

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1507 of 2013**

**IN**

**Civil Writ Jurisdiction Case No. 17654 of 2010**

- =====
1. The State Of Bihar Through The Secretary Cum Commissioner, Department Of Health, Bihar, Patna
  2. The Deputy Director, Department Of Health, Bihar, Patna
  3. The Joint Secretary, Department Of Health, Bihar, Patna
  4. The Additional Secretary, Department Of Health, Bihar, Patna
  5. The Regional Deputy Director, Department Of Health, Darbhanga Division, Darbhanga
  6. The Chief Medical Officer Cum Civil Surgeon, District - Madhubani
  7. The Medical Officer Incharge, Primary Health Centre, Pandaul, District - Madhubani

.... .... Appellants

Versus

Dr. Noorul Honda Ansari @ Dr. Noorul Honda Ansari, Son of Late Mobi Bullah Ansari, Resident of Village Khiri, P.S. Rajpur, District - Buxar

.... .... Respondent

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**Appearance :**

For the Appellants : Mr. Anil Kr. Sinha, GA-1  
Ms. Aditi Hanserio, AC to GA-1  
For the Respondent : Mr. Md. Anisur Rahman, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

**and**

**HONOURABLE JUSTICE SMT. NILU AGRAWAL**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)**

**Date: 01-03-2017**

There is delay of 192 days in filing the appeal, for which a condonation application, namely, I.A. No. 8355 of 2013 has been filed.

For the reasons indicated in the limitation petition, the delay is condoned. I.A. No. 8355 of 2013 is allowed. Matter is taken up on the merits.



A limited submission has been made on behalf of the counsel representing the State that in view of the Division Bench decision rendered in the case of ***Shri Mahabir Prasad Vs. The State of Bihar and others*** reported in ***1988 PLJR 82***, the learned Single Judge was right in quashing that part of the order of punishment wherein a decision was taken not to pay any salary for the period of suspension, except the subsistence allowance was quashed, but the learned Single Judge having allowed the application should have also remanded the matter back to the authorities for compliance with Rule 97 (3) and (5) of the Bihar Service Code in terms of the Division Bench decision. In that case after quashing the matter, the matter was remitted back.

Learned counsel for the sole respondent submits that the respondent retired in the year 2011, and, therefore, it will be inequitable to refer the matter back to the authorities for show cause and inquiry.

There is a significant period under which the private respondent was under suspension i.e. between 31.05.2001 to 03.05.2005 since there is allegation that he was in private practice even during the duty hours, which led to suspension and departmental inquiry culminating into punishment order. Suspension to that extent would not have made any difference to the private respondent



because his earning would not have been affected in any manner, in fact, he must have spent all the time available with him during that period to make money by indulging in private practice. The Court is inclined to modify the order dated 25.09.2012 and remand the matter back to the concerned authorities for issuance of a show cause for taking a final decision with regard to withholding of salary for the period of suspension after following due procedure under Rule 97(3) and (5) of the Bihar Service Code .

The appeal is allowed with a direction upon the authorities that on production of a copy of the order passed today by the private respondent before the competent authority, the matter will be concluded preferably within a period of four months from the date of production of a copy of the order since the private respondent is a retiree of the year 2011.

**(Ajay Kumar Tripathi, J)**

**(Nilu Agrawal, J)**

Rajesh/-

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