
(2014) 07 UK CK 0023
In the Uttarakhand High Court
Case No : Special Appeal No. 496 of 2013

Director School Education

APPELLANT

Vs

Munni Tilara

RESPONDENT

Date of Decision : 24-07-2014

Acts Referred:

Citation : (2014) 106 ALR 386 : (2014) 143 FLR 804 : (2015) 2 UC 1072

Hon'ble Judges : Servesh Kumar Gupta, J;Alok Singh, J

Bench : Division Bench

Advocate : Pradeep Joshi, Standing Counsel, Advocate for the Appellant; Atul Bhatt, Advocate for the Respondent

Final Decision : Allowed

Judgement

Alok Singh, J.—Despite sufficient opportunity granted to respondent no. 1/writ petitioner, no reply has been filed to the application seeking condonation of delay in filing the appeal.

2. For the reasons stated in the accompanying affidavit, we are of the opinion that delay in filing the appeal should be condoned. Consequently, delay condonation application no. 13901 of 2013 is allowed. Delay of 347 days in filing the appeal is condoned.

3. Present appeal is preferred assailing the judgment dated 01.12.2012 passed by learned Single Judge whereby WPSS No. 1169 of 2010 filed by the writ petitioner/respondent no. 1, herein, was allowed directing the appellants to pay the petitioner salary for the post of Principal payable to her husband with effect from 01.07.1992 till the death of her husband i.e. 24.01.1998.

4. Brief facts of the present case inter alia are that husband of the writ petitioner was working as Senior Most Lecturer in Inter College, Dhaulaghat, Almora; after retirement of the Principal of said college, husband of the petitioner was permitted to work as officiating Principal with effect from 01.07.1992; he worked as officiating Principal till 24.01.1998 (till the date when he died in harness).

5. Present writ petition was filed by wife of Principal (husband) in the year 2010, after almost 12 years from the date of death of her husband, stating therein that since her husband was allowed to work as officiating Principal for more than 5 1/2 years, therefore, he should have been paid salary for the post of Principal, which was not paid to him illegally, therefore, same should be paid to her being his widow.

6. Mr. Pradeep Joshi, learned Standing Counsel for the State of Uttarakhand/appellant, has vehemently argued that writ petition was hopelessly barred by the principle of laches, in view of the fact that as per Article 7 of the Limitation Act, prescribed period for recovery of wages is 3 years. He further contends that since husband of the writ petitioner never demanded salary for the post of officiating Principal during his lifetime, therefore, it should be presumed that he must have waived his right and he agreed to work as officiating Principal without raising any claim for salary on the post of officiating Principal.

7. Undisputedly, as per Article 7 of the Limitation Act, wages can be recovered within 3 years. We are of the considered opinion that although rigid provisions of the Limitation Act are not applicable in writ petition, however, broad principles of the Act are always applicable, therefore, on the face of it, writ petition seems to be barred by the principle of laches. Writ petitioner has not made any averment in the writ petition as to why petitioner had not filed the writ petition earlier and why she had filed writ petition, after 12 years of death of her husband. Laches stand unexplained, therefore, writ petition ought not to have been entertained at all.

8. Undisputedly, husband of the petitioner worked as officiating Principal from 01.07.1992 to 24.01.1998 for almost 5 1/2 years and he never raised any claim for salary for the post of officiating Principal during his lifetime, therefore, after 12 years from his death, it is not open to the petitioner (wife of the officiating Principal) to raise claim for salary, which her husband had waived during his lifetime.

9. In view of the fact that writ petition was barred by the principle of laches and principle of waiver, writ petition is liable to be dismissed. In net result, appeal is allowed. Impugned judgment is set aside. Writ petition is dismissed. No order as to costs.