

(2011) 07 JH CK 0225
In the Jharkhand High Court
Case No : L.P.A. No. 141 of 2010

Shailendra Kumar Jha

APPELLANT

Vs

The Regional Director, D.A.V. Public School Bariatu, Ranchi
and Another

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Jharkhand Education Tribunal Act, 2005 — Section 10(2), 9
Penal Code, 1860 (IPC) — Section 379, 408, 468, 477A

Citation : (2011) 4 JCR 90

Hon'ble Judges : Prakash Tatia, Acting C.J.; Harish Chandra Mishra, J

Bench : Division Bench

Judgement

Prakash Tatia, ACJ. and

H.C. Mishra, J.—Heard the counsel for the parties.

2. The petitioner was in employment and joined on 17.11.1991 in Parmar Vidyawati Surjeet Singh D.A.V. Public School, Jhumri Tilaiya. According to the petitioner, he was promoted to the post of Clerk. However, in the year 1993, a criminal case under Sections 408, 468, 477A, 379 IPC was registered against the petitioner and the petitioner's contention is that because of registration of criminal case and the petitioner's facing trial, the respondent employee did not allow the petitioner to join the duties. The petitioner was acquitted in the said criminal case on 21.8.2006. Then, the petitioner approached the Management seeking his reinstatement, but, the Management did not oblige the petitioner-appellant. Ultimately, the petitioner-appellant served the notice upon the respondent-Management on 5.11.2007, which was not responded by the respondent-Management. Then, the petitioner-appellant approached the Jharkhand Education Tribunal, who rejected the petitioner's O.A. on the ground of being barred by time under the provisions of Section 10(2) of the Jharkhand Education Tribunal Act, 2005. The petitioner-appellant preferred the writ petition being A.C. (S.B.) NO. 5 of 2009 to challenge the order of the Tribunal on the

ground that the Tribunal could not have decided the objection of limitation as preliminary issue and then It has been submitted by the learned counsel for the appellant-petitioner that the bar as contained under sub-section (2) of Section 10 of the Act of 2005 has no application because this bar applies in the cases where any order passed by the Education Institution is challenged, and the petitioner's case is that no order was passed against him, but, he was denied to join (sic) duties and the Tribunal is vested with jurisdiction not" only to hear and decide the challenge to order passed, by Educational Institution but also vested with power to pass order to redress the grievance of employee of any Educational Institution where it is a case of inaction only for which no order is passed. The learned single Judge has rejected the respondent-Management's contention and held that even When no order has been passed by the Management, then also the O.A. can be filed by the employee of the Educational Institution. Hence, the Tribunal held that the petitioner-appellant preferred the application before the Tribunal after the expiry of the period as provided under subsection (2) of Section 10 of the Act of 2005 and that too, without filing any application for condoning the delay, therefore, it is barred by "time and rejected the petitioner's application.

3. Learned counsel for the appellant-petitioner submitted that sub-section (2) of Section 10 of the Act of 2005 applies only in the cases where any "order" is passed and challenged, then the action can be initiated in the Tribunal within the period of six months from the date of passing of the order by an Educational Institution. It is submitted that so far the jurisdiction to entertain the petition is not limited to the case where the Educational Institution has passed the "order" but it is wide and any application by any aggrieved person with respect to his "grievance" against the Educational Institution is maintainable. This jurisdiction is given u/s 9 of the Act of 2005, which is wide, covering the "grievances" and not restricted for the challenge to any order passed by the Educational Institution. Therefore, so far the jurisdiction of the Tribunal to grant the relief to redress grievance of the employee, there is no limitation prescribed and the limitation has been made applicable to the cases where any "order" is passed by the Institution and challenged. Therefore, the bar of limitation has no application to the petitioner's case and the petitioner was not required to file any application for condoning the delay. It is also submitted that when Section 10(2) has no application, at the most the provisions of the Indian Limitation Act, 1963 can only be applied, providing that where the limitation is not provided for any application/ suit, then the period of limitation for application shall be three years, and therefore, the petitioner's application before the Tribunal was within the period of three years, and therefore, was within the period of limitation. In the alternate, it has been submitted that the petitioner may be permitted to file an application for condoning the delay if this Court comes to the conclusion that the petitioner's application should have been within the period of limitation as prescribed under sub-section (2) of the Section 10 of the Act of 2005.

