

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.213 of 2020

1. The State of Bihar.
2. The Principal Secretary, Human Resource Development Department, Govt. of Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The District Magistrate, Patna.
5. The District Education Officer, Patna.
6. The District Programme Officer, Establishment, Patna.
7. The Block Education Officer, Barh Block, District- Patna.
8. The Block Education Officer, Daniyawan Block, District- Patna.

... .. Appellant/s

Versus

Md. Aslam Prawaiz Son of Late Md. Mansoor Alam, Resident of Village Andhana Via Noor Sarai, P.S. Noor Sarai, District- Nalanda.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Mukund Mohan Jha, Advocate
For the Respondent/s : Mr. Ram Sagar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 17-12-2024

I.A. No.02 of 2020

The present application has been filed under Section 5 of the Limitation Act for condonation of delay of 411 days caused in preferring the Appeal.

2. Heard Mr. Mukund Mohan Jha, learned counsel for the appellants and Mr. Ram Sagar Singh, learned counsel for the respondent.



3. We have considered the submissions canvassed by learned Advocates appearing for the parties. We have also perused the averments made in the Memo. of Application. We are of the view that the applicant has shown sufficient cause for not preferring the LPA within the period of limitation. Accordingly, delay of 411 days caused in preferring the LPA is hereby condoned.

4. The present interlocutory application stands allowed.

Re:-LPA No.213 of 2020.

5. The appeal has been filed under Clause 10 of the Letters Patent Appeal of the Patna High Court Rules against the order dated 17.01.2019 passed by the learned single Judge in C.W.J.C. No.24814 of 2018.

6. Heard Mr. Mukund Mohan Jha, learned counsel for the appellants and Mr. Ram Sagar Singh, learned counsel for the respondent.

7. Learned counsel for the appellants-State would mainly contend that the learned single Judge has passed the impugned order simply relying upon the order passed by another learned single Judge in C.W.J.C. No.7504 of 2013 whereby the another learned single Judge has allowed the



petition. It has been observed by the learned single Judge that the issue involved in the writ petition is covered by the said order. However, learned counsel for the appellants referred the averments made in the Memo of LPA and, thereafter, pointed out that the original writ petitioner obtained the degree from Soghra College of Education, Biharsharif, Nalanda which was not affiliated with Magadh University. The degree was obtained by the original petitioner in the year 1987. It has been pointed out by learned counsel for the appellants that the similar issue arose in C.W.J.C. No.4560 of 2007 where the concerned writ petitioners preferred the writ petition with a grievance that once they had been issued the provisional mark sheets and a certificate in the year 1990 by Magadh University, it was the duty of the concerned authority to include the name of the college in the context of eligibility of the candidates holding B.Ed. degree for the post of teacher. In the said case, the same college was not affiliated with the University and, therefore, the writ petition was preferred. It is submitted that the learned single Judge has allowed the said writ petition *vide* order dated 24.10.2011 against which the State preferred LPA No.1241 of 2014. It is contended that *vide* order dated 19.05.2015, the Division Bench of this Court quashed and set aside the order



passed by the learned single Judge and, thereby, the direction issued by the learned single Judge to include the name of the aforesaid college in the list of Institutions was set aside. Learned counsel for the appellants, therefore, urged that though the aforesaid order was passed by the Division Bench, the learned single Judge, in the present case, relying upon another order passed in a different writ petition, allowed the writ petition filed by the present respondent/original petitioner. Learned counsel, therefore, urged that the present LPA be allowed and, thereby, the impugned order passed by the learned single Judge be quashed and set aside.

8. On the other hand, learned counsel appearing for the present opponent/original petitioner has opposed the present Appeal. Learned counsel for the opponent mainly submitted that the learned single Judge, in the present case, has specifically observed that the learned counsel for the parties are in agreement that the present case is covered by the judgment dated 29.02.2016 passed in C.W.J.C. No.7504 of 2013 especially, on account of the fact that the case of the respondent herein has also received a stamp of approval by the Hon'ble Apex Court. Learned counsel submits that once the counsel appearing for the present appellants/original respondents before



the learned single Judge, have agreed that the present case is covered by the aforesaid order passed in C.W.J.C. No.7504 of 2013, it is not open for the appellants to contend that the present case is not covered by the aforesaid order.

9. Learned counsel for the present opponent would thereafter submit that the order dated 29.02.2016 passed in C.W.J.C. No.7504 of 2013, was challenged by the State by filing LPA No.1739 of 2016 and allied matters. It is submitted that the Division Bench of this Court *vide* order dated 28.08.2023 dismissed the appeals filed by the State Government. Learned counsel for the present opponent has placed on record the copy of the order dated 28.08.2023 passed by a Division Bench of this Court in batch of appeals filed by the State.

10. It is further contended that the present opponent/original petitioner was appointed on the post in question *vide* order dated 30.01.2012, copy of which is placed on record at page 18 of the Memo. of Writ Petition. It is submitted that the original petitioner has been appointed on the post in question pursuant to the direction issued by the Hon'ble Supreme Court in Contempt Petition No.297 of 2007 and allied matters. At this stage, learned counsel has also referred the order dated 18.07.2013 passed by Hon'ble Supreme Court in Special



Leave Petition (Civil) No.26824 of 2012 and allied matters. It is submitted that the Hon'ble Supreme Court has specifically observed that none of the persons appointed out of the 34,540 vacancies should be disturbed in any way, despite which the present appellants/original respondents have passed the impugned order whereby they have decided to terminate the services of the original petitioner. Learned counsel, therefore, urged that the present appeal be dismissed as the issue involved in the present matter is covered by the order dated 18.07.2013 passed by Hon'ble Supreme Court in the aforesaid batch of matters.

