
(2014) 02 JH CK 0012

In the Jharkhand High Court

Case No : I.A. No. 3187 of 2012 in L.P.A. No. 437 of 2012

The State of Jharkhand

APPELLANT

Vs

Debabrata Dasgupta and Others

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2014) 2 JLJR 559

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Bishambhar Shastri, Advocate for the Appellant; Sidhartha Roy, Advocate for the Respondent

Judgement

1. Interlocutory Application, being I.A. No. 3187 of 2012, is filed u/s 5 of the Limitation Act to condone the delay of 461 days in preferring this Letters Patent Appeal, which arises out of order passed in W.P. (S) No. 3534 of 2009 dated 4.7.2011. The appellant-State has filed this application (I.A. No. 3187 of 2012) stating that earlier on the same set of facts, the writ petitioner-respondent No. 1 has filed W.P. (S) No. 1124 of 2006 and vide order dated 17.12.2008, the prayer of the writ petitioner-respondent No. 1 for grant of promotion on the post of Associate Professor with effect from 1983 was rejected by a detailed order. Per contra in W.P. (S) No. 3534 of 2009, a contradictory order was passed by learned Single Judge, therefore, the Department has decided to prefer L.P.A. The appellant-State has filed a supplementary affidavit on 28.10.2013 explaining the reasons for the long delay of 461 days in filing the L.P.A. In paragraph 5 of the said affidavit, it is stated that while perusing the case of the writ petitioner-respondent, the department came to know about cases filed by the petitioner-respondent on the similar facts, which were already decided in W.P. (S) No. 1124 of 2006 vide order dated 17.12.2008 and another in C.W.J.C No. 2014 of 1997(R), which was dismissed vide order dated 16.04.2004. It is further stated that as against the order passed in W.P. (S) No. 3534 of 2009 dated 4.7.2011, the writ petitioner-respondent No. 1 has filed a contempt petition, being

Contempt Case (C) No. 51 of 2012, in and by which various orders were passed. It is stated that during the pendency of the Contempt Case and having regard to the orders passed in the earlier writ petitions, the department took steps for filing an L.P.A. and the certified copy was applied on 5.10.2012, copy of which was received on 3.11.2012. It is further stated that the Contempt Case was filed on 18.1.2012 and show cause was filed on 30.4.2012 and file was processed for obtaining the opinion. It is stated that on 22.6.2012, the matter was referred to Principal Secretary, Department of Health, Government of Jharkhand and the papers were processed and thereafter, the department has filed the present L.P.A.

2. Learned counsel for the appellant submitted that in view of the conflicting orders passed in the earlier round of writ petitions, an opportunity is to be given to the appellant to challenge the order passed in W.P. (S) No. 3534 of 2009 dated 4.7.2011. Learned counsel drawing our attention to the supplementary affidavit filed in I.A. No. 3187 of 2012 submitted that though the delay is long, the same is satisfactorily explained and, therefore, prayed for condonation of delay.

3. Learned counsel for the respondent-writ petitioner contended that the averment made in the supplementary affidavit in I.A. No. 3187 of 2012 that the department came to know about W.P. (S) No. 1124 of 2006 for the first time after Contempt Case was filed and thereafter they took steps for obtaining the details about the earlier round of litigation, is totally false. Learned counsel submitted that in spite of order being passed in W.P. (S) No. 3534 of 2009 dated 4.7.2011, only after filing of the Contempt Petition (on 18.1.2012), the respondent-writ petitioner was given the promotional position. Learned counsel further submitted that in the Contempt Petition the Principal Secretary, Health, Medical Education and Family Welfare Department was directed to appear in the Court and thereafter, the respondent-writ petitioner was given promotion and only thereafter the department has taken steps to file the L.P.A. and there is no bona fide in filing the L.P.A., and, therefore, prayed for dismissal of the Limitation Petition (I.A. No. 3187 of 2012).

4. We have considered the submissions of learned counsel appearing for the parties and perused the materials on record.

5. It has rightly been pointed out by learned counsel for the appellant-State that there has been earlier round of limitations; one in W.P. (S) No. 1124 of 2006 (order dated 17.12.2008) and another in C.W.J.C No. 2014 of 1997(R) (Order dated 16.04.2004). In view of the earlier round of litigations, the correctness of the impugned order is to be examined in the light of the order dated 17.12.2008 passed in W.P. (S) No. 1124 of 2006 and order dated 16.4.2004 passed in C.W.J.C. No. 2014 of 1997(R). Unless an opportunity is given to the appellant, it would not be possible to challenge the correctness of order dated 4.07.2011 passed in W.P. (S) No. 3534 of 2009. Even though the delay of 461 days is a long length of delay, in the facts and circumstances of the case, delay in filing the L.P.A. may be condoned and the application is to be allowed.

6. Learned counsel appearing for the respondent submitted that pursuant to the order passed in Contempt petition, the writ petitioner is working in the promotional position from 11.10.2011 and thus, we are of the view the status of the respondent is not to be disturbed at present. Learned counsel for the respondent further stated that the respondent has not been paid the salary in the promotional post.

7. Even though the respondent-writ petitioner claims salary for the post of Associate Professor from 1983, we are of the view that the salary of the respondent in the post of Associate Professor be given from the date of his joining in the post of Associate Professor i.e. 11.10.2011. In so far as the contention of the writ petitioner-respondent for the earlier period is concerned, the same would be considered in the main L.P.A. The I.A. No. 3187 of 2012 is allowed and delay in filing the L.P.A. is condoned. The further proceeding in the Contempt Petition shall be kept in abeyance.

Post this matter after eight weeks.