

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.486 of 2019

In

Civil Writ Jurisdiction Case No.14776 of 2010

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1. The State of Bihar through the Divisional Commissioner, Bhagalpur.
 2. The District Magistrate, Bhagalpur.
 3. The Block Development Officer, Gopalpur, Bhagalpur.

... .. Appellant/s

Versus

Maheshwar Prasad Singh, S/o Late Awadheshwari Pd. Singh, Resident of Mohalla- Vikram Shila Nagar, Kalpana, Cinema Road, Khalgaon, P.S.- Kahagaon, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. P.K. Verma, AAG-3
Mr.Saroj Kumar Sharma, A.C. to AAG-3
For the Respondent/s : None

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-08-2019

Re: I.A. No. 2 of 2019

Heard Shri P.K.Verma, learned Additional Advocate General No.3 for the appellants.

We have perused the facts stated in the limitation petition and we find sufficient reason to condone the delay. The delay is, accordingly, condoned and the appeal shall be treated to be within time.

I.A. No.2 of 2019 stands allowed accordingly.



Re: L.P.A. No. 486 of 2019

The appeal questions the correctness of the impugned order dated 18th of June, 2018 with the aid of supplementary affidavit filed today bringing on record the corrected order dated 9th of July, 2018.

The writ petition was filed by the respondent-petitioner in the year 2010 claiming benefits of Assured Career Progression Scheme and other consequential financial benefits. This writ petition, which was filed in the year 2010, has been allowed under the impugned judgment dated 18.06.2018 i.e., after eight years holding that since the appellants have not been able to controvert the claim of the respondent-petitioner, the writ petition is allowed and the benefits of second time bound promotion/A.C.P. to the petitioner was admissible, which should be implemented within four weeks. The judgment proceeds on the assumption of the statement of fact made by the petitioner's counsel that the respondent-petitioner had also passed the Accounts Examination.

Later on, a correction application on behalf of the petitioner was filed and from the order dated 9th July, 2018, it appears that the learned single Judge has corrected the order



by deleting the words “Accounts Examination” and substituting it by the words “Preliminary Accounts Examination.”

Learned counsel submits that if the respondent-petitioner had not passed the final Accounts Examination and had passed only the Preliminary Accounts Examination, then the A.C.P. was not admissible in the absence of the said eligibility qualification, which is a *sine qua non*. It is in this background that it is urged that the appeal deserves to be entertained and the impugned judgment and order deserves to be set aside.

We find that the impugned judgment proceeds on the presumption of facts not having been controverted by the respondents. Admittedly, the writ petition had been filed eight years hence. In the event the appellants have now chosen to contest the said petition or are of the opinion that there is an error apparent on the face of record in the judgment dated 18th June, 2018 in light of the subsequent order dated 9th July, 2018 that was passed *ex parte* or without opportunity to the State, then it would be expedient for the appellants to file a review application before the learned single Judge for an appropriate order in that regard. We therefore refrain from entertaining



this appeal at this stage with liberty to the appellants to file a review application accordingly.

The appeal is dismissed with the liberty aforesaid.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM

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CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

