
(2020) 02 JH CK 0065
In the Jharkhand High Court
Case No : L.P.A. No. 161, 282 of 2018

Sunil Baran Chatterjee And Ors	Vs	APPELLANT
State of Jharkhand And Ors		RESPONDENT

Date of Decision : 05-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 379, 409, 411
Constitution of India, 1950 — Article 226

Citation : (2020) 02 JH CK 0065

Hon'ble Judges : Shree Chandrashekhar, J; Ratnaker Bhengra, J

Bench : Division Bench

Advocate : Dr. Ravi Ranjan, CJ; Sujit Narayan Prasad, J

Final Decision : Dismissed

Judgement

1. Both the intra-court appeals pertain to common order passed by the learned Single Judge in W.P.(S) No. 4196 of 2015.
2. L.P.A. No. 161 of 2018 has been filed by the writ petitioner while L.P.A. No. 282 of 2018 has been filed by the respondent State of Jharkhand.
3. It also requires to clarify herein that L.P.A. No. 161 of 2018, preferred by the writ petitioner, is within the time but the L.P.A. No. 282 of 2018 preferred by the State of Jharkhand is beyond the period of limitation of 30 days, wherein one interlocutory application has been filed being I.A. No.4711 of 2018 for condoning the delay and, therefore, this Court thought it proper to first deal with the interlocutory application which has been pressed by the learned counsel appearing for the appellant State.
4. This Court, after having heard learned counsel for the appellant State as also learned counsel for the writ petitioner and considering the reason assigned in the interlocutory application, deems it fit and proper to condone the delay in preferring the intra-court appeal by the State of Jharkhand being L.P.A. No. 282 of 2018.

5. Accordingly, the delay in filing the appeal is condoned. In consequence thereof, interlocutory application being I.A. No. 4711 of 2018 is disposed of.

L.P.A. No. 282 of 2018

6. The writ petitioner has invoked the jurisdiction as conferred to this Court under Article 226 of the Constitution of India by assailing the decision of the authority as contained in letters dated 28.08.2008, 04.03.2015 and 02.06.2015 which relate to imposition of penal rent for retention of official quarter and, orders contained in letters dated 18.02.2015 and 15.07.2015 for recovery of excess payment made to the petitioner.

7. The brief facts of the case which require to be enumerated herein since the same is necessary to refer for proper adjudication of the lis are as under:-

The writ petitioner was appointed as Clerk on 17.07.1965 in Shree Shree Lakshmi Narain Trust Eye Hospital (SSLNT), Dhanbad. He was promoted to the post of Administrative Officer on 28.05.1981. The SSLNT Hospital, Dhanbad was taken over by the State Government and accordingly the writ petitioner's pay was fixed on 16.06.1989 in the pay scale of Rs.880-35-1370 EB-35-1510. He superannuated from service on 31.05.2003.

The authorities passed an order imposing penal rent 15 times the normal monthly rent to be paid by the writ petitioner vide decision as contained in letters dated 28.08.2008, 04.03.2015 and 02.06.2015. The respondent authorities on the garb of retention of the quarter, did not pay the pension and all legally payable dues for which orders were issued on 18.02.2015.

The orders imposing penal rent 15 times of the normal rent for retention of official accommodation by the petitioner were quashed by this Court by holding the writ petitioner liable to make payment of only monthly rental on account of retention of the accommodation with a direction to make payment of gratuity as calculated by the respondent State of Jharkhand. Learned Single Judge, however, has rejected the claim of the writ petitioner for consideration of his case for upgradation in the pay scale under Assured Career Progression Scheme (ACP) on the ground that such claim has been made after lapse of 15 years from the date of his superannuation as also on the ground that the foundational facts which are necessary for claiming ACP benefits under resolution dated 14.08.2002 has not been pleaded.

