

(2019) 12 JH CK 0184

In the Jharkhand High Court

Case No : Letter Patents Appeal No. 360 of 2019, I.A. No. 4777 of 2019

State Of Jharkhand And Ors

APPELLANT

Vs

Ram Kishore Singh And Ors

RESPONDENT

Date of Decision : 11-12-2019

Acts Referred:

Limitation Act, 1963 — Section 5
Constitution Of India, 1950 — Article 226

Citation : (2019) 12 JH CK 0184

Hon'ble Judges : Dr. Ravi Ranjan, C.J.;Sujit Narayan Prasad, J

Bench : Divison Bench

Advocate : Ajit Kumar

Final Decision : Disposed Of

Judgement

I.A. No.4777 of 2019:

This interlocutory application has been preferred under Section 5 of the Limitation Act for condoning the delay of 03 days in preferring this Letters Patent Appeal.

Heard.

In view of the statements made in the interlocutory application, the delay in filing the appeal is hereby condoned.

This Interlocutory Application stands allowed.

L.P.A. No. 360 of 2019:

Heard learned Advocate General for the appellants.

Challenge in this appeal is to the part of the order dated 29.03.2019 by which the learned Single Judge has directed that the salary of the petitioner for the period commencing from 10.03.2015 till his retirement on 31.07.2018, shall

be paid preferably within a period of three months.

It is contended that this part of the direction was neither the subject matter of the writ petition nor was any direction given to that extent in the order

passed in the writ petition, as such, it is contended that this not being a part of the contempt proceeding, definitely would have to be considered to be

further direction exercising the powers of the Court under Article 226 of the Constitution of India and, as such, Letters Patent Appeal would be

maintainable against that.

Learned counsel has placed reliance upon a Division Bench decision dated 05.10.2016 rendered by Patna High Court in Letters Patent Appeal No.

1529 of 2016 in which part of the order was prima facie considered to be a further direction in exercise of the powers under Article 226 of the

Constitution of India and thus, it was held that a Letters Patent Appeal would lie against that part of the order.

However, there is another difficulty in this appeal as said part of the order appears to have been passed in view of the concession given by the

Principal Secretary who was present in the court and had himself made a submission that since the petitioner had worked for that period, he is entitled

for the salary of that period. Now it is being said that no such concession was given by the Principal Secretary.

Be that as it may, since from the order impugned it appears that the basis of such direction was statement made by the Principal Secretary, in a

situation when this stand is being taken that he had not made such concession, in our view, the remedy available to the State would be to approach the

Single Judge, who had passed the impugned order, by filing a review application.

Learned Advocate General, seeks leave to withdraw this appeal to move before the concerned court itself by filing a civil review application.

Accordingly, this appeal is dismissed as withdrawn with the aforesaid liberty granted to the appellants.

Consequently, I.A. Nos.4778 of 2019 and 11333 of 2019 also stand disposed of.

It is further made clear that in case the appellants-State of Jharkhand files a review application but remains finally unsuccessful, that would not take

away its right to assail the adverse order again before a competent forum.