
(2023) 10 CHH CK 0010
In the Chhattisgarh High Court
Case No : Writ Appeal No. 15 Of 2023

Jyoti Sidar

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 11-10-2023

Acts Referred:

Citation : (2023) 10 CHH CK 0010

Hon'ble Judges : Ramesh Sinha, CJ;N. K. Chandravanshi , J

Bench : Division Bench

Advocate : H.S. Ahluwalia

Final Decision : Dismissed

Judgement

1. Aggrieved by the order dated 28.04.2022 passed by learned Single Judge in WP(C) No.4040 of 2021, the present writ appeal has been filed by the appellant with the following prayers :

"Therefore, within the above said facts and circumstances it is prayed that, this Hon'ble Court kindly be pleased to set-aside the impugned order dated 28.04.2022 passed by the Hon'ble Single Judge in WP.C No.4040/2021 and consequently set-aside the impugned order and grant relief as prayed for in the writ petition in the interest of justice."

2. Facts of the case is that, the appellant had contested the election for the post of Sarpanch of Samaruma Panchayat of Janpad Panchayat Tamnar, District Raigarh which was a reserved seat for Scheduled Tribe. The appellant is a member of Scheduled Tribe. The respondent No 2 has procured false caste certificate dated 06.01.2020 to show his entitlement for contesting the election in which the respondent No.1 was declared elected. The appellant preferred Election Petition and also filed a criminal complaint against respondent No.2. The Election Petition of the appellant was dismissed by the S.D.O. The appellant thereafter filed a revision petition before the Collector- Raigarh, which was also dismissed. The appellant preferred the W.P.(C.) No.2677 of 2021, which has been

disposed off vide order dated 05.07.2021, directing the appellant to file a complaint before the appropriate authority under the provisions of Chhattisgarh Scheduled Caste, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Act, 2013 (hereinafter referred to as 'the Act, 2013'). The appellant filed a complaint before the Chhattisgarh State Scheduled Tribe Commission, Raipur on 07.07.2021 vide Annexure-P/5 and then she has filed a second complaint to the High Level Certification Scrutiny Committee on 19.08.2021 vide Annexure-P/6, on which no action has been taken so far.

3. It was this reason that second Writ Petition (C) No.4040 of 2021 was filed by the appellant which was disposed of on 28.04.2022 with liberty to file a complaint before the District Level Certificate(s) Verification Committee. Hence this Writ Appeal.

4. None appears for the appellant when the matter is taken up for hearing.

5. We have heard the counsel appearing for the State and perused the orders impugned.

6. Learned Single Judge while disposing of the writ petition vide its order dated 28.04.2022 in Para -9 held as under :

"9. Hence, with these observations, this petition is disposed of. The petitioner is at liberty to file a complaint before the District Level Certificate(s) Verification Committee and seek relief in accordance with law as provided under the Act, 2013."

7. The appellant was granted liberty to file a complaint before the District Level Certificate(s) Verification Committee and seek relief in accordance with law as provided under the Act, 2013. The appellant did not avail such remedy and have filed the present writ appeal against the order dated 28.04.2022 with delay of 173 days. Therefore, this court is of the opinion that the appeal is time barred. The appellant has not offered any plausible explanation for delay in filing the writ appeal. As such, the writ appeal is barred by delay and laches and is not liable to be entertained.

8. The Supreme Court in the matter of Union of India and others v. Tarsem Singh reported in (2008) 8 SCC 652 summarized the settled principles in the following manner:-

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which

related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/ limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/ successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

9. The Supreme Court in the matter of C. Jacob v. Director of Geology and Mining and others reported in (2008) 10 SCC 115, having found that the employee suddenly brought up a challenge to the order of termination of his services after 20 years and claimed all consequential benefits, held that the relief sought for was inadmissible. The legal position in this regard was laid out in the following terms:-

"10. Every representation of the Government for relief, may not be applied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a decision is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of "acknowledgement of a jural relationship" to give rise to a fresh cause of action.

12. When a government abandons service to take alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for the purpose of pension. That will be a travesty of justice.

13. Where an employee unauthorisedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches the

court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage discipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back wages.”

10. In the light of the principle of law laid down by the Supreme Court in the above-stated judgments (*supra*) and considering the grounds raised in I.A.No. 2 of 2023, we do not find any good ground to condone the delay of 173 days in preferring the writ appeal. Accordingly, I.A.No. 2 of 2023 is rejected and consequently thereto, the writ appeal is dismissed.