

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No. 730 of 2021

In
Civil Writ Jurisdiction Case No.5855 of 2019

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1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
 2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
 3. The Director Primary Education, Government of Bihar, Patna.
 4. The Special Secretary, Education Department, Government of Bihar, Patna.
 5. The District Compassionate Appointment Committee through Chairman District Magistrate-cum-Collector, Buxar.
 6. The District Magistrate-cum-Collector, Buxar.
 7. The District Education Officer, Buxar.
 8. The District Program Officer (Establishment), Buxar.

... .. Appellant/s

Versus

Lokesh Kumar Tripathi Son of Late Umakant Tiwari R.O. Village- Bilauti,
Police Station- Shahpur in the District- Bhojpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ram Vinay Pd. Sinha, A.C. To G.A.12
For the Respondent/s : Ms. Supriya Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL ORDER

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

13 30-08-2024

Re:- Interlocutory Application No. 1 of 2021

This interlocutory Application has been filed by appellant / applicant under Section 5 of the Limitation Act for condonation of delay of 973 days caused in preferring the Letters Patent Appeal.

We have considered the submission canvassed by the learned counsel for appellant as well as learned counsel for the



respondent. Considering the averments made in this application and the submission canvassed by the learned counsel for the applicant, delay of 973 days, caused in preferring the Letters Patent Appeal, is condoned.

3. This Interlocutory Application is allowed.

Re:- Letters Patent Appeal No. 730 of 2021

With the request of learned advocates appearing on behalf of the parties, the appeal itself is taken up for hearing.

2. Heard Mr. Ram Vinay Pd. Sinha, learned A.C. to G.A.12, for the appellants and Ms. Supriya Kumari, learned Advocate for the respondent.

3. Learned counsel for the Appellants-State submits that the present appeal has been filed under Clause 10 of the Letters Patent Appeal of the Patna High Court Rules, 1916 against order dated 27.03.2019 passed by the learned Single Judge in Civil Writ Jurisdiction Case No. 5855 of 2019. Learned counsel for the appellant-State referred the said order. It is contended that the learned Single Judge has, without going into the merits of the case, disposed of the petition, as if the decision rendered by the Hon'ble Supreme Court, in the case of ***Mukesh and Anr. Vs. State of Bihar and Ors.*** reported in ***2017 (5) SSC 383***, is applicable to the facts of the present case. Learned



counsel, therefore, urges that the impugned order be set aside.

4. On the other hand, learned counsel for the present respondent/ original petitioner has opposed the present appeal. Learned counsel would mainly submit that the learned Single Judge has not examined the merits of the case of the petitioner and, on the contrary, disposed of the petition by granting liberty to the petitioner to file a representation before the concerned/ original respondent authorities along with the copy of the decision rendered by the Hon'ble Supreme Court as observed in the said order. Learned Single Judge has not given any direction to the present appellant, who were the respondents, to allow the representation and, therefore, it is always open for the present appellants to decide the said representation on its own merits, despite which the present appeal has been filed, therefore, this appeal be dismissed.

5. Having heard the learned counsels appearing for the parties and having gone through the material placed on record, it would emerge that the learned single Judge has taken note of the decision rendered by the Hon'ble Supreme Court in the case of ***Mukesh & Anr.*** (*supra*) and, thereafter, observed that it is open for the petitioner to submit the representation before the concerned/ original respondent authority along with



the copy of the said decision. Learned Single Judge further directed the present appellants/original respondents to decide such representation keeping in view the aforesaid decision and thereafter pass appropriate order within a period of three months. We fail to understand that why the State has preferred the present appeal challenging such type of innocuous order passed by the learned Single Judge. It appears from the impugned order that learned single Judge has not gone into the merits of the case of the parties and liberty was reserved to the original petitioner / present opponent to submit representation. No specific direction has been given to the present appellants to allow the representation, which may be filed by the original petitioners.

In view of the aforesaid facts and circumstances of the present case, we are of the view that no interference is required in the impugned order passed by the learned Single Judge. Accordingly, the present Letters Patent Appeal stands dismissed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

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