

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1510 of 2018

In

Civil Writ Jurisdiction Case No.8177 of 2015

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1. The State of Bihar, through the Principal Secretary, Health Department, Government of Bihar, Patna.
 2. The Principal Secretary, Health Department, Government of Bihar, Patna.
 3. The Deputy Secretary, Health Department, Government of Bihar, Patna.
 4. The Under Secretary, Health Department, Government of Bihar, Patna.
 5. The Joint Director, Health Services, Bihar, Patna.

... .. Appellants/Respondents.

Versus

Dr. Vijay Kumar, S/o Late Rameshwar Paswan, resident of Mohalla-Bariyusufpur, P.O.- Hajipur, P.S.- Industrial Area, Hajipur, District Vaishali, Bihar, presently posted as Medical Officer, Referral Hospital, P.O.- Meriganj, P.S. Raniganj, District Araria.

... .. Respondent/Writ Petitioner

Appearance :

For the Appellant/s : Mr. Lalit Kishore, Advocate General

For the Respondent/s : Mr. Sandeep Kumar, Advocate
Mr. Nikhil Kumar Agrawal, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-04-2019

Re: Interlocutory Application No.8268 of 2018.

Heard learned counsel for the parties.

The cause shown is sufficient. The delay is condoned. The appeal shall be treated to be within time.

Interlocutory Application stands allowed.

Re: Letters Patent Appeal No. 1510 of 2018

Heard Shri Lalit Kishore, learned Advocate General for the appellants-State and Shri Nikhil Kumar Agrawal, learned counsel for the respondent-petitioner.



The attention of the Court has been invited to paragraphs 5 and 6 of the affidavit filed in M.J.C. No.3649 of 2018 arising out of the judgement of the learned Single Judge impugned in this appeal. The same is extracted hereinunder:

“5. That at the outset, it is humbly submitted that the answering opposite parties have not violated the order dated 09.07.2018 passed in CWJC No. 8177/2015 by this Hon’ble Court, as the State of Bihar had already preferred an appeal against the order under compliance bearing LPA No.1510 of 2018 (The State of Bihar & Others V/S Dr. Vijay Kumar) before the Hon’ble Division Bench of this Court. The above said appeal is still pending for adjudication and the stay order of the order under compliance has not been obtained till date hence, in order to ensure compliance of the order of this Hon’ble Court dated 09.07.2018 passed in CWJC No.8177/2015, the Department has decided to reinstate the petitioner in service subject to final outcome of pending appeal preferred by the State bearing LPA No.1510/2018 (State of Bihar V/S Dr. Vijay Kumar).

6. That it is humbly submitted that now, the department is in swift process of taking procedural steps as required in the matter of reinstatement of the petitioner and which can only be done after obtaining necessary approval of the State Cabinet routed through the Hon’ble Health Minister and in view of the above, the



deponent seeks kind indulgence of this Hon'ble Court to grant at least four weeks time so that the order of this Hon'ble Court may be complied.”

It is stated by the learned Advocate General that since in principle the Government has taken a decision to reinstate the respondent-petitioner, the formalities will take about four weeks and, therefore, a prayer is made that the said fact be taken notice of.

The argument of the learned Advocate General in so far as the merits of the appeal is concerned, the submission is that in view of the discussions made by the learned Single Judge in the impugned judgment, the appellant-State can take a decision to institute the enquiry afresh from the stage from which it has been found to be defective. There cannot be any dispute with that proposition, but such step can only be taken by the appellant-State only after reinstating the respondent-petitioner and complying with the judgement of this Court which they have already stated before the learned Contempt Judge.

We, therefore, dispose of this appeal that in the event, the appellants choose to re-initiate the proceedings of enquiry as per the observations made by the learned Single



Judge, then the same shall not be done, unless the respondent-petitioner is reinstated in service and is extended the benefits that have been granted by the learned Single Judge.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
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