
(2014) 03 JH CK 0028
In the Jharkhand High Court
Case No : L.P.A. No. 292 of 2013

Ghanshyam Thakur

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 26-03-2014

Acts Referred:

Constitution of India, 1950 — Article 136
Contempt of Courts Act, 1971 — Section 19

Citation : (2014) 03 JH CK 0028

Hon'ble Judges : R. Banumathi, C.J.; S. Chandrashekhar, J

Bench : Division Bench

Advocate : Kanti Kumar Ojha and Rakesh Kumar, Advocate for the Appellant;
Ram Prakash Singh, J.C. to G.P. II, Advocate for the Respondent

Final Decision : Dismissed

Judgement

I.A. No. 7062 of 2013:

1. This interlocutory application has been filed to condone the delay of 1245 days in filing the Letters Patent Appeal against the order passed in Contempt Case (C) No. 494 of 2009 dated 25.02.2010. In supporting affidavit, it is stated that the contempt petition filed by the petitioner has been dropped and as such the petitioner did not think necessary to obtain the certified copy of the order dated 20.02.2010 and left the matter upon the respondents for about four years concerning to payment of back wages for the period during which the petitioner - appellant remained out of service. According to the petitioner -- appellant, in the case of other similarly situated persons the payment of back wages was made to them by virtue of the order of this Court in W.P. (S) No. 4740 of 2009, W.P. (S) No. 2238 of 2004 and W.P. (S) No. 4841 of 2012 and as such the petitioner - appellant is also similarly situated and therefore, the petitioner - appellant is seeking fresh direction upon the respondents for payment of full back wages along with consequential benefits from the date of his termination from service till the date of his reinstatement in service by taking into consideration the facts

that the petitioner was not engaged elsewhere till the date of the order i.e., 09.04.2009 passed in the writ petition.

2. The delay in filing the appeal is a long range of delay of about 1245 days. In order to condone the delay, the petitioner who prays the Court to exercise the discretion to condone the delay has to establish that he was prevented by sufficient cause in not filing the appeal. In the petition, the delay in filing the appeal is approximately 4 years (1245 days), a long range of delay. Even though, it is well settled that the Court will be liberal in condoning the delay in filing the appeals, the petitioner ought to satisfactorily explain the reasons for the delay in filing the appeal. In this case, the petitioner - appellant has not explained the reasons for the long range of delay of 1245 days and therefore we do not find any substantial ground to exercise the discretion to condone the long range of delay of 1245 days in filing the appeal.

3. Even on merits of the intra-Court Appeal, we are of the view that the Letters Patent Appeal is not maintainable. The Letters Patent Appeal is preferred against the order in Contempt Case (C) No. 494 of 2009 dated 25.02.2010. In the said case vide order dated 25.02.2010, the Contempt Case (C) No. 494 of 2009 filed by the petitioner - appellant was ordered to be dropped with a direction to the opposite parties to pass a fresh order reinstating the petitioner - appellant with retrospective effect from the date he has been retrenched. Since the contempt proceeding has ordered to be dropped, the intra-Court Appeal is not maintainable u/s 19 of the Contempt of Courts Act, 1971 which reads as under:

19. (1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt-

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court:

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

4. In *Baradakanta Mishra Vs. Justice Gatikrushna Misra*, Chief Justice of the Orissa High Court, the Hon'ble Supreme Court has held that when the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, such a decision would not, therefore, fall within Section 19, sub-section (1) and no appeal would lie against it as of right under that provision. In such a case there is a remedy before the Hon'ble Supreme Court under Article 136 of the Constitution of India.

5. In the present case, the learned Single Judge has declined to initiate proceeding under the Contempt of Courts Act, 1971 against the opposite parties and therefore, in view of the provisions u/s 19 of the Contempt of Courts Act, 1971, the Letters Patent Appeal filed by the applicant would not be maintainable. In view of the aforesaid discussion, I.A. No. 7062 of 2013 seeking condonation of

delay is dismissed and consequently this Letters Patent Appeal is rejected.