

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1085 of 2018

In

Civil Writ Jurisdiction Case No.20099 of 2016

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The State of Bihar through Principal Secretary, (Higher Education),
Department of Education, Govt. of Bihar, Patna.

... .. Appellant/s

Versus

1. Lalit Narain Mithila University, Kameshwar Nagar, Darbhanga, through its Registrar
2. Vice Chancellor, L.N. Mithila University, Kameshwar Nagar, Darbhanga District-Darbhangha.
3. The Registrar, L.N. Mithila University, Kameshwar Nagar, Darbhanga, District-Darbhangha.
4. The Principal Harshpati Singh College, Dharmanand Nagar, Madhepur, Distirct-Madhubani.
5. Subhash Chandra Mishra, Son of Late Harsh Narayan Mishra Resident of Village-Umari, P.S. Lakhnaur, District-Madhubani at present working as Lab-Incharge, Department of Physics, Harshpati Singh College, Madhepur, P.S. Madhepur, District-Madhubani.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashutosh Ranjan Pandey, A.A.G.-15

For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-02-2019

Re : I.A. No. 8736 of 2018 and 8737 of 2018

There is a delay of 198 days in the filing of the appeal.

Having considered the submissions raised, we are satisfied that sufficient cause has been shown. The delay is therefore condoned and the appeal shall be



treated to be within time.

In the background of the case since we are finally disposing of the appeal itself, there should be no occasion to pass any order on I.A. No. 8737 of 2018 which stands consigned.

Re : L.P.A. No. 1085 of 2018

We have heard Shri Pandey, learned counsel for the State of Bihar who contends that the direction of the learned Single Judge cannot be complied with inasmuch as according to him, the respondent-petitioner cannot be extended the benefits in the absence of the sanctioned post. Learned counsel submits that the claim of the respondent-petitioner is not similar to that as involved in the case of Binod Kumar Jha & Ors. Vs. State of Bihar & Ors. decided on 26.08.2004 and therefore the learned Single Judge has committed an error in proceeding to allow the writ petition.

2. We have considered the submissions raised and we find that the learned Single Judge has recorded a categorical finding that not only was the case of the respondent-petitioner similar but it was almost identically situated and consequently, the learned Single



Judge proceeded to dispose of the writ petition and grant the relief to the respondent-petitioner in terms of the judgment dated 26.08.2004 passed in C.W.J.C. No. 9215 of 1998.

3. The learned Single Judge has also noted that the said judgment was taken up in appeal before this Court, where also the challenge raised failed whereafter a special leave petition was also filed before the Apex Court. The same was converted into Civil Appeal No. 1140 of 2006 (State of Bihar & Ors. Vs. Binod Kumar Jha & Ors.) and the same was dismissed in default on 6th of September, 2013. A copy of the order has been placed before us.

4. In the grounds of appeal, it has been mentioned that efforts were being made to get the same restored. There is no material on record to establish that any restoration application was filed or any further steps were taken for getting the order of the Apex Court recalled.

5. In this view of the matter, the judgment in the case of Binod Kumar Jha (supra) having become final up to the Apex Court, we find no justification for treating



the case of the respondent-petitioner differently and therefore the conclusion drawn by the learned Single Judge does not suffer from any error so as to warrant entertaining of this appeal on behalf of the State of Bihar.

6. The appeal is accordingly rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Saif/-

AFR/NAFR	
CAV DATE	N.A.
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