The State of Jharkhand has preferred the intra-court appeal (L.P.A. No. 282 of 2018) against the part of the order whereby and whereunder the writ petitioner has been held liable to make payment of monthly rent while according to the appellant State of Jharkhand, rent has been fixed 15 times of the monthly rent which, according to the appellant State of Jharkhand suffers from no unjustification as because admittedly the writ petitioner has retained the quarter fairly for long period and as such, the calculation has been made by calculating the rent 15 times to that of the monthly rent.

8. Mr. Manoj Tandon, learned Additional Advocate General while assailing the aforesaid part of order, has submitted by raising the ground that the learned Single Judge ought not to have held the writ petitioner liable to make payment of only monthly rent and according to him, since the quarter has been retained unauthorizedly, therefore, the calculation of rent equal to 15 times to that of the monthly rent has been imposed by taking decision by the competent authority and when the fact about unauthorized retention of the quarter is in admission by the writ petitioner, he cannot be held liable only to make payment of monthly rent.

9. Per contra, Mr. Indrajit Sinha, learned counsel appearing for the respondent No.1 in L.P.A. No. 282 of 2018 has countered the ground agitated by the appellant-State on the ground that no such authority has been vested upon the appellant State of Jharkhand in imposing rent 15 times of the monthly rent. According to him, the recovery, as has been directed to be made, penal rent 15 times of the monthly rent can only be made if authorities have been provided such power under the statutory provision but in the memo of appeal no such authority has been referred and, therefore, the order passed by the learned Single Judge to that effect cannot be said to have any infirmity.

10. This Court, after having heard learned counsel for the parties, had granted time to the respondent State of Jharkhand to bring the statutory provision basis upon which the decision for calculating the rent 15 times of the monthly rent has been imposed.

11. Mr. Manoj Tandon, learned Additional Advocate General has produced the Rules in the name of Government Accommodation Allotment (Patna Central Pool) Rules, 1986 and Bihar Government Premises Allotment (Administrative Pool) Rules, 1996.

12. This Court, after having heard learned counsel for the parties as also on appreciation of the rival submissions, is of the considered view that the State authority can only pass order if conferred in that respect. If any decision would be taken pertaining to any penal action against the public servant, in course of service or even after retirement, the same is supposed to be done in pursuance to the statutory provision under which the power has been vested to take such decision. If such decision would be taken without any statutory provision, the same would be said to be without any authority of law and in that view of the matter, such decision would be held to be illegal.

13. There is no pleading to the effect what prompted the State respondents to prefer the appeal questioning the finding recorded by the learned Single Judge. This Court, in course of hearing, has granted ample opportunity to the learned Additional Advocate General to bring on record any authority basis upon which such decision has been taken and in compliance to the same the Rules i.e., Government Accommodation Allotment (Patna Central Pool) Rules, 1986 and Bihar Government Premises Allotment (Administrative Pool) Rules, 1996 have

been produced.

This Court made specific query to the learned Additional Advocate General with respect to the applicability of the said Rules in the present facts and circumstances.

Learned Additional Advocate General, in all fairness, has submitted that these Rules are not applicable in the facts and circumstances of the present case, therefore, it is admitted case of the appellant State of Jharkhand that there is no such Rule, basis upon which 15 times rent has been directed to be recovered from the writ petitioner.

14. As observed hereinabove, the State authority cannot be allowed to act without any authority of law that too, when a decision which is adversely affecting the interest and right of the public servant and if such decision would be taken without any authority of law, the same will be nullity in the eye of law.

15. Since it is admitted by the State respondents that no such rule is available basis upon which 15 times of the monthly rent has been decided to be recovered from the writ petitioner, this Court is of the view that the order of the learned Single Judge holding the writ petitioner liable to make payment of only monthly rent, cannot be faulted with.

16. In view thereof, the part of the order against which the State has preferred the intra-court appeal is fit to be dismissed. Accordingly, the same is dismissed.

L.P.A. No. 161 of 2018

17. The instant intra-court appeal has been directed against the order of rejection regarding the claim of grant of ACP benefit on the ground that the claim has been raised by the writ petitioner after 15 years from the date of his retirement and no foundational facts are available in the pleading.

