

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.322 of 2018
In
Civil Writ Jurisdiction Case No.4175 of 2014

1. The State Of Bihar.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Special Secretary, Road Construction Department, Government of Bihar, Patna.
5. The Joint Secretary, Road Construction Department, Government of Bihar, Patna.
6. The Deputy Secretary (Vigilance), Road Construction Department, Government of Bihar, Patna.
7. The Accountant General, Bihar.

... .. Appellant/s

Versus

Nawal Kishore Prasad S/o- Late Mehar Chand Prasad, Resident of North Sri Krishnapuri, Tilak Marg House No.- 6B/7, Boring Road, P.O.- Patliputra, P.S.- Sri Krishnapuri, District- Patna- 800013.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sajid Salim Khan, SC 25
	:	Mr. Ram Pravesh Nath Tiwari, AC to SC 25
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE RAJAN GUPTA
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJAN GUPTA)

Date : 29-08-2022

In the present L.P.A. an I.A. No. 9364 of 2018 was filed under Section 5 of the Limitation Act for extension of the period of limitation because there is delay of 187 days in filing the present L.P.A.

2. Heard learned counsel for the appellants and in the

light of the reasons assigned in the I.A. petition, let the present I.A. requesting for condonation of delay of filing the present L.P.A. is hereby allowed and the delay of 187 days in filing the present L.P.A. is hereby condoned.

3. Heard learned counsel for the appellants on merit.

4. The present L.P.A. has been preferred against the order dated 02.08.2017 passed by Hon'ble Mr. Justice Prabhat Kumar Jha in C.W.J.C. No. 4175 of 2014.

“The question for determination in the present L.P.A. is that whether the alleged delinquent employee who was the then Superintending Engineer had empowered to take decision and relax the condition made in Letter No. 462 dated 30.03.1982 ?”

5. Learned counsel for the appellants submits that the delinquent employee has committed wrong and misused his power to extend relaxation in the capacity of the Superintending Engineer without giving cause for relaxation and it is also in violation of the point of relaxation of condition of Appendix Part 2 para 7 of Letter No. 462 dated 30.03.1982 warranting mention of cause for relaxation in case of urgency.

6. The said point is basically charge no. 4 on which there is categorical finding of the Inquiry Officer that the

Superintending Engineer is the Competent Authority to do the same. The finding of the Inquiry Officer has been duly considered by the learned Single Bench and the finding is as follows:

“.....The Executive Engineer made request for preparing the roads during the rainy season and on such the petitionr gave approval on the request of Executive Engineer. During the course of enquiry, no evidence was brought on record to show that no such emergent situation was existed and the Executive Engineer sent the letter for doing emergent work. Therefore, I find that non consideration of the reply of the petitioner to second show cause by the disciplinary authority is violative of principles of natural justice and the order suffers from illegality.

Accordingly, the impugned order dated 06.01.2014, as contained in Memo No. 136(S) (Annexure-8) is set aside and the writ petition is allowed.”

7. Upon going through the counter affidavit filed by the appellant before the learned Single Judge, the pleadings

made in the appeal is not present in the counter affidavit.

8. From the finding of the Inquiry Officer, it is clear that the Superintending Engineer has taken decision completely in the light of the power so vested in him by virtue of Letter No. 462 dated 30.03.1982 in special circumstances.

9. Upon perusal of the records and the documents annexed in the L.P.A., we are of the view that it need no interference in the order passed by the learned Single Judge. In the light of the reasons assigned above, the present L.P.A. is dismissed without costs.

10. The appellants are directed to calculate the entire arrears of the respondent in compliance of the order passed by the learned Single Judge and assure payment within 90 days from the date of passing of this order.

(Rajan Gupta, J.)

(Dr. Anshuman, J.)

ravishankar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	