

(2016) 05 PAT CK 0119

In the Patna High Court

Case No : Letters Patent Appeal No. 511 of 2015 Arising out of Civil Writ Jurisdiction Case No. 17140 of 2011 Along with Interlocutory Application No. 2291 of 2015

Bijay Kumar Sinha

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 20-05-2016

Acts Referred:

Citation : (2016) 3 BBCJ 339 : (2016) 4 PLJR 91

Hon'ble Judges : Mr. Hemant Gupta and Mr. Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Mr. Sunil Kumar, Advocate, for the Appellants; Mr. Hari Shankar Roy, A.C. to P.A.A.G, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Hemant Gupta, J. (Oral)—Re.: Interlocutory Application No. 2291 of 2015

The application is for condonation of delay of 132 days in filing of the present appeal.

2. For the reasons mentioned in the application, we find that sufficient cause is shown by the appellants to condone such delay. Consequently, the delay in filing of the present Letters Patent Appeal is condoned.

3. Interlocutory Application stands allowed accordingly.

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4. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 10th July, 2014 in CWJC No. 17140 of 2011 whereby the claim of the appellants for payment of salary from the date of termination till the date of reinstatement remained unsuccessful.

5. The services of the appellants were terminated in the year 2003 for the reason that initial appointments were illegal. The writ petitions were allowed, but in Letters Patent Appeal, the matter was referred to a five-member Committee to look into the merits of all the similarly situated candidates. The five-member Committee grouped the persons in three categories on the basis of nature of their initial appointment, i.e., irregular, illegal and forged. The appointments of the appellants were found to be irregular and consequently the appellants were reinstated in service. While reinstating the appellants, there was specific condition that the appellants shall not be paid any salary for the period between the dates of termination till the date of their joining. Challenge to the said order has remained unsuccessful in view of Full Bench judgment reported as Malti Kumari v. The State of Bihar & Ors., 2013 (2) PLJR 677.

6. We have heard learned counsel for the parties and find no cause for interference in the appeal. The Full Bench judgment reported as Malti Kumari's case (Supra) held as under :

"We find considerable force in the submission on behalf of the State that the petitioner cannot blow hot and cold simultaneously. It is a settled principle of law that a person cannot retain the benefit of a part of the order and simultaneously challenge another part of the same order. Once the direction to be considered afresh for regularisation was accepted and the subsequent order of regularisation from September 2007 has not been challenged but accepted without demur by joining in September 2007 it is impermissible for her to question the very order for regularisation by seeking salary for the period prior to regularisation. The fact that the earlier period may have been counted by fiction for purposes of pension only cannot lay the foundation for a relief factually impossible. If regularisation has been done subsequently and accepted, the question of wrongly being denied the right to work for the interregnum period does not arise. The principle of "No work no pay" therefore applies."

7. In view of the aforesaid Full Bench judgment, the present Letters Patent Appeal is dismissed.