

(2016) 04 PAT CK 0055

In the Patna High Court

Case No : Letters Patent Appeal No. 115 of 2015 (Arising out of Civil Review No. 133 of 2003) and Interlocutory Application No. 489 of 2015

Ratnesh Kumar Mishra and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-04-2016

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2016) 04 PAT CK 0055

Hon'ble Judges : Hemant Gupta and Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Shailendra Kumar Verma, Advocate, for the Appellant; Kundan Bahadur Singh, SC 22, for the Respondent

Final Decision : Dismissed

Judgement

Ahsanuddin Amanullah, J.—1. Heard learned counsel for the parties.

2. Re.: Interlocutory Application No. 489 of 2015.

3. The present Interlocutory Application has been filed under Section 5 of the Limitation Act, 1963 seeking condonation of delay of three days in filing of the Letters Patent Appeal No. 115 of 2015.

4. Taking into consideration the averments made in the Interlocutory Application and after hearing learned counsel for the parties, we find that sufficient cause has been shown for the appeal being filed beyond the limitation period.

5. For the reasons aforesaid, the delay in filing of Letters Patent Appeal No. 115 of 2015 stands condoned. Interlocutory Application No. 489 of 2015 stands disposed off.

6. Re.: Letters Patent Appeal No. 115 of 2015

7. The present intra-court appeal, under Clause X of the Letters Patent of the

Patna High Court, has been filed by the appellants against the order passed by the learned Single Bench of this Court dated 10.09.2014 in Civil Review No. 133 of 2003 by which the earlier order dated 22.05.2002 passed in CWJC No. 9256 of 1999 has been recalled and the writ petition dismissed.

8. The writ petitioners, who are appellants herein, had preferred CWJC No. 9256 of 1999 for quashing of the result published in the newspaper dated 12.05.1999 and further for a direction to appoint them on the post of B.C.G. (Technician). The writ petition was heard and finally disposed off by judgment dated 22nd November, 2002 by which, though the selection process or the result of successful candidates was not cancelled but a direction was issued to the State to verify the candidature of each successful candidate already appointed or to be appointed, particularly in reference to their training certificate and those who had not obtained training from the recognized Government Institute, their appointments were directed to be terminated after giving opportunity to them. The review petitioners, who were the selected candidates, then approached this Court in Civil Review No. 133 of 2003 being aggrieved by judgment dated 22.05.2002. The learned Single Bench has allowed the review application by order dated 10.09.2014 and has dismissed the writ petition (CWJC No. 9256 of 1999) after recalling the order dated 22.05.2002. The petitioners in CWJC No. 9256 of 1999 have thus preferred the present appeal being aggrieved by order dated 10.09.2014.

9. The relevant facts of the case are that about 6000 appointments were made, mostly on non-existing post by the then Deputy Director and the In-charge of the Tuberculosis Centre, Health Department, Government of Bihar way back in the year 1983 and onwards. On controversy being raised, a vigilance enquiry was ordered by the State Government in 1991 which found such appointments to be illegal both in terms of the procedure adopted as well as the number of appointments made which were way beyond the sanctioned vacancies of 2250 Class IV and Class III posts. The matter travelled to the Hon'ble Supreme Court which, by judgment passed in the case of Ashwani Kumar v. State of Bihar, reported in , (1997) 2 Supreme Court Cases 1, though upheld the dismissal, but in view of the human aspect, directed the State of Bihar to undergo fresh exercise for recruiting Class IV and Class III employees in the Tuberculosis Eradication Programme on the available 2250 vacancies or even more, as the case may be, for which certain guidelines were also provided. The exercise having been completed by the State of Bihar and the result declared was subject matter before the Court in CWJC No. 9256 of 1999.