11. Having heard learned counsel appearing for the parties and having gone through the materials placed on record, it would emerge that the present respondent/original petitioner has been appointed *vide* order dated 30.01.2012. Copy of the said order is placed on record at Annexure-2, Page 18 of the Memo of Appeal. It transpires from the appointment order of the original petitioner that he has been appointed in pursuance of the proceedings filed before the Hon'ble Supreme Court in Contempt Petition No.297 of 2007. It is not in dispute that in pursuance of the proceeding filed before the Hon'ble Supreme Court, in the first round of litigation, the State of Bihar filed



undertaking and, thereafter, the SLP was disposed of by the Hon'ble Supreme Court *vide* order dated 23.01.2006. However, when the State of Bihar failed to abide by its commitment and assurance, the Contempt Petition (Civil) No.207 of 2006 and allied matters were preferred before the Hon'ble Supreme Court. From the appointment order dated 30.01.2012 of the original petitioner, it transpires that he has been appointed in pursuance of the proceeding filed before the Hon'ble Supreme Court. It would further reveal from the record that 34,540 candidates were appointed on the respective posts in question and, therefore, while disposing of the various applications, the Hon'ble Supreme Court, *vide* order dated 18.07.2013, after considering submissions canvassed by learned Advocates appearing for the parties, specifically observed that “..... *We make it clear that none of the persons appointed out of the 34,540 vacancies should be disturbed in any way, but the question of filling up the balance vacancies may be taken into consideration, while disposing of the applications in question*”.

12. Thus, from the aforesaid observations, it can be said that specific direction has been issued by the Hon'ble Supreme Court that none of the persons appointed out of the 34,540 vacancies should be disturbed. Though the aforesaid



direction has been issued by the Hon'ble Supreme Court, now it is revealed from the record that after the order of the Hon'ble Supreme Court passed on 18.07.2013, the respondents *vide* order dated 15.11.2018 terminated the services of the original petitioner by observing that the original writ petitioner obtained the degree from Soghra College of Education, Biharsharif, Nalanda which is not in the list of recognized Institutions and, therefore, he has been wrongly appointed on the said post. The present appellants for the said purpose has placed reliance upon the order dated 19.05.2015 passed by a Division Bench of this Court in LPA No.1241 of 2014 and, thereafter, it has been contended that in the said proceedings before the Division Bench in appeal, similar question arose and the Division Bench specifically observed that the learned single Judge has committed an error while issuing direction to the State Government to include the name of Soghra College of Education, Biharsharif, Nalanda in the list of recognized Institutions.

13. Now at this stage, learned counsel for the original writ petitioner/present opponent pointed out from the record that the writ petitioner of C.W.J.C. No.7504 of 2013 has also obtained the B.Ed. Degree from the very same Institution. His



services were terminated and, therefore, the writ petition was filed by him before this Court. It is submitted that the learned single Judge *vide* order dated 29.02.2016 allowed the aforesaid writ petition along with the similar type of writ petitions filed by other writ petitioners. In the said order, it has been observed that “*The petitioners are aggrieved by the different orders passed by DEO, Vaishali terminating their service on the ground that they had obtained training certificate from institute who have no recommendation by the State of Bihar.....*” In the said order, the learned single Judge, after relying upon some other orders passed by this Court, quashed and set aside the orders passed by the DEO, Vaishali terminating services of the concerned writ petitioners in view of the direction issued by the Hon’ble Supreme Court.

14. During the course of the submissions, learned counsel for the original petitioner/ present opponent has placed on record the order dated 28.08.2023 passed by the Division Bench of this Court in LPA No.1739 of 2016 arising out of C.W.J.C. No.7504 of 2013 and allied matters. It is submitted that the order passed by learned Single Judge is confirmed by the Division Bench of this Court and all the appeals filed by the State have been dismissed.



15. Now, in the present case also, the learned single Judge, in the impugned order dated 17.01.2019, has placed reliance upon the aforesaid order dated 29.02.2016 passed in C.W.J.C. No.7504 of 2013 which has been now confirmed by the Division Bench of this Court in the aforesaid LPA. It is required to be observed at this stage that the learned single Judge has specifically observed that the learned counsel for the parties are in agreement that the present case is covered by the aforesaid order.

16. Thus, we are of the view that once the learned counsel for the appellants has agreed before the learned single Judge that the issue involved in the present proceeding is covered by the aforesaid orders, it is not open for the present appellants to file the present LPA. Even otherwise, we are also of the view that the issue involved in the present proceeding is covered by the order dated 29.02.2016 passed in C.W.J.C. No.7504 of 2013 and LPA No.1739 of 2016 arising out of the aforesaid writ petition. Lastly, we may also observe that the Hon'ble Supreme Court has observed in the last paragraph of the order dated 18.07.2013 that none of the persons appointed out of 34,540 vacancies should be disturbed in any way and, therefore also, it is not open for the appellants herein to



terminate the services of the original petitioner.

17. In view of the aforesaid discussion, we are of the view that the learned single Judge has not committed any error while allowing the writ petition filed by the original petitioner and, therefore, no interference is required in the present appeal.

18. Accordingly, the present LPA No.213 of 2020 stands dismissed.

19. In view of the above, the stay petition, *i.e.* I.A No. 01 of 2020 stands disposed of.

(Vipul M. Pancholi, J)

(Dr. Anshuman, J)

Ashwini/
Prakashmani/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

