

(2014) 05 RAJ CK 0261
In the Rajasthan High Court
Case No : Special Appeal (Writ) No. 487/2014

Sunita Kumari

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226(3)
Limitation Act, 1963 — Section 5

Citation : (2014) 05 RAJ CK 0261

Hon'ble Judges : J.K. Ranka, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : Nawal Singh Sikarwar, Counsel, Advocate for the Appellant

Final Decision : Dismissed

Judgement

1. The office has pointed out delay of two days in filing of the instant appeal and an application has been filed u/S. 5 of the Limitation Act seeking condonation of delay.
2. We are satisfied with the explanation furnished for the delay, duly supported with the affidavit.
3. The application u/S. 5 of the Limitation Act stands allowed and the delay is accordingly condoned.
4. Instant intra-court appeal is directed against order of the Id. Single Judge dt. 20.12.2013 on the application filed by the respondent-State u/Art. 226(3) of the Constitution of India vacating ad-interim order granted at one stage in favour of the appellant.
5. The salient facts as culled out of record & relevant for consideration are that the appellant at one stage came to be appointed as Assistant Warden on contractual basis in District Soldier Welfare Office, Jhunjhunu and at a later point of time, appears to be under some policy decision of the Government, she was

replaced by another incumbent who is a war widow and as a consequence thereof, the service of present appellant stood dispensed with and that being a subject matter of challenge before the Id. Single Judge, at one stage, ad-interim order was passed in favour of the appellant obviously allowing her to continue on the post of Assistant Warden.

6. When the matter was heard on application u/Art. 226(3) of the Constitution of India for vacation of ad-interim order, the Id. Single Judge was apprised that it is not a case of replacement of a contractual employee by another set of employee whereas in fact it is a case where a war widow is appointed, under some policy decision of the Government and the theory and principle of contractual employee being replaced by another employee may not apply in the facts & circumstances of the instant case.

7. Taking note of the facts and submissions made, the Id. Single Judge was not inclined to continue the appellant on the post which at one stage she held and while vacating the ad-interim order on the application filed u/Art. 226(3) of the Constitution of India, dismissed the stay application vide order impugned dt. 20.12.2013.

8. It is brought to our notice that Smt. Roshan Devi, respondent No. 3, who at one stage was appointed, as alleged by the respondent-State in replacement of the present appellant being a war widow, her services were also terminated vide order dt. 18.11.2013.

9. Counsel submits that the appellant was replaced by a war widow, as alleged by the respondents-State but her services too were terminated w.e.f. 18.11.2013 and in these facts and circumstances, at least after the services of the war widow -respondent No. 3, came to be dispensed with, the appellant can still be allowed to continue on the post, which at one stage she held.

10. It appears from the record that subsequent facts regarding termination of services of Smt. Roshan Devi, respondent No. 3, vide order dt. 18.11.2013 was not brought to notice of the Id. Single Judge by either party and the question as to what will be the effect of her termination and how far the appellant could be held justified in now making a request that on account of her termination, she may be allowed to continue on the post which at one stage she held, at least would not be appropriate for this court to examine.

11. We further like to observe that it is a common practice being developed of filing appeals against ad-interim/interim order passed by the Id. Single Judge, which we deprecate. Even, the instant case is in series of filing such special appeal of its kind.

12. The instant appeal is wholly devoid of merit and the same deserves to be dismissed. However, the appellant is still at liberty to bring all the subsequent facts on record by filing misc. application before the Id. Single Judge, if so advised.

13. Consequently, the instant appeal is dismissed, with liberty, as indicated above.