4. It is further submitted by the learned counsel for the petitioner-appellant that

the contention of the respondent-Management that the petitioner did not report to the duties is absolutely wrong statement of fact and in fact the petitioner was prevented from discharging the duties. However, if this contention of the petitioner is accepted as it is, then also admittedly the cause of action accrued to the petitioner when he was denied to join the duties and that was in the year 1993 and the petitioner has filed this application before the Tribunal in the year 2008, then the petitioner's application was liable to be dismissed in view of such inordinate delay of more than 14 years and in fact the petitioner's application was liable to be dismissed on this ground which will be clear from the reasons, we are going to give hereinafter.

5. Learned counsel for the respondent-Management has submitted that firstly, there is no order passed by the respondent-Management terminating the services of the petitioner or denying him to join the duties, and therefore, the Tribunal had no jurisdiction to entertain the application of the writ-petitioner. Then, it is submitted that the petitioner has failed to establish that he was denied the job or did not allow to do the work or the job because of the said criminal case and his services has been terminated and because of the criminal case so as to seek any relief of reinstatement on account of the acquittal in criminal case. It is further submitted that even before the lodging of the criminal case against the petitioner, the petitioner did not turn up to do the job and it has been submitted that the petitioner left the job on 21.1.1993 and the FIR was lodged on 10.2.1993. It is also submitted that even if the contention of the petitioner is accepted that he was not allowed to do the work on his post since 1993, then the cause of action accrued to the petitioner in the year 1993. The petitioner approached the Tribunal in the year 2008. Therefore, on this inordinate delay, the petitioner's claim was barred by period of limitation firstly under sub-section (2) of Section 10 of the Act of 2005, and secondly, if the limitation is taken from the Indian Limitation Act, 1963 also.

6. We have considered the submissions of the learned counsel for the parties and perused the facts of the case.

7. It is admitted case of the petitioner himself that the Management did not pass any order terminating his services on account of registration of criminal case against him or pendency of the trial, and secondly, no order has been passed against the petitioner terminating his services on any point of time because of any other reason, In the facts and circumstances of the case, it appears that the petitioner, who -admittedly did not reported to duty since 1993, tried to develop the case by taking help of acquittal order made in his favour in the said criminal case which has directly or indirectly no relation with the petitioner's end of service for which no order has been passed by the respondent-Management. Since, this is not a case where the services of the petitioner was terminated on account of the criminal case so as to claim that after acquittal in the said criminal case, the respondent should revoke the order of termination of services passed for the reason of lodging of criminal case against the petitioner. Therefore, in the

facts of the case, the petitioner cannot claim the reinstatement in service because of his acquittal in criminal case.

8. In view of the above facts, whatever cause of action accrued to the petitioner that accrued on the day when he was denied to do the work on the post which according to the petitioner himself was denied in the year 1993, and therefore, the cause of action independently to criminal case, accrued to the petitioner in the year 1993 and reason may be that the petitioner himself did not report to duty under the fear of said criminal case against the petitioner.

9. For the reasons stated above, we do not find any just reason to permit the petitioner to keep the litigation pending by approaching the Tribunal for the relief on the ground which has no connection with the termination of the services of the petitioner.

10. In view of the above reasons, we do not find any merit in the L.P.A., and for the reasons mentioned above, apart from the reasons given in the impugned order passed by the learned single Judge wherein it has rightly been held that the grievance of the aggrieved party could have been redressed by the Education Tribunal without there being any specific order passed by the Education Tribunal and the question of limitation as raised by the petitioner-appellant has no relevance in view of the facts that accrual of the cause of action to the petitioner is in the year 1993.

11. Accordingly, the L.P.A. is Dismissed.