

(2010) 11 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : CDLSW No. 87 of 2010 In LPASW No. 129 of 2010 and Caveat No. 856 of 2010

Principal, Sainik School, Nagrota, Jammu

APPELLANT

Vs

A. Jeyaraman and Others

RESPONDENT

Date of Decision : 04-11-2010

Acts Referred:

Jammu and Kashmir Limitation Act, 1995 — Section 14

Citation : (2011) 1 JKJ 200

Hon'ble Judges : Sunil Hali, J; J.P. Singh, J

Bench : Division Bench

Judgement

J.P. Singh, Judge

1. Respondent-A. Jeyaraman's Writ Petition, SWP No. 1943/04 was allowed by a learned Single Judge of this Court, issuing directions to, the

Sainik School Society, Principal, Sainik School, Nagrota, Jammu and Local Board of Administration, Sainik School, Nagrota, Jammu to fix the

Respondent's Pay, stepping it up to the same level as that of Radhey Sham Dayal, a Trained Graduate Teacher, taking notice of Note 6 of the

Rules applicable to the service.

2. Aggrieved by the directions of the Writ Court, the Principal, Sainik School, Nagrota, Jammu moved Motion seeking review of the order and the

condonation of delay in moving the Motion. The Review Petition came to be registered as Review No. 3/2009.

3. Although the delay in filing the Review Petition was condoned but the learned Single Judge did not consider it appropriate to exercise the power

of review on the ground that, if aggrieved by the observations and findings of the learned Single Judge, the Appellant was required to file appeal

against judgment dated November 12, 2008.

4. The Appellant-Principal, Sainik School, Nagrota, Jammu has, thus, filed LPA(S) No. 129/2010 along with an Application seeking condonation of 601 days' delay in filing the Appeal.

5. Getting support from the principle underlying the provisions of Section 14 of the Jammu and Kashmir Limitation Act, Smvt., 1995 (1938 A. D.),

the Appellant seeks condonation of delay on the ground that it was neither intentional nor deliberate but had occasioned because of the mistaken

belief and impression that the Motion of review was the appropriate remedy against the decision of the learned Single Judge.

6. Relying on Zafar Khan and Others Vs. Board of Revenue, U.P. and Others, and Deena (Dead) through LRs. Vs. Bharat Singh (Dead) thr.

LRs. and Others, , Respondent's learned Counsel, Mr. Sharma, submitted that the Review Petition having not been dismissed for lack of

jurisdiction, the provisions of Section 14 of the Limitation Act, invoked by the Appellant, could not be pressed into service to seek condonation of

delay. He further submitted that the Appellant's Application being vague and ambiguous, condonation of huge delay of 601 days may not be

warranted, in the facts and circumstances of the case.

7. Per contra, Mr. Thakur, appearing for the Appellant, submitted that the Appellant had not invoked the provisions of Section 14 of the Limitation

Act, as such, to seek condonation of delay but had sought support from the principle underlying therein to seek consideration for the exercise of

discretion to condone the delay so that the dispute between the parties, which had not been correctly decided by the learned Single Judge, being

against the express provisions of the rules on the subject, was decided, in accordance with law, by an authoritative pronouncement of the Court.

8. We have considered the submissions of learned Counsel for the parties and perused the judgments referred to by them in the light of the provisions of the Jammu and Kashmir Limitation Act.

9. Perusal of the provisions of Section 14 of the Limitation Act, which provide for exclusion of time of proceedings bonafide in a Court without

jurisdiction, indicates that the exclusion of time, in terms of the Section, was permissible not only when the Court, where the proceedings had been

prosecuted, suffered from the defect of jurisdiction but also in those cases,

where it was unable to entertain the proceedings, for any other cause of a like nature. The expression ""any other cause of like nature"" appearing in Section 14 has been interpreted in the judgments referred by the Respondent's learned Counsel to mean that the Court was disabled to decide the issue on merits, for one or the other disability including that of the jurisdiction.

10. Therefore, in those cases, where the Court finds that the proceedings prosecuted in good faith, were not maintainable, for one or the other reason other than that of the defect of jurisdiction, be those, the grounds of non-maintainability or other disabilities, under any law, for the time being in force, the suitor prosecuting the cause in good faith, would become entitled to seek exclusion of time taken in proceedings, in such Court, and that too, as of right.

11. The principle underlying Section 14, therefore, appears to be a principle, in public interest to advance the cause of justice, so that the suitor prosecuting a remedy in good faith may not suffer injustice only because of the non-maintainability of the proceedings in the Court, where he was following the cause.

12. We do not, therefore, find any merit in the objection raised by Mr. Sharma that the time spent by a suitor in proceedings in a Court in good faith, can be given allowance of only if the Court was found lacking jurisdiction to entertain such proceedings or other grounds akin only to the jurisdiction of the Court.

13. Coming back to the facts of the case, it is found that the learned Single Judge, hearing the Review Petition, has refused to exercise the power of review, holding that the issue projected by the Appellant, that the Respondent, an Art Master, was not entitled to the relief of stepping up of his Pay, as he was not in the same cadre as that of Radhey Sham Dayal was a question which could be taken cognizance of only by the appellate Court, and that the proceedings in Review were not the appropriate remedy. It, thus, comes out that the Court had refused to exercise jurisdiction in review finding that the jurisdiction to deal with the matter urged before the Court vested only in the Appellate Court.

14. Perusal of the judgment of the Writ Court indicates that the issue raised by the Appellant in the Appeal that the Respondent and Radhey Sham

Dayal did not belong to the same cadre and thus the Respondent was not entitled to similar relief, though noticed in the judgment, has not been addressed to while disposing of the Writ Petition.

15. In any case, we find that the Review Petition had been prosecuted by the Appellant with due diligence and in this view of the matter, his being in the Court with the impression that the plea raised by him could well be addressed to by the Court exercising jurisdiction in review, was sufficient cause for him not to prefer appeal against the judgment.

16. Accordingly, relying on the law laid down in R.B. Ramalingam v. R.B. Bhvaneswari, reported as 2009 (1) SC 674, holding that ""it cannot be stated as a proposition per se that the prosecution of review proceedings would not be a sufficient cause at all for purposes of Section 5 of the Limitation Act"", we find that the Appellant was prevented by sufficient cause in not filing the appeal while prosecuting the remedy of review.

17. In the facts and circumstances of the case, we feel that it would be appropriate as also in the interests of justice to hear the parties on merits of the appeal rather than dismissing the Appellant's appeal as time barred.

18. Thus finding no merit in the Respondent's learned Counsel's submission, the Appellant is found to have made out a case for condonation of delay in filing the Appeal.

19. CDLSW No. 87/2010 is, accordingly, allowed and the delay in filing the Appeal condoned.

20. Registry to list LPASW No. 129/2010 and CMP No. 171/2010 for consideration after four weeks.