18. It has been submitted by Mr. Indrajit Sinha, learned counsel appearing for the appellant/writ petitioner that there is no delay on the part of the writ petitioner, rather, due to pending litigation the delay has occurred. According to him, the writ petitioner was involved in a criminal case being Bankmore P.S. Case No.753/1998 corresponding to G.R. No. 3694/1998 for commission of alleged offences punishable under Sections 409, 379, 411 and 120B of the Indian Penal Code. The case ultimately was subjected to trial which resulted in acquittal by judgment pronounced by the competent court of criminal jurisdiction on 19.08.2014 and it is only thereafter the services of the writ petitioner was regularized and as such, the claim has been agitated in the year 2015. In view of such factual circumstances it cannot be said that there is delay on the part of the writ petitioner in raising the claim.

So far as foundational fact is concerned which is one of the ground for rejecting the benefit of ACP Scheme, the same cannot be said to be valid ground in view of the fact that under resolution dated 14.08.2002 which contains the provision for

consideration of upgradation under the Assured Career Progression Scheme and once the claim has been agitated it is the boundened duty of the competent authority either to reject it or to allow it. In this case, even accepting that after 15 years the claim has been agitated, it ought to have been rejected by taking decision but no such decision has been taken.

19. Per contra, Mr. Manoj Tandon, learned Additional Advocate General has defended the order passed by the learned Single Judge by taking the plea that the claim since has been agitated after lapse of 15 years, the same is said to be hopelessly barred by delay and laches and, therefore, the claim has been rightly rejected by the learned Single Judge and it cannot be said to be unjustified.

20. This Court, after having heard learned counsel for the parties and after considering their rival submissions, deems it fit and proper to deal with the terms and conditions of the resolution dated 14.08.2002 which contains the provision for consideration of case of one or the other employees for upgradation in pay scale under the ACP Scheme. The said resolution contains a provision that the upgradation in the pay scale would be granted if the concerned employee will be found eligible for getting regular promotion as also has completed 12 years of continuous service for getting the upgradation by way of first benefit under the ACP Scheme.

21. The admitted position herein is that although the writ petitioner was appointed in the year 1965 in the SSLNT Hospital, Dhanbad but the said college was taken over by the State Government on 16.06.1989 but for one or the other reasons, the services of the writ petitioner were not regularized and in the meanwhile, he was implicated in a criminal case being Bankmore P.S. Case No.753/1998 corresponding to G.R. No. 3694/1998 which continued and concluded in acquittal vide judgment pronounced on 19.08.2014. Admittedly, the writ petitioner has raised the claim in the year 2015.

Now the question is that whether the period from 1998 to 19.08.2014 when the criminal case was pending, can it be said to be a ground for considering the reason for delay in claiming the relief of upgradation in pay scale.

22. It is settled position of law that on the ground of pendency of proceeding that too, which is criminal in nature, the period consumed waiting for the result of the criminal case, will not be considered to be period of delay. The question with respect to period consumed in getting the judgment in a criminal case fell for consideration before the Hon^{ble} Apex Court in the case of Basanti Prasad Vs. Chairman, Bihar School Examination Board and Others reported in (2009) 6 SCC 791 wherein the Hon^{ble} Apex Court has been pleased to hold that the period consumed in getting the judgment from the competent court of criminal jurisdiction will not come in the way for considering the ground of delay. Reference of paragraphs 23, 24 and 25 are required to be made herein which reads hereunder as :-

"23. Now reverting back to the facts of this case, the services of the appellant's

husband were terminated only on the ground, that he was convicted by a Judicial Magistrate for certain offences under the provisions of the Penal Code. It is not a case where the delinquent employee was dismissed from service on the ground that he was charge-sheeted by the police for certain offences under the Penal Code after holding a departmental enquiry. In the later circumstances, the delinquent employee could not have been heard to say that he did not question the order within a reasonable time, since the order of conviction passed by the Judicial Magistrate has nothing to do with the order passed by disciplinary authority.

