

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.373 of 2019

In
Civil Writ Jurisdiction Case No.20446 of 2010

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1. Deputy Development Commissioner cum Chief Executive Officer, District Board (Zila Parishad) Nalanda at Bihar Sharif.
 2. The Chief Executive Officer (Zila Parishad) Nalanda at Bihar Sharif.

... .. Appellant/s

Versus

1. The State of Bihar through Secretary, Rural Development Department, Govt. of Bihar, Patna.
2. The Secretary, Rural Development Department, Govt. of Bihar, Patna.
3. Braj Raj Kishore Son of Late Ramjee Prasad Verma Resident of Bindhyavasni Street, behind Ayurvedic Hospital, New Area, Kadamkuan, Police Station-Kadamkuan, District-Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Awadhesh Prasad Sinha, Adv.
For the Respondent/s : Mr. Shailendra Kumar Singh, AC t AAG-4

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-09-2019

I.A. No.1 of 2019

Heard Mr. Sinha, learned counsel for the Zila
Parishad, Nalanda.

There is a challenge raised to the directions
given by the learned Single Judge on the ground that such
directions are not in consonance with law for ensuring certain
payments to the respondent No.3. The issue is being raised on



merits in respect of a judgement by the learned Single Judge delivered on 7th August, 2014. The appeal has been registered in the year 2019. The Division Bench had called for an explanation from the appellant about the delay in the presentation of this appeal after having noted the background in which the appeal was filed. The order dated 22nd August, // is extracted hereinunder:

“ **I.A. No. 1 of 2019** ”

This limitation petition has been filed stating that the appeal had been presented before the High Court on 21st October, 2014 and Token No. 74189 of 2014 was allotted. It is evident from the case status maintained on the website of the High Court, copy whereof has been downloaded by us. We find that original file in which there was certain defects were taken away by the learned counsel which ought to have been filed within time, but instead it appears that the same was presented in the office in March, 2019 and the office refused to entertain the same after a lapse of almost four years.

The present appeal along with this limitation petition has been filed praying for condoning the delay on the ground that the appellant had already taken steps, but on account of mistakes that occurred in between either due to the counsel or his clerk, the appeal could not be presented within time.

The appellant, therefore, contends that steps had been taken, but on account of this procedural flaw and an error on presentation of the appeal, the cause of the Zila Parishad would suffer, inasmuch as the respondent-



petitioner is not entitled to any of the payments as claimed by him and as extended by learned Single Judge.

It was informed by the learned counsel that a contempt application is also pending before this Court. With the aid of the Bench Secretary, we have been able to download the order passed in M.J.C. No. 469 of 2015 arising out of C.W.J.C. No. 20446 of 2010 whereby the contempt application has been finally disposed of on 4th January, 2019 by issuing direction. The order is extracted hereinunder:-

“Despite valid service of notice, opposite party Nos. 3 and 4 have not appeared before this Court. The direction of the Writ Court was to be complied with by the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Nalanda at Biharsharif. The Writ Court after hearing the parties directed the respondents to pay additional allowance of 20% of basic salary for holding charge of independent higher post of District Engineer for the period from 5.12.1992 to 31.1.2010. The said direction was issued on 7.8.2014 but till date the same has not been complied with.

Under the aforesaid circumstances, the Court is constrained to direct the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Nalanda at Biharsharif to either implement the direction issued by the Writ Court in CWJC No. 20446 of 2010 dated 7.8.2014 in its letter and spirit or get it stayed/modified or set aside by the superior Court within a period of one month from today, failing which the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Nalanda at Biharsharif shall not draw his



salary until order of the Writ Court is complied with in its letter and spirit.

With the aforesaid, the application stands disposed of.”

The appellants’ counsel may, therefore, apprise the Court as to what action has been taken pursuant of the directions of the learned Single Judge dated 4th January, 2019 aforesaid about which there is no mention in any of the affidavits filed along with this appeal even though the appeal has been presented and registered on 11th March, 2019. The affidavit shall be filed by the Chief Executive Officer to that effect.

List on 16.09.2019.”

In response to the aforesaid order, a second supplementary affidavit has been filed by the appellant and paragraph 2 to 7 of the said supplementary affidavit is extracted hereinunder:

“2. That a writ application bearing C.W.J.C. No. - 20446 of 2010 was filed by the respondent no- 3 in the Hon’ble Court for grant of 20% additional allowance of the salary for holding higher post in addition to his original post.

3. That the above said writ application was heard by the Hon’ble Court and the same was allowed by the order dated 07.08.2014 and the appellants were directed to pay 20% additional allowance.

4. That the petitioner has been granted additional allowance of 20% of basic pay for the period form 05.12.1992 to 31.01.2010 i.e. till his superannuation.

5. That the petitioner has been granted



20% extra allowance from 05.12.1992 for which the writ application was filed on 16.12.2010 that is after 18 years from the due date.

6. That the order of the Hon'ble Court passed in C.W.J.C. No – 20446 of 2010 dated 07.08.2014 has been complied with and an office order has been issued vide order dated 13.09.2019 the same has been communicated to the writ petitioner.

7. That although the order of the Hon'ble Single Judge passed in C.W.J.C. No – 20446 of 2010 dated 07.08.2014 has been complied with even then the deponent prays before this Hon'ble Court to decide the issue so that a huge amount of Public Money may not be misused due to wrong order of the Hon'ble Single Judge.”

We have not yet been able to find any plausible ground for having filed the appeal which appears to have been presented belatedly, may be on account of the default of the erstwhile counsel for the Zila Parishad. The State of Bihar does not appear to have filed any appeal challenging the order of the learned Single Judge and as per the averments in the affidavit extracted hereinabove, the order of the learned Single Judge has been complied with.

In the background aforesaid, we do not find it appropriate on the peculiar facts of this case to condone the delay and entertain the appeal.

I.A. No.1 of 2019 and the appeal is dismissed,



without prejudice to the rights of the appellant to contest the question of law of the admissibility of any such payments in any other case where the impugned judgement is cited as an authority.

The matter is consigned to records with the said observation.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30.09.2019
Transmission Date	N/A

