

(2010) 04 JH CK 0164
In the Jharkhand High Court
Case No : A.C. (S.B.) No. 15 Of 2008

Regional Director DAV Public School & Ors	APPELLANT
Vs	
Raju Tirkey & Ors	RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Jharkhand Education Tribunal Act, 2005 — Section 11(1)
Code Of Civil Procedure, 1908 — Order 41 Rule 33

Citation : AIR 2010 4 Jhar R 197 : (2010) 4 JLJR 644

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The aforesaid appeals heard together, as common question of law arose in all the appeals. The aforesaid appeals are directed against the orders of

Jharkhand Education Tribunal, Ranchi dated 13-5-2008, 6-5-2008, 22-5-2008 and 29-4-2008 in Case Nos. 7 of 2008 (JET), 3 of 2008 (JET), 5 of 2008

(JET) and 47 of 2007 (JET) respectively, whereby and whereunder the appellants were directed to take decision for regularizing the services of

respondents.

2. It is submitted by Sri Ananda Sen, learned counsel for the appellants that the Tribunal concluded that the cases filed before it are time barred and

there is no sufficient ground for condoning the delay, but inspite of the aforesaid finding, the learned Tribunal decided the case on merit and directed

the appellants to take decision for regularizing the services of respondents. It is submitted that once the Tribunal came to the conclusion that the cases

filed before it were filed after the period of limitation, then the Tribunal has no power to decide the cases on merit. Accordingly, it is submitted that the

impugned orders of learned Tribunal cannot be sustained in these appeals. Notices were issued on respondents in all the aforesaid appeals and same had been served upon them.

3. Sri Sunil Kumar Dubey, advocate appeared on behalf of respondent in A.C. (S.B.) No. 16 of 2008, however none appears on behalf of respondents

in other appeals. It is submitted by Sri Dubey that the respondents approached the Labour Commissioner through Teacher's Union for redressal of

their grievances, where they have been directed that they should approach individually before the Jharkhand Education Tribunal for redressal of their

grievances. Thereafter, the respondents appeared before the Tribunal by filing the cases. Hence, there is sufficient cause shown by the respondents

for condonation of delay, but in spite of that, Tribunal had not condoned the delay, therefore, the aforesaid finding is not correct. It is submitted that on

merit the Tribunal has come to the conclusion that the action of Management of the D.A.V. School is not legal, therefore, School Management was

directed to consider the cases of the respondents for regularizing of their services. Accordingly, it is submitted that the orders of the Tribunal are in the

interest of justice, mere-fore, the same does not require any interference.

4. Having heard the submissions, I have gone through the record of the case. From perusal of impugned orders, I find that learned Tribunal assigned

reason and come to the conclusion that the delay in filing of the cases cannot be condoned. Thus, if the Tribunal has come to the conclusion that the

cases filed before it were hopelessly barred by limitation as prescribed under the Jharkhand Education Tribunal Act, 2005, then in my view, it is

incumbent upon the Tribunal to dismiss the cases filed before it on the ground of limitation itself and would not require to give any direction after

considering the merit of the case. It is worth mentioning that no appeal filed by respondents against the findings of the Tribunal that the cases before it

are hopelessly time barred. However, it is submitted by learned counsel for the respondents that as per provision under Order XLI, Rule 33 the finding

of the Court below which goes against the respondents can be assailed in appeals filed by the other parties. Sri Sen appearing for the appellants

submitted that in the instant case the Code of Civil Procedure has no application, therefore, the aforesaid submission of learned counsel for the

respondents, has no leg to stand.

5. Section 11(1) of the Jharkhand Education Tribunal Act, 2005 is relevant for consideration.

6. According to said provision Tribunal shall not be bound by the procedures laid down in the Code of Civil Procedures. Thus, I find substance in the submission of Sri Sen that Order XLI, Rule 33 C.P.C. has no application.

7. Since the finding of the Tribunal that the cases filed before it are hopelessly time barred, therefore, it is not open for the Tribunal to decide the merit of the case.

8. In view of aforesaid discussion, I find material illegality in the impugned orders. Therefore, the said orders cannot be sustained in these appeals.

9. In the result, all the aforesaid appeals are allowed. The impugned orders by which the appellants have been directed to regularize the services of respondents are set aside. However, in the facts and circumstances of the case, the party shall bear their own cost.

10. Appeals allowed.