

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.707 of 2015
IN
Civil Writ Jurisdiction Case No. 20558 of 2013**

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Tusar Kant Sinha, son of Sri Mukund Murari Sinha, MIG-69, Housing Barari Colony, Post Office and Police Station- Barari, Bhagalpur, presently posted as Block Education Officer, Phulidomar, Banka & Ors

.... Appellant/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jitendra Kumar Roy, Advocate
Mr. Nikki Singh, Advocate

For the Respondent/s : Mr. K.K. Singh, AC to GP-22
Mr. Dilip Kumar Tiwary, Advocate

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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 of 97 days in filing the appeal is condoned. I.A.

No.2795 of 2015 is allowed and disposed of.

Seeking exception to an order dated 21.10.2014 passed by the learned Writ Court in C.W.J.C. No.20558 of 2013, this appeal has been filed under Clause 10 of the Letters Patent.

The order passed by the learned Writ Court only directs that the representation of the private respondent Satyendra Mochi shall be decided. The order passed by the learned Writ Court is



innocuous in nature and the first impression is caused as to why such an order should be assailed in an appeal.

When the aforesaid queries were made, learned counsel for the appellant pointed out that earlier the matter had come to this Court at the instance of the petitioners and other identically situated persons in C.W.J.C. No.4357 of 2007 wherein a detailed order dated 10.5.2007 was issued deciding the matter and even the L.P.A. arising out of the same has been dismissed.

As the representation, if now decided, would be adversely affecting the right of the appellant and the rights which had accrued to him by virtue of the earlier order, an order deciding the representation could not be passed.

However, learned counsel for the respondent, original petitioner Satyendra Mochi, invited our attention to the order dated 10.5.2007 passed in C.W.J.C. No.4257/07, certain directions issued therein and tried to make out a case that as the appellant did not pass the requisite training course/examination within the stipulated period in the policy decision taken by the State Government for absorption, the order passed in the writ petition shall not come in the way and the representation will have to be decided. The counsel for the respondent



may be right in so contending, but on going through the averments in the connected writ petition, i.e. C.W.J.C. No.2058 of 2013, we find that nowhere in the writ petition an averment is made to say that in the earlier round of litigation, orders as indicated hereinabove were passed and without considering the orders and without taking action as required in pursuance to the order when a representation is filed, the same is not to be decided. The case put forth before us does not seem to be the case as we see on going through the order passed in the original writ petition on account of the fact that the petitioner in the original writ petition, C.W.J.C. No.20558 of 2013 has not pleaded relevant facts and has not brought on record materials which were necessary for deciding the writ petition, we are of the considered view the directions issued for deciding the representation, without taking note of all these factors, cannot be considered a good ground to decide.

The appeal should be and is allowed, the order passed by the learned Writ Court dismissed with liberty to the original petitioner in C.W.J.C. No.20558 of 2013 to file a separate writ petition, if advised, after bringing to the notice of the Court all relevant facts, including filing of the earlier writ petition 4257/2007, the directions



issued therein and the requirement which was to be fulfilled by the appellant in pursuance of the said direction and the fact about the order being upheld in an L.P.A.

Wit the aforesaid liberty to the original petitioner we allow this appeal and dispose of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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