

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.115 of 2018**

Dr. Shailesh Kumar S/o Sri Krishnandan Prasad R/o 234 Nehru Nagar Rai  
Rambrikjsh Path, Patna- 13, presently residing at C/o Shri Bindeshwari Rai,  
R/o Mohalla Kashi Bazar Main Road, P.O- Chapra, P.S- Bhagwan Bazar,  
District- Saran.

... .. Appellant/s

Versus

1. The State of Bihar and Ors
2. The Director, Department of Animal Husbandry Government of Bihar, Patna.
3. The Secretary, Finance P.C.F.C, Department, Government of Bihar, Patna.
4. The Commissioner- Cum- Secretary, Department of Animal Husbandry, Government of Bihar, Patna.
5. The Joint Secretary, Department of Animal Husbandry and Fishery Department, Government of Bihar, Patna
6. The Deputy Secretary, Department of Animal Husbandry and Fishery Department, Government of Bihar, Patna
7. The Officer In- Charge, Finance P.C.F.C Department, Government of Bihar, Patna.
8. The Regional Director, Animal Husbandry Saran Chapra.

... .. Respondent/s

**Appearance :**

For the Appellant/s : Mr.Shashi Shekhar Tiwary, Advocate  
For the Respondent/s : Mrs. Nutan Sahay, A.C. to AAG-12

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

**Date : 16-01-2019**

Re: I.A. No. 528 of 2018

Heard Shri Shashi Shekhar Tiwary, learned counsel  
for the appellant and Smt. Nutan Sahay for the State of Bihar  
and its authorities.

2. The appeal is reported to be delayed by 1 year and  
35 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. Other defects stand ignored.

4. I.A. No. 528 of 2018 stands allowed accordingly.

Re: L.P.A. No. 115 of 2018

This appeal raises a short dispute with regard to the claim of payment of Non Practising Allowance of the petitioner admissible for a period of nine months between 20<sup>th</sup> March, 2001 to 20<sup>th</sup> of December, 2001.

2. The claim of the appellant for payment of salary for the said period had been raised earlier in C.W.J.C. No. 13359 of 2005 and the said writ petition was allowed on 23<sup>rd</sup> July, 2009 by the following judgment:-

“Heard Mr. Vinod Kumar, learned counsel for the petitioner and counsel for the State.

In this case, the petitioner has made a very limited prayer for payment of salary for a period of nine months i.e. from 20.3.2001 to 20.12.2001 on the ground that ever since he was appointed in the month of January, 2001 as a Touring Veterinary Officer (T.V.O.) and had joined the said post on 20.3.2001, he had remained without any place of posting and consequently, without salary for a period of nine months before



he was posted on 20.12.2001.

The aforesaid prayer of the petitioner seems to be most reasonable specially when the respondents in their counter affidavit filed today do not dispute that the petitioner was waiting for posting for the period 20.3.2001 to 20.12.2001. In the counter affidavit, all that has been said is that the matter regarding payment of salary for the petitioner is still under consideration.

The period of more than 8 years having been elapsed and if the respondents have not taken any decision even during the period of three and a half years of pendency of this writ application, it does not appear that the respondents really intend to take such a decision in near future.

Counsel for the State, however, would submit that since such a stand was taken in the counter affidavit sworn in the year 2006, he is unaware of the current position.

This Court would find that the payment of salary to a person cannot be withheld if he has joined the post and has been deprived from working on account of certain impediment on the part of the respondents. There being no dispute that the petitioner had remained waiting for posting for the aforementioned period of nine months, this Court must hold the petitioner is entitled for payment of salary and if such salary has not been paid to the petitioner as yet, the same must be paid within a period of three months from the date of



receipt/production of a copy of this order.

With the aforementioned observations and direction, this application is disposed of.”

3. Complying with the same, the appellant was paid his entire salary for the said period but without the Non Practising Allowance. The said order was enclosed as Annexure-2 to the writ petition giving rise to this appeal.

4. The appellant thereafter requested the authorities to release the Non Practising Allowance also. It may be mentioned that another set of employees had claimed their Non Practising Allowance before this Court which became subject matter of consideration in M.J.C. No. 2938 of 2005. In view of the said proceedings certain other employees were extended the benefit of Non Practising Allowance but the appellant was denied with reference to the said order of the High Court on the ground that it would be admissible only if he was an applicant/petitioner in the said case. It is this order dated 13<sup>th</sup> September, 2013 communicated to the appellant that became subject matter of challenge before the learned Single Judge giving rise to this appeal. The learned Single Judge treated the claim of the appellant to be stale in respect of the payment of the year 2001 and dismissed the writ petition.

5. Learned counsel for the appellant contends that



this was a continuing cause of action and in view of the facts narrated hereinabove the appellant had nowhere committed any default or delay and rather he has been compelled to fight this litigation not only for the payment of his salary but also for the release of his Non Practising Allowance. He contends that the reason given in the impugned order and the reason given by the learned Single Judge are divorced from each other in context and, therefore, the impugned judgment deserves to be set aside and the order dated 13.09.2013 deserves to be set aside insofar as it denies the claim of Non Practising Allowance to the appellant inasmuch as such such denial is discriminatory and violative of Article 14 of the Constitution of India. Even otherwise there is no delay or laches on the part of the appellant in approaching this Court for release of his emoluments to which he is legally entitled otherwise.

6. Learned counsel for the State has defended the impugned judgment and urged that this was a stale claim, therefore, the writ petition has been rightly dismissed.

7. We find that the cause as disclosed by the appellant was with regard to non-payment of Non Practising Allowance after the release of his salary pursuant to the direction of this Court that was released bereft of the said



allowance. This happened between 2009 and 2011 after the direction of the High Court. The appellant immediately thereafter claimed his Non Practising Allowance. Thus, there was no delay nor any laches on his part in approaching this Court claiming his entitlement for Non Practising Allowance. The ground, therefore, taken for dismissing the writ petition as being stale is unsustainable as it is unsupported in view of the facts narrated hereinabove.

8. The issue relating to release of Non Practising Allowance, suffice it to say that if others similarly situate had been extended the said benefit then merely because the appellant was not a party to the litigation filed by the other employees the same cannot be a ground for denial of the benefits if the appellant is otherwise entitled to the same. In this regard the communication made on 13<sup>th</sup> September, 2013 proceeds on an erroneous assumption and consequently is unsustainable.

9. We, accordingly, allow the appeal, set aside the impugned judgment dated 19.11.2016 as well as the order dated 13.09.2013 which denies the payment of Non Practising Allowance to the appellant. We direct that the Non Practising Allowance admissible to the appellant for the period referred to



hereinabove shall be released forthwith to the appellant without any further delay and not later than six weeks by the concerned official before whom a certified copy of this order is filed. The appeal is accordingly allowed.

**(Amreshwar Pratap Sahi, CJ)**

**(Anjana Mishra, J)**

P.K.P./-Jagdish

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