

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.358 of 2017

IN

LPA 1686 of 2010

- =====
1. The State Of Bihar.
 2. The Agriculture Production Commissioner, Department of Agriculture, Bihar, Patna.
 3. The Additional Secretary, Department of Agriculture, Bihar, Patna.
 4. The Director, Agriculture, Department of Agriculture, Patna.
 5. The Joint Director, of Agriculture, Darbhanga, Range, Darbhanga.

.... Petitioner/s

Versus

1. Soni Kumari, daughter of Late Pramila Devi and Late Ramdhani Choudhary, R/o Village and Post- Noawan, P.S.- Asthawan, District- Nalanda.
2. The Accountant General, Bihar, Patna.
3. The Chairman, Bihar Public Service Commission, Patna.

.... Respondent/s

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Appearance :

- | | | |
|----------------------|---|--|
| For the Petitioner/s | : | Mr. Sarvesh Kumar Singh, AAG 13
Mr. Shakib Ayaz, AC to AAG 13 |
| For the Respondent/s | : | Mr. Murari Narain Choudhary, Adv.
Mr. Vijay Kumar, Adv. |
| For the A.G. | : | Mr. Uday Kumar, Adv. |
- =====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 27-09-2018

Re: I.A. No. 6625 of 2017

The petitioners by this application under section 5 of the Limitation Act pray for condonation of delay of one year two months and 17 days in filing the review application.

Mr. Sarvesh Kumar Singh, learned AAG 13 in reference to the pleading made in the condonation application submits that though



steps have been taken by the department for filing an appeal before the Supreme Court as against the judgment and order passed by the Division Bench on the Letters Patent Appeal arising from LPA No. 1686/2010, but it was advised to file the review application before this Court in the light of the stipulations present in Rule 103 of the Bihar Service Code (hereinafter referred to as 'the Code') and which has consumed time in filing this review application.

Opposite party no.1 has appeared on notice through Mr. Murari Narain Choudhary, who opposes the condonation application, as according to him the delay is excessive and the explanation is not satisfactory.

Learned Counsel for the Accountant General is present.

We have heard the parties and have perused the records. We record our satisfaction on the explanation given by the review petitioners for the delay so caused in filing this review application. Accordingly the delay is condoned.

I.A. No. 6625 of 2017 is allowed.

Re: C. Rev. No. 358 of 2017

With the consent of the parties review application itself has been taken on record for its consideration at the admission stage and the parties have been heard.

According to Mr. Sarvesh Kumar Singh, learned AAG 13 the



order passed by this Court is not in tune with the provisions underlying Rule 103 of 'the Code' and thus requires the review. Reliance in this regard is placed on the notes attached to Rule 103 of 'the Code' which inter alia provides for payment of pay to the State Government servants and officiating on a higher post. While arguing in support of the review application, Mr. Singh fairly informs that the officiating pay admissible to the writ petitioner has been paid to him.

The plea for review is opposed by the learned Counsel for the opposite parties, who submits that the entitlement of the writ petitioner to the officiating pay has been upheld by the Division Bench and is in tune with the provisions underlying Rule 103 of 'the Code'.

Having heard learned Counsel for the parties and having perused the provisions of Rule 103, we are of the view that the review application not only lacks merit but in fact raises issue which are dehors the stipulations underlying Rule 103 of 'the Code'. Apart from the fact that the opposite party-appellant-writ petitioner has already been accorded benefit for officiating on higher post as informed by Mr. Singh, learned AAG 13, thus bringing the contest to a close, even on merits, the submission so advanced by Mr. Singh, learned AAG 13 lacks foundation and is not supported by the statutory provisions. Rule 103 of 'the Code' itself allows pay to an incumbent, officiating on a



higher post and the guidelines present in the notes attached thereto simply enable the State Government to take a decision in this regard. This is exactly what has been done by this Court by allowing the claim where the State was directed to work out the financial benefit which has been worked out and paid.

This application in the garb of review, in fact attempts to seek a rehearing of the appeal on merits without demonstrating any error apparent on the face of records.

The review application is accordingly dismissed.

(Jyoti Saran, J)

(Nilu Agrawal, J)

Archana/Surendra

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.10.2018
Transmission Date	NA