10. Learned counsel for the appellants submits that the judgment dated 22.05.2002 is well-considered and that only those persons who had training certificate from Government recognized Institutes at Patna and Darbhanga could have been considered, as persons not possessing the same were ineligible as per Advertisement No. 01 of 1997, as has been rightly interpreted by the learned Single Bench in the judgment dated 22.05.2002 relating to the eligibility criteria

with regard to such advertisement dated 05.05.1997. It is further submitted that even the judgment of the Hon''ble Supreme Court in the case of Ashwani Kumar (supra) has to be interpreted in a manner which has been so done in the judgment dated 22.05.2002 and thus the benefit cannot be given to those who did not have such training from the Government recognized Institutes at Patna and Darbhanga. It is submitted that the learned Single Bench has misinterpreted the directions No. 6 and 7 given by the Hon''ble Supreme Court in the case of Ashwani Kumar (supra). Learned counsel submits that the judgment dated 22.05.2002 in CWJC No. 9256 of 1999 being based on well-founded and cogent reasons was not fit to be interfered with as has been done in the order impugned in Civil Review No. 133 of 2003 dated 10.09.2014.

11. Learned counsel for the State submits that the reasons mentioned in the order impugned cannot be faulted. It is submitted that the learned Single Bench has rightly noted the fact, relying upon the judgment of the Hon''ble Supreme Court, that it is the basic requirement of law in terms of principles of natural justice that persons who are to be affected by any order/judgment have not only to be or party but also noticed and heard which was the basic infirmity in the judgment dated 22.05.2002. He further submits that even as per the judgment of the Hon''ble Supreme Court in the case of Ashwani Kumar (supra), the contention that the consideration had to be of persons who had the requisite training from Government recognized Institutes at Patna and Darbhanga, as has been held in the judgment dated 22.05.2002, is erroneous for the reason that the Hon''ble Supreme Court itself has noticed the direction of the State Government under communication dated 31.01.1987 relating to training being imparted to the candidates and persons who have completed such training were also to be given the benefit of extra 2 marks. Learned counsel submits that the order impugned needs no interference.

12. Having considered the rival contentions, we are unable to agree with the submissions of learned counsel for the appellants. The fact that the affected persons, who had been successful in the result which was impugned before the learned Single Bench in the writ petition, not having been made party, itself made the writ petition unfit to proceed, moreso if any adverse order or observation was made with regard to such result or any fresh exercise directed with regard to the same was to be issued. Only in the case where the entire writ petition itself was fit to be dismissed, such requirement of making them party stood waived. In the present case, the direction to verify the candidature of each successful candidate already appointed or to be appointed, especially with reference to the training certificate and such training certificate having been defined to imply only those from Government recognized training Institutes at Patna and Darbhanga, did visit the successful candidates with civil consequences which may also have been prejudicial to their interest ought not to have been done behind their back as they had no opportunity to explain their position or the import of either the judgment of the Hon''ble Supreme Court or the Government decision as contained in letter dated 31.01.1987. Further, the learned Single

Bench in the judgment dated 22.05.2002 at paragraph No. 14, though has noticed the Government decision dated 31.01.1987, but has gone on an erroneous presumption that the cases were argued before the Hon''ble Supreme Court on the basis of training qualification mentioned in the advertisement. This distinction appears to us to be contrary to what has been held by the Hon''ble Supreme Court in the case of Ashwani Kumar (supra) where direction No. 7 clearly stipulates that candidates appointed by Dr. Mallick, who are found to have undertaken training pursuant to the Government decision dated 31.01.1987, may be awarded two additional marks for training so received. We have gone through the Government decision contained in letter dated 31.01.1987 and find that the same clearly stipulates that the Government itself made provision for persons to get training at the Government Tuberculosis Centres and the Hon''ble Supreme Court having clearly mentioned that such training would also be considered, leaves no scope of any ambiguity or doubt that the training for consideration of appointment pursuant to the direction of the Hon''ble Supreme Court was not to be restricted only to those candidates who possess the training certificate from Government recognized institutes at Patna and Darbhanga. Thus, taking an overall view and considering the totality of the situation, we find that the review application has rightly been allowed and the order dated 10.09.2014 passed in Civil Review No. 133 of 2003 requires no interference.

13. Accordingly, we find no merit in the present appeal and the same stands dismissed.

Hemant Gupta, J.—I agree.