24. As we have already noticed, the dismissal was in view of the order of conviction passed by the Magistrate, till that order is set aside by a superior forum, the appellant's husband or the appellant could not have questioned the same till he was acquitted by the Sessions Court. In view of these peculiar circumstances, in our view, the High Court was not justified in rejecting the prayer of the appellant primarily on the ground of delay and laches on the part of the appellant in questioning the order of termination passed on 4-8-1992 in a petition filed in the year 2005.

25. In the present case, we are of the opinion that there is no such negligence or laches or acquiescence on the part of the appellant as may disentitle her for grant of a writ. Having said so, the matter requires to be remanded back to the High Court for taking a decision on the merits of the case. But taking into consideration the pendency of the litigation between the parties from the last one decade and taking also into consideration the plight of the poor widow who is fighting the litigation before various forums with limited resources, we desist from remanding the matter and we intend to decide the matter on merits here itself in order to give quietus to this litigation."

23. This Court, after placing reliance upon the judgment in the case of Basanti Prasad (*supra*), is of the view that so far as the grounds pertaining to delay of 15 years will not come in the way even though the writ petitioner retired on 31.05.2003 but due to the reason that in the year 1998 while the writ petitioner was in service he was implicated in the criminal case and thereafter he was acquitted in the said criminal case vide judgment pronounced on 19.08.2014 and since the writ petitioner has raised claim immediately thereafter in the year 2015, therefore, the period of 15 years cannot be treated to be a ground of delay in rejecting the claim.

24. The other reason for coming to such conclusion is that admittedly the services of the writ petitioner were not regularized due to pendency of the criminal case. However, after his acquittal in the year 2014, his services were regularized in the year 2014 and as such on that ground also the period of 15 years cannot be treated to be a ground for rejecting the case of the writ petitioner for upgradation in the pay scale as because as per resolution dated 14.08.2002 the services of the public servants, who are to be considered for getting the benefit of upgradation in the pay scale under the ACP scheme, can

only be considered if their services are regular and continued regularly for 12 years. Herein, the services of the writ petitioner was regularized sometime in the year 2014 and immediately after regularization, the writ petitioner raised his claim.

25. So far as the delay of 15 years is concerned, the same is also not fit to be taken as a ground for rejection of the claim on the basis of the position of law that the delay will be treated to be a ground to reject the claim by stopping the litigants to approach to the court so that the matter cannot be allowed to be reopened after lapse of considerable period but the facts would be different if the cause of action is recurring in nature.

"Recurring" means suffering of the litigant, particularly, the public servant if the suffering is continuing day by day, the same will be said to be recurring cause of action.

It is not in dispute that if the petitioner would get the benefit of upgradation, if he is found to be eligible, he will be given benefit by way of difference of salary as also the difference in the pensionary benefits and once the writ petitioner would be held entitled to get the benefits of upgradation under the ACP Scheme, he would be entitled to get enhanced pension month to month and therefore, the cause of action of the writ petitioner would be said to be recurring on month to month basis and hence it cannot be said that the right of making the claim has been estopped as because the chapter is closed.

26. So far as the foundational facts are concerned, which according to the learned Single Judge are necessary for claiming ACP benefits, this Court is of the view that it cannot be a ground to reject the claim, rather, the proper course available to the learned Single Judge was to remit the matter before the competent authority for taking decision in accordance with law instead of rejecting it.

27. In view thereof, this Court is of the view that the finding recorded by the learned Single Judge in rejecting the claim under the ACP Scheme cannot be said to be justified one and, therefore, the said part of the order is held to be not justified and accordingly quashed.

28. In the result, the matter is remitted before the competent authority to take decision with respect to claim of the writ petitioner for upgradation in the pay scale under the ACP Scheme in accordance with law within a period of eight weeks from the date of receipt of copy of the order.

29. Both Letters Patent Appeals are disposed of with the direction as indicated hereinabove.

30. I.A. No. 4712 of 2018 filed for stay of operation of the impugned order dated 26.02.2018 also stands disposed of.