

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.709 of 2023
In
Civil Writ Jurisdiction Case No.6674 of 2009

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1. The State of Bihar through the Director-in-Chief, Health Services, Government of Bihar, Patna.
 2. The Civil Surgeon-cum-Chief Medical Officer, Jehanabad.
 3. Dr. Baleshwar Chaudhary, (the then Civil Surgeon, Jehanabad between July 1994 to December 1995) at present reverted to the post of Additional Chief Medical Officer and Placed under Suspension, C/o Secretary Department of Health and Family Welfare Government, Bihar, Patna.

... .. Appellant/s

Versus

Deepak Kumar, Son of Late Ramakant Prasad, Resident of Village Masaurhi, Police Station Masaurhi, District- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. P.K. Shahi, AG

Mr. Ajay, GA-5

For the Respondent/s : Mr. Santosh Kumar Sinha 2, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 25-03-2025

Re : I.A. No. 01 of 2023

The learned Advocate General presses I.A. No. 01 of 2023 seeking condonation of delay of one year and four months in preferring this appeal against the judgment of the learned Single Judge in C.W.J.C. No. 6674 of 2009 dated 16.12.2021.

2. The reasons assigned in the application is that



some time was taken in obtaining legal opinion, whereafter the issues were considered threadbare and was endorsed to a panel of Advocates for necessary drafting. The Department of Law received the draft, but because of some of the lackadaisical employees of the department, the same could not be sent on time to the appropriate authority, which has resulted in delay.

3. Apart from that, the learned Advocate General has pointed out that huge number of appointments were made against the Rules and in many cases, the credentials of the candidates were found to be forged and fabricated.

4. Several writ petitions were filed against the order of termination of such employees.

5. A Five Member Committee also was constituted to look into such irregular/illegal appointments and the matter at many stages travelled to Supreme Court. It was also a humongous task, it has been urged on behalf of the State, to identify all such



employees and the process was time taking.

6. Contesting the aforementioned grounds, the learned counsel for the respondent has submitted that the State is supposed to explain the sufficient cause and administrative lethargy has been held to be no sufficient cause.

7. In ***Majji Sannemma vs. Reddy Sridevi and Ors., 2021 SCC OnLine SC 1260***, the Supreme Court has held that even though limitation may harshly affect the rights of a party, but it has to be applied with all its rigours.

8. Similar grounds have weighed with the Supreme Court in ***Ajay Dabra vs. Pyare Ram and Ors., 2023 SCC OnLine SC 92; Basawaraj and Anr. vs. Special Land Acquisition Officer, (2013) 14 SCC 81; Union of India and Anr. vs. Jahangir Byramji Jeejeebhoy (D) Through His Lr, 2024 SCC OnLine SC 489***.

9. In all these judgments, it has been held that it



matters not whether a litigant is a private party or a State when it comes to condoning the delay in preferring the appeal. The length of delay is also a relevant matter which the Court must take into consideration while considering whether the delay should be condoned or not.

10. It has further been argued that in ***State of M.P. vs. Ramkumar Choudhary, 2024 SCC OnLine SC 3612***, the delay of 5 years, 10 months and 16 days in preferring a second appeal was not condoned by the jurisdictional High Court and the same was affirmed by the Supreme Court.

11. In ***State of Bihar and Ors. vs. Deo Kumar Singh and Ors., (2022) 16 SCC 483***, it has clearly been held that condonation of delay is no more admissible on the pretext of government lethargy. (also refer to ***H. Guruswamy and Ors. vs. A. Krishnaiah Since Deceased by Lrs., 2025 SCC OnLine SC 54***)

12. After having considered the submission on behalf of the parties and also taking into account the



judgment of the Supreme Court in ***Inder Singh vs. State of Madhya Pradesh, 2025 Live Law (SC) 339***, holding that there can be no quarrel on the settled principle of law that delay cannot be condoned without sufficient cause, but a major aspect which has to be kept in mind is that if in a particular case, the merits have to be examined, it should not be scuttled merely on the basis of limitation.

