
(2011) 11 CHH CK 0043
In the Chhattisgarh High Court
Case No : Writ Appeal No. 256 of 2007

Hem Kumari Sharma

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 02-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 11 CHH CK 0043

Hon'ble Judges : Satish K. Agnihotri, J;R.S. Sharma, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—This intra-court appeal arises from the order dated 26th April, 2007 (Annexure A-1) passed in Writ Petition No. 1719 of 2001 Smt. Hem Kumari Sharma v. State of Chhattisgarh & Others, whereby the writ petition filed by the appellant was dismissed by the, then, learned Chief Justice, sitting single.

2. The case of the appellant, in short, is that the husband of the appellant was working as Head Master in a Government School. He joined the service on 16th July, 1958. After attaining the age of superannuation, he retired from the service sometime in the year 1991. Immediately after his retirement from the service, the State Government has settled the terminal benefits payable to him. The husband of the appellant was receiving all these benefits without even a murmur. He died on 15th May, 1997 leaving behind the appellant and others. The petitioner for the first time has approached this Court by filing a writ petition in the year 2001, inter alia, seeking a direction to the respondents for payment of unpaid salary and difference in the pension amount. The said writ petition was dismissed by the learned single Bench on 26th April, 2007. Thus, this appeal.

3. Ms. Dubey, learned counsel appearing for the appellant, would submit that during the life time of the husband of the appellant, he was making representations for payment of difference in salary for the period 01st October,

1981 to 13th April, 1982 and 03rd April, 1984 to 12th August, 1988. Further, it is stated that even after his death, the appellant continued to make representations before the respondents for payment of difference in pension amount, as also unpaid salary, and thereafter, it is stated by the appellant that there was no delay in approaching this Court.

4. Ms. Dubey, learned counsel would further submit that the learned single Bench failed to consider the fact that the appellant's husband had not been retired actually after attaining the age of superannuation because according to the date of birth of the appellant's husband i.e. 15th September, 1934 recorded in the service book was to be retired on 31st July, 1994, but the respondent authorities prematurely retired the appellant's husband on 30th September, 1990. Vide order dated 25th July, 1991 though the Under Secretary, Government of Madhya Pradesh, Bhopal, accorded permission for amendment in the entry of the date of birth of the appellant's husband in the service book as 15th September, 1930, the respondent authorities had not paid the salary of the period from 30th September, 1990 to 25th July, 1991 as the appellant's husband rendered his service till 25th July, 1991. The learned single Bench ought to have held that the respondent authorities had not paid all the terminal benefits payable to him, to which, the husband of the appellant was entitled and in view of slackness on the part of the respondents, the delay occurred in approaching this Court, thus the same ought to have been condoned.

5. Ms. Dubey, would next submit that the learned single Bench erred in holding that "even if it is assumed that the husband of the appellant was making representations, it does not cure the delay and laches on his part in approaching this Court". The learned single Bench further failed to appreciate that the case of the appellant's husband was submitted in the year 1999 to the Chief Secretary, M.P. Government, Bhopal for according sanction and thus it cannot be held that there was laches and delay in approaching the Court.

6. On the other hand, Shri Bhatia, learned Dy. Govt. Advocate appearing for the State, would submit that if for any reason, the husband of the appellant had any grievance with regard to non-payment of salary for the aforesaid period and also difference in pension amount, he should have approached this Court within a reasonable time. The appellant approached even the authorities after the death of the employee, in 1997. Thus, the discretionary relief of this Court may not be extended.

7. Shri Bhatia would further submit that the husband of the appellant was already given all retiral benefits to which he was entitled to, during his lifetime. The appellant is also getting the benefit of family pension as per rules. Thus, there is no merit in the writ appeal and also there is no illegality in the impugned order dated 26th April, 2007 passed in W.P. No. 1719/2001 and, as such, the appellant is not entitled to any relief and the writ appeal may be dismissed.

8. We have heard learned counsel appearing for the parties, perused the

pleadings and documents appended thereto.

9. Indisputably, the husband of the appellant namely; Dani Ram Sharma retired from the service some time in the year 1991. Thereafter, he had not made any effort to agitate the issue of alleged grievances. He died on 15th May, 1997 and after his death the appellant, being wife of the retired deceased employee, approached this Court in the year 2001 without explaining such an inordinate delay.

10. The issue on the question of raising the grievance after unexplained, inordinate delay is well settled.

11. The Supreme Court in Shankara Cooperative Housing Society Limited v. M. Prabhakar and Others, referring and considering Lindsay Petroleum Co. v. Hurd, Moon Mills Ltd. v. Industrial Court, Maharashtra SRTC v. Balwant Regular Motor Service, Amrit Lal Berry v. CCE, State of Maharashtra v. Digambar, Shiv Dass v. Union of India, State of M.P. v. Nandlal Jaiswal and Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur, held as under :

54. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are:

(1) There is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.

(2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.

(3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy.

(4) No hard-and- fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

(5) That representations would not be adequate explanation to take care of the delay.

12. In the case on hand, indisputably, the husband of the appellant retired from service some time in the year 1991 when the, then, State of Madhya Pradesh was in existence. The present State of Chhattisgarh was carved out on 1st

November, 2000. Thereafter, the appellant, widow of the deceased employee, had approached this Court in 2001. Thus, the respondent State would suffer on account of old stale claim, which was not raised within the reasonable time.

13. For the reasons mentioned hereinabove and applying the well settled principles of law to the facts of the present case, we do not find any illegality or irregularity warranting interference in the intra-Court appeal. The impugned order passed by the learned single Bench is just & proper.

14. As an upshot, the appeal, being bereft of merit, is liable to be and is hereby dismissed.

15. There shall be no order asto costs.