

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1027 of 2017

In

Civil Writ Jurisdiction Case No. 4649 of 2017

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Krishna Ballabh Prasad Sinha

.... Appellant/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : M/S S.K. Jha & Raushan Kumar Mishra, Advs.

For the Respondent/s : Mr. Jitendra Kumar, AC to AAG XIV

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR

UPADHYAY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

4 29-01-2018

Having heard the learned counsel for the parties, we

find that the writ petition, C.W.J.C. No. 4649 of 2011, filed by the petitioner-appellant was dismissed on 23.05.2017 during the summer vacation.

The dismissal was on merit on two counts that the petitioner-appellant has challenged the punishment order, dated 22.01.2003, after a period of more than eight years in the year 2011, after his superannuation on 30th June, 2007, and there is no explanation to the delay.

As far as the delay in filing of the writ petition is concerned, even though the petitioner-appellant, in the writ petition, C.W.J.C. No. 4649 of 2011, had challenged Memo No.



262, dated 22.01.2003, imposing the punishment upon him, but, during the pendency of the writ petition amendment application was filed, being I.A. No. 284 of 2013 and by an order passed on 21.01,2013 this interlocutory application was allowed, petitioner-appellant was directed to amend the writ petition and challenge the appellate order passed on 13.12.2006. Even though the appellate order, dated 13.12.2006, is issued much before the original writ petition was filed on 10.03.2011, but, in I.A. No. 6147 of 2015 the petitioner-appellant even made a categorical statement that the order of the appellate authority was never served upon him and only the appellate order came when the counter affidavit was filed and in the copy of the writ petition also he makes a statement that after the impugned order of punishment was issued on 22.01.2003 he had filed the writ petition and till filing of the writ petition on 10.03.2011 he has not served with an order deciding by the appellate authority, that being the position all the factual position have been lost and without considering this issue the writ petition has been dismissed on merit. That apart when the matter was listed during summer vacation, only interim order could have been passed. The writ petition could not be dismissed on the ground of delay which amounts to dismissal on merit.

Accordingly, considering all these aspects, we are of



the considered view that the matter warrants reconsideration. Accordingly, we allow the Letters Patent Appeal, quash the order, dated 23.05.2007, passed in C.W.J.C. No. 4649 of 2011 and restore it to its original file and request the learned writ Court to decide the petition afresh in accordance with law.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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