13. In the present case, the learned Single Judge *vide* his judgment has not taken into account the various decisions of the Supreme Court in the same set of facts with regard to illegal appointments in the Health Department of the State of Bihar and set aside the termination order on the sole ground that the respondent was not subjected to a detailed procedure for terminating his service. This has resulted in a dichotomous judgment in favour of the respondent, when many such similarly situated employees were terminated, whose termination were upheld by the Supreme Court.



14. We are conscious of the fact that this aspect of the matter pertains to the merits of the case; nonetheless considering the wide impact which the judgment impugned will have, there appears to be a necessity for looking into the merits of the case.

15. In that context, the delay appears to be explained.

16. Thus, we deem it appropriate to condone the delay of one year and four months in preferring this appeal and allow the application.

17. The delay is condoned.

18. I.A. No. 01 of 2023 stands allowed.

Re : LPA No. 709 of 2023

19. The services of the respondent was terminated after giving him a notice but there being no record available before the learned Single Judge about such notice to the respondent, his termination was set aside. The State, however, was permitted to, should it decide, to hold a fresh inquiry and in that case, the



respondent was directed to be reinstated, put under suspension and be given subsistence allowance till the conclusion of the inquiry. The State was directed to extend monetary benefits of the respondent from the date of termination till the date fresh order is passed.

20. It would be necessary to refer to the judgment of the Supreme Court in ***State of Bihar & Ors. vs. Devendra Sharma : (2020) 15 SCC 466*** which related to the same set of appointments in the Health Department in Government of Bihar. The services of such employees who were illegally/ irregularly appointed was terminated which had led to a number of writ petitions having filed before the High Court.

21. The first round of cases was decided by a three Judge Bench of the Supreme Court in ***Ashwani Kumar & Ors. vs. State of Bihar : (1997) 2 SCC 1*** wherein it was held that recruitments made by one Dr. Mallik were arbitrary, capricious, null and void. It was also held that none of the appointees had in their favour any



accrued right in the absence of sanctioned posts. It was held that the whole exercise of recruitment was in the realm of an unauthorised adventure.

22. In another round of litigation, a Division Bench of Patna High Court in **State of Bihar vs. Purendra Sulan Kit : 2006 SCC OnLine Patna 290** had decided approximately 809 LPAs and the writ petitions. A direction was issued to the Health Department to scrutinize the cases of affected employees afresh on the basis of relevant materials and in view of the law declared by the Supreme Court in **State of Karnataka vs. Uma Devi (3) : (2006) 4 SCC 1**.

23. Pursuant to such a direction, the State of Bihar had constituted a committee of five officers to examine the facts of each of the employee's case. For such categories of cases where the appointments were obtained on forged certificates, the Supreme Court in **Devendra Sharma** (supra) held that such appointments were *void ab initio*.



24. The Five Member Committee, out of whom only three had participated, but whose report was relied upon, had clearly found out that the respondent's appointment was on the basis of forged certificates.

25. The learned Single Judge, relying on the judgment of ***Managing Director ECIL Hyderabad vs. B. Karunakar Etc. : (1993) 4 SCC 727*** and ***Chairman-cum-Managing Director, Coal India Ltd. & Ors. vs. Ananta Saha & Ors : (2011) 5 SCC 142*** came to the conclusion that the respondent was required to be put through a departmental proceeding before terminating his services. There is no cavil with the principle but in these set of appointments, the Supreme Court has held such appointment to be *void ab initio* because of the findings of the Five Member Committee out of which three had participated. Since the report was accepted by the Supreme Court, any decision to the contrary would be in teeth of the Supreme Court's judgment.



26. Even otherwise, in view of the appointment of the respondent having been found to be based on forged certificates, which comprehensive report of the Committee was relied upon by the Supreme Court, there would be, in our view, no necessity of subjecting the respondent to such domestic proceeding. The report of the Committee has never been assailed but it has been relied upon by the Supreme Court.

27. Considering these aspects of the matter, we are of the view that the State has been able to make out a case for interference with the judgment impugned.

28. For the aforementioned reasons, we set aside the judgment impugned dated 16.12.2021.

29. The appeal is allowed.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Rajesh/Saurav

AFR/NAFR	NAFR
CAV DATE	NA
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