

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2081 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 4769 of 2015**

=====

Ashutosh Kumar Karn, aged about 25 years, S/o Purnendu Kumar Karn, Resident of Mohalla - K.C. Ghosh Lane, Bumkali, Jogsar, Bhuranath, District - Bhagalpur.

.... Appellant/s

Versus

1. Tilka Manjhi Bhagalpur University, Bhagalpur through Vice Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur.
2. Vice Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur.
3. Pro Vice Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur.
4. Head of Department (Statistics and Computer Application), Tilka Manjhi Bhagalpur University, Bhagalpur.
5. Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur.
6. Controller of Examination, Tilka Manjhi Bhagalpur University, Bhagalpur.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Siddhartha Prasad, Advocate

For the Respondent/s : Mr. Rajendra Kumar Giri, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 21-03-2017

Re.:I.A. No. 9173 of 2015

The application is for condonation of delay of 10 days in filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory Application, we are satisfied that the appellant has shown sufficient cause to seek condonation of delay in filing the Letters Patent Appeal.

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



Re.: L.P.A. No. 2081 of 2015

Seeking exception to an order passed by the learned Writ Court on 09.07.2015 in C.W.J.C. No. 4769 of 2015 appellant has filed this appeal under Clause 10 of the Letters Patent.

2. Even the learned Writ Court has refused to interfere in the matter only on account of the fact that in the absence of any rule, law or regulation providing for reevaluation of an answer-book, the extraordinary power available under Article 226 of the Constitution of India cannot be exercised.

3. The aforesaid findings recorded by the learned Writ Court is correct. However, there is an exception to the aforesaid rule i.e. in a given case materials are available on record to demonstrate *prima facie* that evaluation of the answer-sheet has not been done in accordance with the requirement of law i.e. the answer-book has been evaluated negligently, callously and there is unreasonableness in evaluation of the answer-book and if by cogent evidence and materials adduced the appellant is able to demonstrate before a Writ Court that such arbitrary and unreasonable evaluation of answer-book has been undertaken then in a given case as an exception reevaluation can be ordered.

4. Even if the aforesaid exception principle is applied in the present case, we find that after the appellant obtained the answer-



book under Right to Information Act and submitted a representation to the University, the Vice Chancellor of the University got the answer-book examined by the second examiner and thereafter marks have been awarded based on the report submitted by the second examiner. Now, appellant points out errors and difficulties in the examination conducted by the second examiner. Once the second examiner, an expert in the subject, has evaluated the answer-book and has given marks to the appellant, this Court cannot sit as if it is acting as an Appellate Authority over the decision of the expert, the second examiner. Accordingly, once the answer-book has been evaluated by the second examiner, in the absence of there being specific mala fide alleged and established against the examiner, no indulgence can be made in the matter.

5. Accordingly, finding no ground, the Letters Patent Appeal stands dismissed.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	23.03.2017
Transmission Date	

