(2008) 07 PAT CK 0178

In the Patna High Court

Case No : L.P.A. No. 332 of 2008 and I.A. No. 2621 of 2008

State of Bihar and others APPELLANT

Vs

Shiv Nath Ram RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Citation : (2009) 120 FLR 198 : (2008) 4 PLJR 123

Hon'ble Judges : R.M. Lodha, C.J;Kishore K. Mandal, J

Bench : Division Bench

Advocate : Bijay Kumar Pandey, for the Appellant; Harendra Pratap Singh, for the Respondent

Judgement

R.M. Lodha, C.J. and Kishore K. Mandal, J.—The appeal suffers from delay of 271 days. For condonation thereof this application has been made.

Cause for delay has been set out thus:--

""That the learned Advocate of the respondent Sheo Nath Ram sent photocopy of the aforesaid judgment for compliance which was received in the appellant office on 13.8.2007.

That the appellant office examined the matter and order passed by the Hon''ble Court and found that the judgment is contrary to Bihar Finance Rule and Board Miscellaneous Rule and it has been decided to file L.P.A. and accordingly on 5.10.2007 in its letter No. 1392 a proposal was sent to the Home (Police) Department, Government of Bihar for grant of permission for filing L.P.A. and its copy was also sent to the Secretary- cum-Law Advisor, Law Department.

That Home (Police) Department sent the file to the Law Department on 15.10.2007 and the Law Department on very next date i.e. on 16.10.2007 sent the said file to the office of Advocate General, Bihar, Patna.

That the learned Advocate General forwarded his opinion on 28.11.2007 and sent the said file to the Law Department on 29.11.2007.

That the Law Department, sent the said file to the Home (Police) Department on 3.12.2007 and thereafter the Home (Police) Department sent the aforesaid opinion on 18,1.2008.

That thereafter it was again sent to the office of Advocate General which was received in the Advocate General office on 17.3.2008.

Thai on 18.3.2008 the concern file was handed over to the concern Law Office, G.P.I 8 for filing the instant L.P.A.

That the office of the Government Pleader No. 18 after getting the concerned file wrote letter to the Deputy Inspector General, I/S Personnel for giving detail of and relevant document for filing L.P.A.

That thereafter the L.P.A. has been drafted and after being typed the same has been filed."

2. No reply has been filed by the respondent opposing the limitation application.

3. For the reasons sec out in the application, we are satisfied that appellants were prevented by sufficient cause in filing the appeal in time. The cause shown in the application constitutes sufficient cause.

4. We, accordingly, grant the application and condone the delay in filing the appeal.

5. I.A. No. 2621 of 2008 is disposed of.

6. The issue raised in this appeal is whether for want of specific date of birth mentioned in the service record, the last day of the year must be taken for the purpose of retirement or 1st July of the year must be treated as the date of birth and 30th June of that year be taken as date of superannuation?

7. The Single Judge has relied upon the decision of this Court in the case of The State of Bihar and Others Vs. Bharat Singh @ Bharat Rao, .

8. Our attention has been drawn by the Counsel for the appellant to the judgment of the Division Bench in the case of State of Bihar and Others Vs. Devendra Kumar Mishra . In the said judgment, various decisions have been taken into consideration including the decision of this Court in the case of Bharat Singh alias Bharat Rao. The Division Bench also referred to Rule 97(1) of the Bihar Financial Rules. It has been held that the date of birth, in a case where the year of birth is only mentioned in the service book, has to be taken on 1st July of that year and date of superannuation has to be taken on 31st July accordingly.

9. The Counsel for the respondent submits that the Division Bench in its decision in the case of Devendra Kumar Mishra has not noticed the earlier decision of this Court in CWJC. No. 2990 of 1903 decided on 6th September, 1993, wherein the last date of the year was taken as the date of retirement where there was no mention of the date of birth in the service book and only the year of birth was shown. He has relied upon another decision of this Court in the case of Devendra

Kumar Mishra Vs. The State of Bihar and Others, .

10. We are afraid, in the light of Rule 97(1) of the Bihar Financial Rules and Rule 233(iii) of the Bihar Boards Miscellaneous Rules, 1958, the view of the Division Bench in the case of Devendra Kumar Mishra appears to be more sound.

11. Prima facie, therefore, we are satisfied that the matter requires consideration. As to whether the matter needs to be referred to the Full Bench or not shall be considered at the time of hearing of the letters patent appeal.

12. Letters patent appeal is, accordingly, admitted.

13. Mr. Harendra Pratap Singh, Advocate, waives service for respondent. I.A. No. 2622 of 2008

14. Prima facie, the view of the Single Judge does not seem to be sound as noticed above. We are satisfied that the operation of the impugned order dated 4th July, 2007, Ed.--Reported in Shiva Nath Ram Vs. State of Bihar and Others, , deserves to be stayed and we order accordingly.

15. However, it is clarified that provisionally the petitioner''s services may be treated upto 30th June, 2007 and all retiral dues be calculated and paid to him accordingly within six weeks from today. This will be subject to the final decision in the appeal.

I.A. No. 2622 of 2008 is disposed.

