

(2019) 09 J&K CK 0046

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal (LPA) No. 124 Of 2019 In Service Writ Petition (SWP) No. 2184 Of 2013

State Of Jammu & Kashmir And Others

APPELLANT

Vs

Kuldeep Kumar And Others

RESPONDENT

Date of Decision : 11-09-2019

Acts Referred:

Citation : (2019) 09 J&K CK 0046

Hon'ble Judges : Rajesh Bindal, J; Sindhu Sharma, J

Bench : Division Bench

Advocate : K.D. S. Kotwal

Final Decision : Dismissed

Judgement

Rajesh Bindal, J

1. The State is in appeal against the order passed by the learned Single Judge dated 25.10.2017, whereby the writ petition filed by the respondents was allowed and direction was given to consider the claim of the respondents for regularization. The appeal is accompanied by an application seeking condonation of delay of 481 days in filing thereof.

2. The case in hand is a glaring example of non application of mind by the State authorities in flooding this court with avoidable unnecessary litigation. Before discussing the merits, this court would like to comment on that. It is a case in which intra-court appeal has been filed against the order passed by the learned Single Judge after a delay of 481 days in filing thereof. There is hardly any explanation in the application seeking condonation of delay. One of the reason can be that the officers shirk taking decisions by not filing appeal. It is to avoid their responsibility as they want to put everything to court.

3. On a query to the learned counsel for the State as to who examines the merits of the controversy before opining the case to be fit for filing the appeal, his candid answer was that it is the law department. There is no system in place that

the counsel who conducted the case before the learned Single Judge gives his opinion to the authority concerned after decision of the case, as to whether the case is fit for filing appeal. And, if yes, the grounds on which the order can be and should be challenged. In our opinion, that system needs to be put in place. It will not only be of help to the law department in finally opining on the issue as to whether the case is fit for filing appeal or not but also have brief grounds on which the order could be assailed. It would also check the delays in filing of appeals at different levels.

4. We may add that even in criminal cases, the counsels representing the State shared the same experience. In the appeals filed against acquittal of the accused again there is no opinion taken from the public prosecutor who conducted the case and its endorsement by the District Attorney concerned. As a result this court is flooded with number of such appeals in which there is no merit as such and the counsels who are assigned these cases are helpless as they have to follow the instructions. It was also shared that in some cases where they sent the opinion back about the case being not fit for further litigation, the opinion was accepted also. But that is not so in all the cases.

5. The aforesaid system should not be limited to the cases to be filed in this court, rather it should be followed in all the cases being dealt with at all levels in the court such as from the Court of Civil Judge or Magistrate to the next higher court and then to the High Court and even to Hon'ble the Supreme Court.

6. We hope that the law department will put such a system in place to streamline its working and avoid flooding of the courts with unnecessary litigation.

7. Now coming to the merits of the case, the operative part of the order passed by the learned Single Judge is extracted below:

"11. In the present case, it is admitted by learned counsel for the respondents that petitioners were engaged in the year 1991 as daily rated workers in the respondents-department and are continuously performing their duties to the satisfaction of their superiors, having 26 years of service at their back uninterruptedly. When petitioners completed seven years of service, their case was submitted with recommendations to higher authorities of the department several times, for regularization which fact is quite evident from Annexures-C to K appended to the writ petition. It is also admitted by the respondents that petitioners were engaged prior to 31st of March, 1994, and their case was recommended for regularization by their Controlling Officer under whose they had worked.

12. In the facts and given circumstances of the case and in view of law laid down by Apex Court as well as this High Court, order impugned No.43-E of 2013 dated 01.06.2013 is set-aside and the writ petition is allowed by directing the respondents to consider the claim of the petitioners for regularization on the analogy of similarly situated persons, namely, Hem Raj and Ashok Kumar who were regularized. Let order of regularization be issued by the respondents in

favour of the petitioners within a period of two months from the date certified copy of this order along with complete set of writ petition is made available to them."

8. A perusal of the aforesaid order shows that the respondents herein had been admittedly working as daily rated workers from 1991 onwards. It is not in dispute that there were policies framed from time to time for regularization of the services of similarly situated employees but in the case in hand, the authorities failed to consider the claim of the respondents. A direction issued by the learned Single Judge referring to the instructions issued by the State from time to time and various judgments on the issue, cannot be faulted with as even in the case of Secretary, State of Karnataka and others v. Umadevi and others, (2006) 4 SCC 1, Hon'ble the Supreme Court had opined that as a one time measure similarly situated employees who were in service for a period of last ten years should be regularized.

9. Coming to the application filed seeking condonation of delay in filing of the appeal, in our view, the same is equally misconceived. Rather it shows total casualness on the part of the department concerned. The order passed by the learned Single Judge is dated 25.10.2017. There is no date as to when the aforesaid order was received. Para 3 of the application only states that it was sent by the Chief Engineer to the Secretary of the Department concerned vide letter dated 07.03.2018 seeking further directions. Thereafter, the department slept over the matter as it is claimed that opinion of the law department was sought by the administrative department on 10.01.2019. Earlier, the matter was assigned to one counsel to file appeal vide letter dated 25.01.2019. However, later on, the counsels dealing with the case of different departments having changed, it was allocated to the present counsel vide letter dated 01.03.2019.

10. From the aforesaid facts it is clearly established that no one was interested to pursue the case even if the same was meritorious, as a result, delay of 481 days in filing the present appeal. The explanation tendered in the application can hardly be said to be reasonable, on the basis of which huge delay of 481 days in filing the appeal can be condoned.

11. For the reasons mentioned above, the application seeking condonation of delay in filing the appeal and as well as the accompanying appeal, are dismissed.

12. Copy of the order be sent to the Chief Secretary and the Law Secretary of the State of Jammu and Kashmir.=