

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1284 of 2018

In

Civil Writ Jurisdiction Case No.10305 of 2017

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1. The State Of Bihar
 2. The Chief Secretary, Government of Bihar, Patna.
 3. Principal Secretary, Department, Of Public Health Engineering Government of Bihar, Patna.
 4. Special Secretary, Department of Public Health Engineering, Government of Bihar, Patna.

... .. Appellants

Versus

1. Devendra Prasad Singh Son of Sri Ram Pravesh Singh Resident of Mohalla-North Mandiri Chhakan Tola, P.S.-Budha Colony, District-Patna, retired Executive Engineer.
2. Accountant General, Bihar, Patna.

... .. Respondents

Appearance :

For the Appellant/s : Mr.Ajay Kumar AC to GP 4

For the Respondent/s : Mr.Anju Kumari @ Anju Narain, Adv.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR

MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 19-02-2020

I.A. No. 7051 of 2018 has been filed on behalf of the appellants under Section 5 of Limitation Act for condonation of delay of 113 days in filing this appeal.

Heard the parties.



Learned counsel appearing for the appellants submits that due to official exigencies, the appeal could not be filed in time.

Learned counsel appearing for respondent no. 1 raised a preliminary objection regarding maintainability of this appeal. He submits that the impugned order dated 16.04.2018 passed by learned Single Judge in CWJC No. 10305 of 2017 goes to show that the learned Single Judge passed the impugned order with consent of the parties and it is well known law that an appeal shall not lie against the consent order. Learned counsel of respondent no. 1 further points out that respondent no. 1 filed contempt petition and in the aforesaid proceeding, the appellants appeared and complied the impugned order but they never questioned the legality of impugned order.

Learned counsel appearing for the appellants submits that no doubt, impugned order dated 16.04.2018 reflects that the aforesaid order was passed by consent of the parties but as a matter of fact, the aforesaid order is contrary to the rules of Bihar Public Servant (Classification, Control and Appeal) (3rd Amendment) Rules, 2010 and, therefore, the impugned order cannot sustain in the eye of law.



In our view, this appeal can be disposed of on admission stage itself. Admittedly, the impugned order dated 16.04.2018 was passed by the learned Single Judge with consent of the parties and, therefore, we do agree with the submission advanced on behalf of respondent no. 1 that the present appeal is not maintainable against the impugned order dated 16.04.2018.

So far as violation of the rules, as stated above, is concerned, the appellants may take legal recourse by filing review petition before the concerned Bench in accordance with law.

Therefore, in the aforesaid circumstance, this appeal stands dismissed on merit as well as being time barred.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

shahzad/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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