

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1883 of 2016

In
Civil Writ Jurisdiction Case No.4488 of 2012

=====

Kiran Kumari W/o - Sri Shailendra Kumar Jha, Resident of Village - Lalpur,
P.O. - Bhawanipur, P.S. - Antichak(Kahalgaon), Bhagalpur.

... .. Appellant

Versus

1. The State of Bihar through the Secretary, Social Welfare, Welfare Department, Govt. of Bihar.
2. The Commissioner, Bhagalpur Division, Bhagalpur.
3. The Director, Social Welfare, Govt. of Bihar, Directorate Social Welfare, Bihar, Patna.
4. District - Magistrate, Chairman-cum-President of the Selection Committee, Bhagalpur.
5. District Programme Officer, Bhagalpur, cum - Member Secretary, Selection Committee, Bhagalpur.
6. Child Development Programme Officer, Bhagalpur.
7. Asha Lata Kumari W/o Sri Rudra Narayan Singh R/o Vilalge - Sadanandpur Baisa, P.S. - Kahalgaon, District - Bhagalpur.

... .. Respondents

=====

Appearance :

For the Appellant/s	:	Mr. Birendra Kumar Sinha,, Sr. Adv. Mr. R.K.Jain, Adv.
For the Respondent/s	:	Mr. Manish Kumar, AC to AAG-6
For respondent no.7	:	Mr. Purushottam Kumar Jha, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 06-12-2018

Re: I.A.No. 8884/2016

This interlocutory application has been filed for
condonation of delay of 4 years and 143 days in filing the appeal.

We have heard Mr. Birendra Kumar Sinha, learned
Senior Counsel appearing for the appellant alongwith Mr. R.K.
Jain, Advocate on record, Mr. Purushottam Kumar Jha, learned



counsel appearing for the respondent- writ petitioner and Mr. Manish Kumar, learned AC to AAG-6, for the State on the limitation petition.

Mr. Sinha has invited the attention of this Court to an order passed by a Co-ordinate Bench in L.P.A.No. 437/2016 arising from C.W.J.C.No. 11476/2011, a copy of which is enclosed at Annexure 1 to the interlocutory application, to submit that the writ petition filed by the present appellant was dismissed in the light of the order in C.W.J.C.No. 4488/2012 vide order passed on 3.4.2012. He further submits that it is because the case of the appellant was not being considered for the post of Lady Supervisor that the writ petition in question was filed but was dismissed on 24.8.2015 taking note of the order passed in C.W.J.C.No. 4488/2012 and observing that until such time the order was in force, no order could be passed. He submits that it is taking note of the circumstances that the appellant chose to withdraw his earlier appeal bearing L.P.A.No. 437/2016 to question the order dated 3.4.2012 passed in C.W.J.C.No. 4488/2012 and since the appeal was so disposed of on 12.7.2016 that the delay has occasioned but no sooner the earlier appeal of the appellant bearing L.P.A.No. 437/2016 was disposed of on 12.7.2016 that the present appeal was filed within two months on 23.9.2016.



Though learned counsel for the respondent- writ petitioner do stand up to oppose the limitation petition but in the nature of the explanation so given, we are persuaded to condone the delay in question, which is accordingly condoned.

I.A.No. 8884/2016 is allowed.

L.P.A.No. 1883/2016

Reply to the counter affidavit is being filed, let it be taken on record.

This intra-Court appeal arises from the order dated 3.4.2012 passed in C.W.J.C.No. 4488/2012 which was preferred by the private respondent and was disposed of in the following terms:

“ Appointment of an Anganwari Sewika is not on a Government post but as an Agent. Under the Indian Contract Act a person below the age of 18 years is incapable of entering into a contract. The petitioner states at paragraph-7 that she was above 15 years of age when she was appointed as Anganwari Sewika. To that extent there may not be merit in the writ application. But, the Court cannot loose sight of the fact that the petitioner has valuable experience of several years behind her. She fulfills the requirements for appointment on the post of Lady Supervisor. The respondents have had no grievance against her discharge of duties as an Agent. It would only be in the interest of the



scheme to utilize her past experience. Whatever may have been the infirmity in the appointment as an Anganwari Sewika under the Contract Act can easily be said to have been waived or abandoned by the respondents. They cannot have it both ways by utilizing her under age service and rejected it for other purposes.

A pragmatic approach on the part of the respondents dictates that if the petitioner fulfills other requirement for appointment on the post of Lady Supervisor, her candidature should be considered in accordance with law. The age at which she may have been appointed as an Anganwari Sewika has no direct nexus or relationship to appointment in a Government service when the earlier relationship was of a principal and agent alone.

The order of the Commissioner dated 16.12.2011 is set aside and the matter is remanded to the respondents for a fresh decision in accordance with law and the discussion contained in the present order.

The writ petition stands disposed.”

A plain reading of the order of the learned Single Judge would confirm that there was no discussion on the inter-party rights rather the learned Single Judge taking note of the fact that the private respondent had been wrongly excluded from consideration chose to remand the matter to the respondent authorities for taking a fresh decision in accordance with law.



It is not in dispute that following remand a selection process took place and which resulted in appointment of the private respondent vide order bearing Memo No. 962 dated 16.7.2014, a copy of which is enclosed with the counter affidavit of the private respondent. It is not in dispute that this order of selection of appointment of the private respondent has never been put to question before any court. In other words, the order passed by the learned Single Judge has taken its effect and has already resulted in a selection rendering the issue academic.

In the circumstances, Mr. Sinha prays for disposal of the appeal to enable the appellant to take recourse to such lawful remedy as may be available to the appellant in law.

The appeal is disposed of accordingly.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.01.2019
Transmission Date	NA

