
(2020) 01 JH CK 0108

In the Jharkhand High Court

Case No : Letter Patents Appeal No. 09 Of 2019, I.A. No. 10195 Of 2019

Anita Kumari

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 09-01-2020

Acts Referred:

Limitation Act, 1963 — Section 5
Constitution Of India, 1950 — Article 226

Citation : (2020) 01 JH CK 0108

Hon'ble Judges : Dr. Ravi Ranjan, CJ; Sujit Narayan Prasad, J

Bench : Division Bench

Advocate : Kanti Kumar Ojha, Bandana Sinha, P.K. Verma, Prashant Pallav,
Navneet Sahay

Final Decision : Dismissed

Judgement

1. The instant Interlocutory Application has been filed under Section 5 of the Limitation Act for condonation of delay of 157 days in filing the appeal.
2. The delay has been prayed to be condoned on the ground that though the appeal ought to have been filed along with certified copy of the impugned judgment passed in W.P.(S) No. 1578 of 2014 but it has been filed along with photocopy of net copy, however, subsequently, certified copy of the impugned judgment has been filed.
3. According to the appellant, appeal along with net copy of impugned judgment since was filed within time, therefore, the delay may be condoned.
4. Learned counsel for the respondents-State has fair enough to submit about condonation of delay so that the appeal be heard on merit.
5. In view of the reasons assigned in the Interlocutory Application, having not been objected by the respondents-State, delay in filing the appeal is

condoned.

6. Accordingly, I.A. No. 10195 of 2019 is disposed of.

L.P.A. No. 09 of 2019

1. The instant intra-court appeal has been filed under clause 10 the Letters Patent against the order/judgment dated 14.12.2018 passed in W.P. (S)

No. 1578 of 2014 by the learned Single Judge whereby and whereunder, the writ Court has dismissed the writ petition by not finding any reason to

issue writ of mandamus to grant relief pertaining to direction upon the respondents to continue the services of the petitioner giving further extension of service.

2. Brief facts of the case, which is relevant for the lis is hereunder as:

The appellant-writ petitioner was appointed as Clerk-cum-Typist, in pursuance to the advertisement published for appointment of Lady Supervisor,

Statistical Assistant and Clerk-cum-Typist, on contract basis initially for a period from 30.01.2006 to 29.01.2007. Thereafter, on rendering satisfactory

services, her contract was extended for the next year. But, all of a sudden for the next term i.e., 2008-09, her services was not extended, however,

services of other similarly situated persons were extended, which led the appellant-writ petitioner to approach before the writ Court for redressal of

her grievances.

3. Mr. Kanti Kumar Ojha, learned counsel for the appellant-writ petitioner has submitted that services of the appellant-writ petitioner has been

dispensed with without serving any show cause or affording opportunity of being heard. It has further been submitted that in the counter affidavit

mainly two grounds have been taken for not extending the contract of the petitioner: (i).She does not belong to the concerned district and; (ii).She has

no knowledge of typing.

With respect to such grounds, submission has been made that in the advertisement it has been stipulated that preference would be given to the Home

District candidates but there is no mention that candidates of other district would not be appointed and further the petitioner does not have knowledge

of typing is contradictory since her services have been extended after one year satisfactory service and therefore, giving no extension to her services

is nothing but an arbitrary exercise of power by the respondents-authorities.

4. Learned counsel appearing for the respondents-State of Jharkhand has opposed the grounds agitated by learned counsel for the appellant and

submits that the appellant-writ petitioner has illegally been appointed, which has been surfaced in enquiry conducted by the District Social Welfare

Officer, Godda wherein it was found that appellant-writ petitioner has no knowledge of typing and by making manipulation, she somehow managed to

secure appointment. Besides, she does not belong to the concerned district and, therefore, decision has been taken in the meeting held on 07.05.2008

not to extend the services of the appellant-writ petitioner. It has further been submitted that since the appellant-writ petitioner was appointed purely on

contract, the extension of the contract period does not vest any right upon the appellant-writ petitioner.

In view of such submissions, the order passed by the learned Single Judge has been defended by learned counsel for the respondents-State of

Jharkhand.

5. This Court, having heard learned counsel for the parties and on appreciation of the rival submissions, has found from the materials available on

record that the appellant-writ petitioner was appointed on the post of Clerk-cum-Typist purely on contract basis, in pursuance to an advertisement

pertaining to the post of Lady Supervisor, Statistical Assistant and Clerk-cum-Typist, as contained in Annexure 1 under the Signature of Deputy

Commissioner, Godda. The aforesaid advertisement contains a provision about giving preference to the local candidates of the district of Godda.

It is evident from the aforesaid advertisement that the appointment was not against the regular post rather appointment was made purely on contract

in ad hoc capacity initially for a period of one year.

6. The petitioner was appointed on being found to be successful in the assessment test, pursuant thereto, appointment order was issued on 24.01.2006

clearly stipulating therein that the appointment is on contract basis depending upon certain terms and conditions. The appellant-writ petitioner started

discharging her duties and after completion of period of one year, the contract period has been extended by virtue of agreement dated 30.01.2006 with

specific condition that the service is purely temporary and if the service is found not to be satisfactory, the same shall be terminated without any prior

notice to the appellant-writ petitioner.

The appellant continued to discharge her duties but the contract has not been extended for the period 2008-09, which led the appellant-writ petitioner to file writ petition, being W.P. (S) No. 1578 of 2014.

7. The fact about non-extension of the period of contract has been brought to the notice before the writ Court by way of counter affidavit, wherein reference of report submitted by District Social Welfare Officer, Godda has been made, who has conducted enquiry about the initial appointment of the appellant-writ petitioner, in which, it has been found that appellant-writ petitioner has no knowledge of typing and by making manipulation, the appellant-writ petitioner somehow managed to secure appointment. The competent authority basing upon the said report took a decision not to extend the contract of the appellant-writ petitioner.

8. It is well settled position of law that appointment made on contract basis does not create any right upon the contract appointees to claim it by virtue of a legal right. If the appointment is being made on the contract basis, the same is governed by the terms and conditions of the contract.

It is very much clear from the offer of appointment that the appointment made on contract was initially for a period of one year, subsequently it has been extended.

In the extension order, it has specifically been mentioned that if the services of the appellant-writ petitioner would not found to be satisfactory, the same would not be extended. The authorities have taken decision not to extend the contract basing upon the report submitted by the District Social Welfare Officer, Godda, in which, it was found that the appellant-writ petitioner has no knowledge of typing and she has been appointed by making manipulation.

9. Since appointees on contract has no vested legal right to claim, therefore, no such direction by way of issuance of writ of mandamus can be issued under Article 226 of the Constitution of India to extend the contract for one or the others, who have been appointed on contract basis, is fit to be passed.

10. It is further settled position of law that writ of mandamus can only be issued, if there is any violation of fundamental right or legal right.

Appointment on contract basis depends upon certain terms and conditions of the contract and does not create any legal right warranting issuance of

writ of mandamus under Article 226 of the Constitution of India.

11. Learned Single Judge by considering the aforesaid principle of law has passed no positive direction in favour of the appellant-writ petitioner for

continuation of the contract, which according to our considered view cannot be faulted with. 12. In view thereof, the appeal being devoid of any merit,

is dismissed.