
(2014) 05 PAT CK 0040

In the Patna High Court

Case No : LPA Nos. 16 in CWJC No. 15296 of 2009, 24 in CWJC No. 8109 of 2008, 242 in CWJC No. 15362 of 2009, 238 in CWJC No. 17165 of 2009, 144 in CWJC No. 14324 of 2009, 8 in CWJC No. 11806 of 2009, 13 in CWJC No. 13650 of 2008, 15 in CWJC No. 14891 of 2009, 38 in

The State of Bihar

APPELLANT

Vs

Raj Narayan Poddar

RESPONDENT

Date of Decision : 13-05-2014

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2014) 2 PLJR 721

Hon'ble Judges : S.P. Singh, J;I.A. Ansari, J

Bench : Division Bench

Advocate : D.K. Sinha, Sudhir Kumar, Abhinay Raj and Alok Kumar Rahi, Advocate for the Appellant; Prafull Chandra Jha, Shyam Lal, Shiv Kumar, Sunil Kumar Verma, Suman Kumar Verma, Suraj Narayan Yadav and Hriday Narayan Hansia, Advocate for the Respondent

Judgement

S.P. Singh, J.—Heard learned Counsel for the parties. Limitation, in filing of these appeals, is in issue in this batch of appeals, which have been preferred by the State of Bihar, as an appellant, seeking condonation of delay in filing these appeals.

2. In the year 2009, over 400 appeals were preferred against the orders of a learned Single Judge of this Court, quashing the order of termination and enquiry report made in December, 2008, of the employees of Class III and IV of Department of Health, Government of Bihar, whose appointments were either categorized as illegal or forged. The contention of the appellants is that the delay, in filing the appeals, is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellants, but the same is on account of bona fide misconstruction and misunderstanding of the matter inasmuch as judgments were kept reserved in many of the appeals preferred against the order of the learned Single Judge and, in some of the State

appeals, even the order of learned Single Judge, setting aside the order of termination, has been stayed. Furthermore, quite a number of appeals, preferred by the State, have been referred, with the consent of employees, to one man Committee of Justice Uday Sinha, a retired Judge of this Court. The appellants state that the delay, in filing of a large number of appeals against the order of the learned Single Judge, has been condoned by different Benches.

3. Before we deal with the issue, some facts are required to be noticed. A large number of illegal appointments on different Class-III and IV posts, in Health Department, came to light in the year 1999. Most of these appointments were made in late 1980s and after providing them with notices to show cause, their services were terminated between 2001 and 2003 on the ground that their appointments were illegal and forged. A large number of writ petitions came to be filed against order of termination including a writ petition, which gave rise to C.W.J.C. No. 4702 of 2003. In the said writ petition and also in some other writ petitions, which were heard analogously, a learned Single Judge of this Court allowed the writ petitions, by order, dated 8.9.2003, primarily, on the ground that the employees had remained in service for a long period of time. Being aggrieved, the State preferred a number of appeals bearing L.P.A. No. 946 of 2003 and analogous appeals. The appeals preferred by the State, as well as the writ petitions of the employees, challenging the orders of termination, which had not been taken up for hearing earlier, were heard together by a Division Bench of this Court.

4. The Letters Patent Appeals were disposed of by order, dated, 26.6.2006 [which came to be reported in *The State of Bihar and Others Vs. Usha Devi*,], with a direction to the Government to constitute a Committee to reexamine the cases in the light of decision of the Supreme Court in *Secretary, State of Karnataka & Ors. vs. Uma Devi & Ors.* (2006 (2) PLJR (SC) 363).

5. In pursuance of the order of the Division Bench, in Letters Patent Appeals and writ petitions aforementioned, a Five Men Committee, consisting of senior officials, was constituted by the Government to consider the cases of the affected employees.

6. The Committee, so constituted, bracketed the appointments, in three categories, in terms of the principle laid down in *Uma Devi* (supra). The Committee submitted its report in December, 2008. The appointments of a large number of affected employees, including the respondents in this batch of appeals, were found to be either illegal or forged.

7. The report of the Committee was challenged by the aggrieved employees by filing writ petitions as mentioned above and most of these writ petitions were heard analogously with C.W.J.C. No. 6575 of 2009, which formed second round of litigation. The writ petitions were allowed by order, dated 6.10.2009, and the employees were directed to be reinstated. The order, dated 6.10.2009, passed in C.W.J.C. No. 6575 of 2009, is reported in *Om Prakash Vs. The State of Bihar* and

Others, .

8. The State of Bihar, again, preferred a number of appeals being L.P.A. No. 1623 of 2009 and analogous appeals. The present appeals are in the series of similar appeals. Some of these appeals filed earlier by the State had been heard and disposed of by a Division Bench by consent order, dated 11.2.2010, for appointment of a One Man (Judge) Committee to adjudicate upon the legality of the appointment. When other appeals came, later on, for hearing before a Division Bench, the learned Division Bench, by order, dated 23.3.2010, disposed of the appeals in terms of the order, dated 11.2.2010, aforementioned.

9. The order, dated 23.3.2010, remitting the matter for adjudication to One Man Committee was challenged before the Supreme Court and the Supreme Court remitted the matter to this Court to dispose of the Letters Patent Appeals on merit in those appeals, wherein the employees had not consented for adjudication of the matter by One Man Committee. However, some of the appeals, which were filed earlier including L.P.A. No. 200 of 2010 and analogous appeals, were heard and order has been kept reserved and, in some appeals, even stay has been granted against order of the learned Single Judge.

