

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1744 of 2016

In
Civil Writ Jurisdiction Case No.2629 of 2014

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1. Shanti Prasad, son of Sarayu Prasad Bari, resident of Village and P.O.- Barow Kala, P.S.- Akodhi Gola, District- Rohtas.
 2. Shakuntala Devi, daughter of Dasal Prasad, resident of Village- Rampur, P.S.- Baghan, District- Rohtas.
 3. Rishbh Deo Singh, son of Late Radha Raman Singh,
 4. Milan Kumar Singh, son of Late Radha Raman Singh, Appellant No. 3 and 4 are residents of Village- Umapur, P.S.- Bhagwanpur, District- Kaimur.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Main Secretariat, Patna;
2. The Commissioner and Secretary, Health, Medical Education and Family Welfare Department, Govt. of Bihar, New Secretariat, Vikas Bhawan, Patna;
3. The Joint Secretary, Health, Medical Education and Family Welfare Department, Govt. of Bihar, New Secretariat, Vikas Bhawan, Patna;
4. The Civil Surgeon-cum-Chief Medical Officer, Rohtas at Sasaram;
5. The Finance Commissioner and Secretary, Finance Department, Govt. of Bihar, Main Secretariat, Patna;
6. The Accountant General Bihar, Birchand Patel Path, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vishwajeet Kr. Mishra, Adv. Mr. Sada Nand Roy, Adv.
For the Respondent/s	:	Mr. Kumar Manish, S.C-5. Mr. Kumar Pankaj, AC to SC-5.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 23-07-2019

Heard Mr. Vishwajeet Kumar Mishra, learned counsel
appearing for the appellants and Mr. Kumar Manish, learned SC-5
for the State.



It is feeling aggrieved by the judgment and order dated 25.07.2014 of the learned Single Judge passed in CWJC No.2629 of 2014, whereby the writ petition preferred by the petitioners seeking a direction in the nature of mandamus to the respondent authorities of the State Government for making payment of salary did not find favour and consequentially the writ petition was disposed that the petitioners as the appellants are before this Court.

While Mr. Vishwajeet Mishra, learned counsel for the appellants, invites the attention of this Court to the Gazette notification at Annexure-8 to the writ petition to submit that an attempt was made by the State Government to take over the Bashishtha Narayan Hospital, Baraonkala in the district of Rohtas in which the appellants are working, however since the intent shown did not reach a finality that it led to the writ petition which has been disposed of without grant of indulgence.

Per contra, it is the submission of Mr. Kumar Manish, learned SC-5 that the attempt by the petitioner is the second round litigation for the hospital itself had approached this Court in CWJC No. 5921 of 1997 acting in pursuance of the same notification and seeking appropriate direction which failed to persuade a learned Single Judge of this Court to order in their favour and consequentially the indulgence was refused by the judgment and



order passed on 18.10.2011. The judgment and order of a learned Single Judge has attained finality since the hospital did not choose to question this judgment in intra-Court appeal. He submits that it is almost 17 years thereafter that the present writ petition was filed and since the hospital had not been taken over that the prayer of the petitioner for payment of salary did not persuade learned Single Judge to order as such.

Mr. Mishra, at this stage invites the attention of this Court to order dated 29.06.2017 by a Co-ordinate Bench whereunder directions were issued as to the reasons which weighed with the Government for not taking any action in furtherance of the notification at Annexure-8 and which direction has been complied by the State by filing an affidavit in the appeal on 18.08.2017 wherein it has been explained that since there are already two Additional Primary Health Centres operating in the village in question that a decision was taken not to give final effect to the notification which remained at its draft stage.

Having heard learned counsel for the parties and since undisputedly the hospital in question is yet to be taken over by the State although some kind of exercise had been initiated vide the gazette publication at Annexure-8 but which remained in draft stage without translating into a final publication, we are satisfied



to record that no infirmity occurs in the opinion of the learned
Single Judge in refusing to grant indulgence in the circumstances
noted which would invite our opinion.

The appeal is accordingly disposed of.

(Jyoti Saran, J)

(Partha Sarthy, J)

Anjula/-

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

