

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.785 of 2016

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1. Indra Narayan Chaudhary S/o Late Kalikant Chaudhary, Resident of village-
Raje (Goth), P.S.- Manigachhi, District- Darbhanga

.... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Health, Government of Bihar, Patna
3. The Director-in- Chief, Department of Health, Government of Bihar, Patna.
4. The Civil Surgeon, Madhubani
5. The District Malaria Officer, Madhubani
6. The Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bimal Kumar Jha, Advocate

For the Respondent/s : Mr. Ramadhar Singh, GP-25

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 19-06-2017

Delay in filing of the appeal is condoned for the simple reason that after the orders were passed by the learned Writ Court on 30th of July, 2013, the petitioner had filed Civil Review No.397 of 2013 which was finally rejected on 28.3.2016 and within a period of one month, on 18.4.2016 this Letters Patent Appeal was filed. There being reasonable justification for the delay in filing the Letters Patent Appeal, the application for condonation is allowed. Delay in filing of the appeal is condoned.

Heard on the question of admission.



Seeking exception to an order dated 30.7.2013 passed by the learned Writ Court in C.W.J.C. No.10020 of 2013, this appeal has been filed under Clause 10 of the Letters Patent.

Petitioner was proceeded against departmentally and pending a preliminary enquiry into the matter, he was denied salary. Finally he was suspended and a departmental enquiry was conducted against him. The Director-in-Chief, Health Services, passed an order on 16.11.2012 exonerating him. No punishment was imposed and his suspension period was also regularized by treating it as period spent on duty. In the criminal prosecution initiated against the petitioner also, the petitioner was honourably acquitted. However, after all this, action was taken and orders were passed in November, 2012. When salary for the period from 1.10.1986 to 13.11.1989 and subsistence allowance from 1.12.1989 to 29.11.1995 was not granted to the petitioner, the petitioner filed the writ petition on 9.5.2013 claiming payment of unpaid salary for the period 1.10.1986 to 13.11.1989 and the unpaid subsistence allowance from 1.12.1989 to 29.11.1995.

By the impugned order passed on 30th of July, 2013, the learned Writ Court directed for payment of full salary after deducting the subsistence allowance for the period from 1.12.1989 to 29.11.1995. With regard to unpaid salary for the period 1.10.1986 to 13.11.1989, it was held that claim for salary after a period of 24 to 20



years cannot be permitted and rejected this part of the claim.

In our considered view, in doing so, the learned Writ Court completely misdirected itself and committed a grave error in doing so. Admittedly, in the year 1996, with effect from 1.10.1986 salary was not paid to the petitioner as a preliminary enquiry was pending against him and thereafter, it seems that, he was suspended on 2.9.1987 and finally exonerated on 16.11.2012 when the period of suspension was regularized. That being so, once the petitioner was exonerated of all the charges levelled against him, both in the departmental enquiry and in the criminal case, and on 16.11.2012, when the Director-in-Chief, Health Services, regularized the period of suspension, a cause of action accrued to the petitioner for claiming salary which was not paid between the period 1.10.1986 to 13.11.1989 due to initiation of the preliminary enquiry at the first instance, thereafter followed by a regular departmental enquiry and suspension thereafter. A continuous cause of action which admittedly accrued on 16.11.2012 and therefore the cause for claiming for unpaid salary for the period 1.10.1986 to 13.11.1989 crystallized when the period of suspension was regularized on 16.11.2012 and if immediately within a reasonable period if the writ petition was filed, it was not appropriate to dismiss the same.

The petitioner was facing the departmental proceeding



which had culminated in 2012 and as the salary for the period 1.10.1986 to 13.11.1989 was not paid to the petitioner due to suspension, we are of the considered view, there is no question of delay in claiming the unpaid salary as the petitioner immediately after the period of suspension was regularized claimed salary by filing the writ petition within a reasonable period. The learned Writ Court, in our considered view, has committed grave error in rejecting the claim for payment of unpaid salary on account of delay of more than 24 years when, in fact, there was no delay on the part of the petitioner in claiming the salary as the right accrued only after he was exonerated of the departmental proceedings and the criminal case and finally when his suspension was regularized on 16.11.2012 and if within a reasonable period thereof the petitioner has claimed the salary, the same could not have been rejected on account of delay. Once the petitioner was absolved of the charges and was acquitted in the criminal case, we see no reason to deny salary to the petitioner. Accordingly, this appeal is allowed. The order dated 30th of July, 2013 passed by the learned Writ Court in C.W.J.C. No.10020 of 2013, as far as it rejects the claim of the petitioner for payment of salary for this period stands quashed. The writ petition stands allowed and the respondents are directed to pay salary to the petitioner for the period 1.10.1986 to 13.11.1989 within a period of



three months from the date of receipt/production of a copy of this order.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.jha/-

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