of Dheria Naya Tola, Ward No.43 Near Ram Das School, P.O.- Daheria Jutemiles, P.S.+District- Katihar.
17. Raj Ranjan Ravi, Son of Narayan Prasad, Resident of Chaudanda, P.O.- Kanp, P.S.- Sour Bazar, District- Saharsa.



18. Manju Kumari Sinha, Wife of Shri Umesh Prasad, At+P.O.- Beshwak, P.S.- Islampur, District- Nalanda.

.... Petitioners-Respondents

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Appearance:

For the Appellant/s : Mr. Awadhesh Kumar Mishra, Advocate.
Mr. Ajay Kumar, Advocate.
Mr. Manoj Prabhakar, Advocate.
Mrs. Sandhya Sharma, Advocate.
For the Respondent/s : Mr. U.S.S.Singh, GP-19.
Dr. Shobha Choubey, AC to GP-19.
For AIDS Control Society: Mr. Sanjiv Kumar, Advocate.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 12-01-2017

Re.: I.A. No. 6335 of 2015

This application is for condonation of delay of 1016 days in filing the Letters Patent Appeal.

For the reasons mentioned in the Interlocutory application, we are satisfied that the appellants have shown sufficient cause to seek condonation of delay in filing the present Letters Patent Appeal.

Consequently, Interlocutory Application is allowed and delay in filing the Letters Patent Appeal is condoned.

Re.: L.P.A. No. 1435 of 2015

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 25.04.2012 whereby, the writ application claiming extension of service beyond 31.07.2011



remained unsuccessful.

2. The appellants were appointed on contract basis as counsellor and laboratory technician in the year 2006. The services of the appellants were extended from time to time and the last extension in service expired on 31.07.2011. The appellants assert that other similarly situated contractual employees were granted extension but the appellants were not conferred such benefit, therefore, action of the respondents is arbitrary and discriminatory.

3. Learned Single Bench dismissed the writ application, inter alia, on the ground that in exercise of power of judicial review, the Court will not evaluate or make assessment about the utility and utilization of the service of the appellant in the manner in which they have been appointed by the respondents. It was found that if services of some of the employees are extended, it does not mean that services of other contractual employees are to be extended.

4. Learned counsel for the appellants refers to a Division Bench Judgment of this Court in L.P.A. No. 1150 of 2013 (The State of Bihar & Ors. Vs. Vimal Prakash & Ors.) decided on 12.01.2015 whereby, the appeal preferred by the State of Bihar against the order passed by the learned Single Bench on 15.07.2013 in CWJC No. 3919 of 2013 was dismissed. The said writ application is on behalf of the persons whose contract was extended. The



Division Bench, inter alia, observed that if the State intends to appoint the technicians in the same vacancies, against which, the writ applicants were appointed, it is totally impermissible for them. It is for the reason that one set of contractual employees cannot be substituted with another set of contractual employees.

5. It is not the case of the appellants in the writ application that another set of contractual employees are being appointed. Even in absence of such stand, we find that one set of contractual employees cannot be substituted with another set of contractual employees. Therefore, we dismiss the present Letters Patent Appeal but with an observation that if contractual appointments are to be made, the persons who were initially appointed on contract basis will be preferred in order to their seniority.

(Hemant Gupta, ACJ)

(Dinesh Kumar Singh, J)

Mishra

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	16.01.2017
Transmission Date	