10. However, some writ petitions, wherein orders were passed in tune with the order, dated 6.10.2009, which had been passed in C.W.J.C. No. 6575 of 2009, no appeal had been preferred by the State. The petitioners, in these writ petitions, moved the learned Single Judge by contempt petitions, wherein notices were issued. This has led to the filing of the present appeals with interlocutory applications seeking condonation of delay. These interlocutory applications, seeking condonation of delay, are being opposed by the respondents/employees on the following grounds:--

(i) There is inordinate delay of more than 3 years and, in some cases nearly four years;

(ii) Though some appeals were filed in the years 2011 and 2012, no steps were taken to remove the defects promptly;

(iii) Only when notices in Contempt Applications were issued, that the State woke up to file appeals.

11. On the other hand, Mr. D.K. Sinha, learned Additional Advocate General No. 2, appearing for the State, submits that several Letters Patent Appeals, including L.P.A. No. 200 of 2010, were heard and order had been kept reserved on 18.9.2012 and, in some of the appeals, stay has been also granted against the order passed by learned Single Judge. Further, the two Writ Petitions, namely, C.W.J.C. Nos. 267 of 2010 and 472 of 2010, filed by the employees against the enquiry report, have been referred to Full Bench, which have been dismissed.

12. In a nutshell, the submission of the State is that the judgment, under appeals, preferred against the common judgment passed by the learned Single Judge, setting aside the termination of the services of the employees, has been

kept reserved, and, in some cases, the order of learned Single Judge, setting aside the order of termination, has been stayed and, hence, in such circumstances, the State was under bona fide belief that the judgment, in the reserved cases, would cover all similar matters, where appeals had not been filed.

13. However, as contempt notices were issued for non-compliance of orders passed in writ applications against which separate appeals had not been preferred, the State was left with no alternative, but to file appeals.

14. Learned Additional Advocate General, appearing for the appellants, thus, submits that there is no laches in filing the appeals and, hence, the interlocutory applications, seeking condonation of delay, may be allowed.

15. Section 5 of the Limitation Act states that an appeal, which has been filed beyond the prescribed period, can be admitted if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making application within the period prescribed. The Supreme Court, in *Perumon Bhagvathy Devaswom, Perinadu Village Vs. Bhargavi Amma (Dead) by LRs. and Others*, , has observed that the words "sufficient cause", mentioned in Section 5 of the Limitation Act, 1963, should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence. The words "may be admitted" give discretion to the Court to condone the delay if sufficient cause has been shown for not preferring the appeal within time. Reference can be made, in this regard, to the decision, in *M.K. Prasad Vs. P. Arumogam*, too.

16. On the other hand, learned Counsel for the employees submits that where there is inordinate delay or when the delay is not explained, the Court may refuse to condone the delay and, in support of this submission, reliance has been placed on the decision of *Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another*, . There cannot be any dispute with the proposition, so advanced, that if there is absence of due diligence or if the applicant has not been able to show sufficient cause for condonation of delay, the application, seeking condonation of delay, would be liable to be rejected.

17. The issue before us is: whether the State has been negligent in not filing the appeals or whether it has furnished sufficient cause for filing appeals belatedly?

18. In the present case, the explanation, given by the State, is that orders of learned Single Judge, setting aside the enquiry report, wherein appointments of the respondents had been held to be either illegal or forged, were challenged and the appeals were reserved for judgment, on 18.9.2012, and as the orders of learned Single Judge were even stayed in some of the Letters Patent Appeals, the State did not chose to file separate appeals in the remaining cases under the impression that the order, passed in the said appeals, would cover the cases of those writ petitioners against whose orders, no appeal had been preferred.

19. In our view, if on account of misconstruction or misunderstanding of law, but

acting bona fide, one does not prefer appeal within the prescribed period, his action shall not be treated to be suffering from lack of good reasons, diligent or bona fide.

20. Having considered the reasons assigned in the present set of petitions and having given our anxious consideration to the rival submissions made before us, we are of the clear view that as judgments were reserved against common order of learned Single Judge, which would have governed the fate of other appeals, the State cannot be said to be either not diligent or lacking in bona fide in omitting to prefer appeals in time. The delay, in filing the appeals, is not, to our mind, on account of any laches, but on account of misconstruction of law, which cannot be a ground for rejecting a petition made u/s 5 of the Limitation Act, 1963.

21. We are satisfied that the State has shown sufficient cause for not preferring the appeals within time. Furthermore, several petitions, seeking condonation of delay in filing many other appeals, preferred against the common order of the learned Single Judge, have been allowed by another Division Bench. Though, every application, seeking condonation of delay, has to be decided on its own merit, we cannot ignore the fact that this Bench, shall, ordinarily, maintain uniformity, while considering the question of delay in filing of the present set of appeal, too, unless there are special reasons for taking a different view. In the present set of appeals, we see no reason to take a view different from one, which has been taken earlier.

22. In view of the above and foregoing reasons, the delay, in preferring these Letters Patent Appeals, is hereby condoned.

23. All interlocutory applications, filed in this batch of appeals, seeking condonation of delay, shall stand allowed and the interlocutory applications aforementioned shall accordingly stand disposed of. Let these appeals come up under the heading "for Admission-I".

I.A. Ansari, J.

I agree.