

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.426 of 2021

In
Civil Writ Jurisdiction Case No.11459 of 2015

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Mukesh Kumar son of Late Kamla Ram, resident of Pamara, P.O.-Keshopur,
P.S. and Prakhand, District-Nalanda (Bihar Sharif).

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Primary Education, Govt. of Bihar, Patna.
4. The District Education Officer, Nalanda (Bihar Sharif).
5. The District Programme Officer (Establishment), Nalanda (Bihar Sharif).
6. The Block Education Officer Noorsarai, Nalanda (Bihar Sharif).
7. The Headmaster of the Middle School Noorsarai, Sangat-cum-Drawing and Disbursing Officer Prakhand-Noorsarai, Nalanda, Bihar Sharif.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Sanjay Prasad, Advocate
For the Respondent/s : Mr.Rohitabh Das, AC to AAG 13

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

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

6 26-11-2024

I.A. No. 2 of 2024

Heard Mr. Sanjay Prasad, learned counsel for the
applicant/appellant and Mr. Rohitabh Das, A.C. to learned AAG-
13.

2. The present interlocutory application has been filed
by the applicant for amendment of I.A. No. 1 of 2021. In fact, I.A.
No. 1 of 2021 has been filed under Section- 5 of the Limitation
Act for condonation of delay of 1120 days caused in preferring the
Letters Patent Appeal. However, in I.A. No. 1 of 2021, the



applicant has failed to point out the details for not filing the Letters Patent Appeal within limitation period and there was no explanation given in the said interlocutory application for the same. Hence, this interlocutory application has been filed.

3. Looking to the averments made in this application, i.e. I.A. No. 2 of 2024, the same is allowed.

I.A. No. 1 of 2021

Heard Mr. Sanjay Prasad, learned counsel for the applicant/appellant and Mr. Rohitabh Das, A.C. to learned AAG-13.

2. The present interlocutory application has been filed under Section-5 of the Limitation Act for condonation of delay of 1120 days caused in preferring the Letters Patent Appeal.

3. Learned counsel for the applicant has referred to the averments made in the application and thereafter submitted that the learned Single Judge passed the impugned order dismissing the writ application on 21.06.2018. However, the applicant came to know about the same when he went to the house of the concerned advocate in February, 2020. Learned counsel has also referred to the averments made in para-6 of the application wherein there is a reference of the order passed by the Hon'ble Supreme Court whereby the limitation period has been extended because of the lock-down. Learned counsel submits that the present appeal has



been filed on 16.07.2021. Learned counsel, therefore, urged that the present application be allowed and delay of 1120 days caused in preferring the appeal be condoned.

4. At this stage, learned counsel also submitted that the applicant is having a very good case on merits and a Co-ordinate Bench of this Court, in the case of similarly situated employees, has passed order in their favour. The said order is also applicable to the present applicant/appellant, despite which the order of recovery of alleged excess amount has been passed by the respondent authority and, therefore, the applicant is having a good case on merits. He, therefore, urged that after condoning the delay, the appeal be heard on merits.

5. On the other hand, learned counsel for the respondents has opposed this I.A., filed for condonation of delay.

6. It is submitted that the applicant has failed to explain the gross delay of 1120 days caused in preferring the appeal and when the applicant has failed to point out any sufficient cause, this Court may not entertain the present I.A.

7. We have considered the submissions canvassed by the learned advocates and also perused the averments made in the memos of both the interlocutory applications.

8. It is not in dispute that the learned Single Judge passed the impugned order on 21.06.2018. As the applicant is an



Assistant Teacher serving in a school, he is an educated person. However, general averment has been made in the memo of application that when he went to the house of the advocate in February, 2020, he came to know about the dismissal of his petition. He has also wrongly mentioned the date of lock-down as 15.03.2020 in the memo of application.

9. We are of the view that when there is a gross delay of 1120 days in preferring the Letters Patent Appeal and, more particularly, in absence of any sufficient cause shown by the applicant for not filing the appeal within the period of limitation, we are not inclined to entertain the present application. The same is dismissed.

10. As the interlocutory application itself stands dismissed, appeal shall also stand dismissed.

(Vipul M. Pancholi, J)

(Dr. Anshuman, J)

K.C.Jha/-

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