

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1510 of 2017

In
Civil Writ Jurisdiction Case No.733 of 2011

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1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
 2. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
 3. The Commissioner-cum-Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
 4. The Deputy Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
 5. The Principal Secretary, Finance Department, Government of Bihar, Patna.

... .. Respondents/Appellants

Versus

Yogendra Dubey, S/o Late Ram Lal Dubey, Resident of Mohalla Vivek Vihar,
Road No. 4, Hanuman Nagar, P.S. Patrakar Nagar, District – Patna.

... .. Respondent

Appearance :

For the Appellant/s : Mr. Satya Prakash (AC to SC 22)
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

5 27-11-2018

Re.: I.A. No. 7759 of 2017

Interlocutory Application No. 7759/2017 is filed for condonation of delay of one year 289 days in filing this intra-court appeal which arises from the judgment and order dated 02.12.2015 passed by learned Single Judge in CWJC No. 733/2011, whereby the writ petition has been allowed and a direction has been given to the respondent authorities who are appellants before this court to make payment of the emoluments to which petitioner was found entitled from the period he was



waiting for posting i.e. 24.02.1997 to 19.02.1999.

Mr. Satya Prakash, learned A.C. to S.C.22 appears to press the condonation application and prays for condonation of delay of one year 289 days *inter alia* on the ground that the writ court has granted such relief to the writ petitioner to which he was not entitled, inasmuch as he never served on the post for which emoluments have been allowed.

We have considered the submissions made by learned counsel in respect of condonation of delay and for the reasons so assigned in the condonation application, we are persuaded to accept the explanation and condone the delay which is accordingly condoned.

I.A. No. 7759 of 2017 is allowed.

Re. : L.P.A. No. 1510 of 2017

Having heard learned State counsel on the merits of the contest, we are not persuaded to accept the submissions advanced by the learned State counsel to question the impugned judgment on merits because it is not on the laches of the writ petitioner that he was being denied salary of the post to which he had been promoted rather it is because the respondents delayed in the issuance of the posting notification which was issued only on 19.02.1999 vide notification no. 203 that the



petitioner was precluded from discharging the duties of the promoted post.

It is not in dispute that the petitioner was serving as Circle Inspector-cum-Kanoongo at Saran when the order of promotion was issued on 24.02.1997 as manifest from Annexure-2 to the writ petition.

It is also not in dispute that petitioner did not absent from his place of posting at Saran, awaiting his posting of promotion. It is again not in dispute that following the posting order issued vide notification no. 203 dated 19.02.1999 at Annexure-3 that the petitioner gave his joining at his place of posting. In such circumstances, neither the respondents could have denied the salary to the petitioner nor can they take advantage of their own folly.

For the reasons so discussed, we find no merit in the appeal in question which is dismissed accordingly.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

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