

(2008) 03 JH CK 0032
In the Jharkhand High Court

Jharkhand Public Service Commission	Vs	APPELLANT
State of Jharkhand and Others		RESPONDENT

Date of Decision : 31-03-2008

Acts Referred:

Citation : (2008) 3 JCR 613

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Judgement

N.N. Tiwari, J.—In this interlocutory application the petitioner has prayed for addition of the prayer seeking quashing of the show cause notice issued to the petitioner for non-compliance of the order dated 19.12.2007. It has been stated that the said notice has been issued when the petitioner had prayed for time to file writ petition against the said order. It has been stated that if the said prayer is not included in the writ petition, there will be multiplicity of proceedings between the same parties. It has been further stated that the amendment prayed for, does not in any way go to change the nature and character of the main writ petition as the relief sought to be added by way of addition is based on the same factual statements as made in the writ petition.

2. Learned Counsel appearing on behalf of the respondent No. 3 contested the application stating, inter alia, that the same has no concern with the writ petition and if the amendment prayed for is allowed, the same would change the nature and character of the main writ petition.

3. I have heard learned Counsel for the parties and perused the application. On perusal of the contents of the application, it is evident that the amendment sought for is intended to bring on record the notice issued in the same matter and in respect of the same case and the amendment sought for is based on the same factual statements as made in the writ petition. In my view, the amendment prayed for, if allowed, would not go to change the nature and character of the main writ petition and the same is also desirable in order to avoid multiplicity of proceedings between the parties. This interlocutory

application is, thus, allowed. Amendment prayed for is also allowed.

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4. The petitioner is aggrieved by the order dated 19.12.2007 (Annexure 8) passed by the State Information Commission whereby the learned Information Commissioner while disposing of the preliminary objection of the petitioner has directed it to furnish the required information to the respondent No. 3. The grievance of the petitioner is that after the preliminary objection, no opportunity was given to the petitioner for hearing on the merit of the case. It has been submitted that the Information Commissioner has not given any opportunity to the petitioner to explain as to under what circumstances the information sought for could not be furnished to the applicant-respondent No. 3, the said order passed without giving any opportunity of hearing to the petitioner, offends the principle of natural justice and the same is not sustainable.

5. The applicant-respondent No. 3 has appeared and filed his counter affidavit contesting the petitioner's writ petition, It has been stated that after appearance in the case the petitioner had only raised the sole objection that the appeal is time barred and no other objection was raised or any other ground was taken by him. The learned Commissioner thus considered the said sole ground taken by it disposed of the same and directed the petitioner to furnish the required information and there is no infirmity or illegality in the said order.

6. I have heard learned Counsel for the parties and considered the facts and materials on record. On perusal of the impugned order, I find that the learned Commissioner has disposed of the petitioner's objection whereby the point of limitation was raised. The learned Commissioner has held that the said objection is not tenable as the same was raised on the third date of hearing. A copy of the objection filed before the Commissioner has been enclosed as Annexure-3 to the writ petition which goes to show that the said objection was taken at the first date when the petitioner had appeared before the said Commission. The ground on which the said preliminary objection has been rejected is not supported by the material on record and the same is perverse.

7. By the impugned order the petitioner has raised an objection regarding the limitation as a preliminary point. If a petition/appeal is likely to be disposed of on a preliminary point like limitation, an opportunity of hearing must be given to the parties. No opportunity of hearing has been given to the petitioner before passing the impugned order. The order is violative of the rule of natural justice and vitiated in law.

For the reasons aforesaid, the order dated 19.12.2007 passed in Appeal No. 666/07 (Annexure-8) is set aside. The matter is remitted to the State Information Commission for hearing and disposal of the appeal in accordance with law.