

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.470 of 2018

Arising out of

C.W.J.C. No. 6883 of 2017

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1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
 2. The Principal Secretary, Finance Department, Government of Bihar, Patna.
 3. The Secretary (Expenditure), Finance Department, Government of Bihar, Patna.
 4. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
 5. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Rural Works Department, Government of Bihar, Patna
 6. The Executive Engineer, Local Area Engineering Organization, Work Division, Gopalganj.
 7. The Executive Engineer, Local Area Engineering Organization, Work Division, Gopalganj
 8. The Executive Engineer, Local Area Engineering Organization, Work Division-2, Banmankhi Purnea.
 9. The Executive Engineer, Local Area Engineering Organization, Work Division-1, Bhagalpur.

... .. Appellant/s

Versus

1. Madhav Mandal son of Late Surya Narayan Mandal, Resident of Village and P.O. Durgapur, P.S.- Bhawanipur, District- Purnea, presently posted as Senior Accounts Clerk in the office of Executive Engineer, Local Area Engineering Organization, Gopalganj, District- Gopalganj.
2. Akhileshwar Prasad Srivastava, son of Late Ram Nandan Prasad, Resident of Village- Hariharpur, P.O.- Rupauli, P.S.- Saraiya, District- Muzaffarpur, presently posted as Senior Accounts Clerk in the office of Executive Engineer, Local Area Engineering Organization, Work Division-2, Banmankhi, Purnea, District- Purnea.
3. Bhagwan Mishra, son of Late Brahmakant Mishra, Resident of Village and P.O.- Gandhwari, P.S.- Sakri, District- Madhubani, presently posted as Senior Accounts Clerk in the office of Executive Engineer, Local Area Engineering Organization, Work Division-1, Bhagalpur, District- Bhagalpur.
4. Sunil Kumar Sinha, son of Late Surendra Prasad Singh, Resident of Asha Surendra Sadan, Mufati Mohalla, P.O.- Hazipur, P.S. Hazipur Town, District- Vaishali at Hazipur, presently posted as Senior Accounts Clerk in the office of Executive Engineer, Local Area Engineering Organization, Works Division-1, Bhagalpur, District- Bhagalpur.
5. Ram Khelawan Chaudhary, son of Munni Chaudhary, Resident of Village- Kamal Bigha, P.O. Birari, P.S.- Katrisarai, District- Nalanda at Biharsharif, presently posted as Senior Accounts Clerk in the office of Executive Engineer, Local Area Engineering Organization, Work Division-1, Purnea, District- Purnea.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ajay Kumar Rastogi, AAG-10



For the Respondent/s : Mr. Parijat Saurav, A.C. to AAG-10
Mr. Naman Nayak, A.C. to AAG-10
Mr. S.B.K. Manglam, Advocate
Ms. Anita Kumari, Advocate
Mr. Ravi Ranjan, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-02-2019

Re: I.A. No. 2770 of 2018

Heard Shri Ajay Kumar Rastogi, learned Additional Advocate General No. 10 for the State and Shri S.B.K. Manglam for the Respondent-petitioners.

2. The appeal is reported to be delayed by 78 days.

3. We have considered the affidavit filed in support of the delay condonation application and we find that sufficient cause has been shown to condone the delay in filing the appeal. The delay is condoned and the appeal shall be treated to be within time.

4. I.A. No. 2770 of 2018 stands allowed accordingly.

Re: L.P.A. No. 470 of 2018

This appeal questions the correctness of the judgment dated 18th December, 2017 passed in C.W.J.C. No. 6883 of 2017 on the ground that the law in the case of **Shashi Shekhar Ambastha Vs. The State of Bihar** (C.W.J.C. No.



18433 of 2016), would not be applicable on the facts of the present case inasmuch as according to the facts that have now been brought on record through I.A. No.6832 of 2018 the respondent-petitioners were not appointed in the regular cadre and were to the contrary appointed as Accounts Clerks under the National Rural Employment Programme which was a scheme which was separately financed and funded for a different purpose and consequently the ratio of the judgment in the case of **Shashi Shekhar Ambastha** (supra) would not be applicable.

2. Shri Manglam has countered the said submission on the ground that as a matter of fact the counsel for the parties were in agreement that the same issue was raised and decided in the case of **Shashi Shekhar Ambastha** (supra) and it is on such understanding that the writ petition came to be disposed of finally. Thus, the contention now raised by the appellants with the aid of additional material which is sought to be brought through an Interlocutory Application cannot be entertained afresh before this Court in appeal.

3. Without entering into the merits of such an objection having been raised and in view of the nature of the order passed by the learned Single Judge, we are of the considered opinion that if any such issue has to be raised, the



same can only be done by an appropriate review application and not otherwise.

4. We, therefore, dismiss this appeal with liberty to the appellants to move an appropriate Review Application, if so advised, in accordance with law.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-Jagdish

AFR/NAFR	
CAV DATE	
Uploading Date	05.02.2019
Transmission Date	

