

Petitioner Vs. Respondent

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Court : Guwahati

Decided On : Jan-22-2014

Judge : The Honourable Chief Justice Mr. Abhay Manohar Sapre & Ujjal Bhuyan

Appeal No. : W.A.No 438 of 2013

Appellant : Petitioner

Respondent : Respondent

Advocate for Pet/Ap. : Mr. N.N.Karmakar

Judgement :

AM. Sapre, CJ.

1. This is an intra-court appeal filed by the writ petitioner of WP(C) 6385/2013 under Rule 2(3) of Chapter V-A of the Gauhati High Court Rules against the order dated 13.11.2013 passed by the Single Judge in abovementioned writ petition.

By impugned order, the learned Single Judge dismissed the writ petition filed by the appellant and declined to grant her any relief which she had claimed in the writ petition.

So the short question which arises for consideration in this appeal is whether learned single judge was justified in dismissing the appellants writ petition.

The controversy involved in the writ petition can be gathered by reading the impugned order which is short and hence instead of repeating the facts separately in our order, it is apposite to reproduce the entire impugned order in verbatim herein below.

The petitioner is aggrieved by Annexure-7 list of employees found eligible for provincialisation of their service under Section 4(1) of the Assam Venture Educational Institutes (Provincialisation of Service) (Amendment) Act, 2012. The cause of action as projected in the writ petition is the non-exclusion of the names of the petitioner in the said list. Incidentally, the petitioner has also challenged the order dated 24.12.2003 (Annexure-6E), by which, termination of his service by the School Managing Committee was approved by the Inspector of Schools, Nagaon District Circle, Nagaon.

From the above, which is seen is that the question of inclusion of the name of the petitioner in the aforementioned Annexure-7 list of employees found eligible for provincialisation would arise, only if the order dated 24.12.2003 that was passed 10 years back is interfered with. Otherwise, there is no question of inclusion of the name of the petitioner in the impugned list prepared very recently as per the provision of the aforesaid Act of 2012. Mr. N.N.Karmakar, learned counsel for the petitioner submits that non-inclusion of the name of the petitioner in the said list has given rise to a fresh cause of action. On being pointed out that unless the order that was passed 10 years back i.e. 24.12.2003 approving termination of his service is set aside, there is no question of inclusion of the name of the petitioner in the list, he submits that the petitioner had earlier approached this court by filing a writ petition being WP(C) No.1979/2005, by which, the aforesaid order dated 24.12.2003 was challenged. It appears that the said writ petition has been dismissed for non-prosecution vide order dated 2.5.2012.

Above apart, as stated in the writ petition, the service of the petitioner in the venture school was dispensed with, with effect from 17.10.2001 and the same was indicated in the attendance register. Since then, she has not attended the school and now after about 12 years of such dispensation of service, she wants inclusion of her name in the list of eligible employees for provincialisation. On the other

hand, her challenge to the order dated 24.12.2003 also did not yield any result as the writ petition being WP(C) No.1979/2005 purportedly filed challenging the said order has been dismissed. Mr. U.K.Goswami, learned Standing Counsel, Education Department submits that the writ petition is misconceived and liable to be dismissed.

Above being the position, I am of the considered opinion that the writ petition is not maintainable. Accordingly, the writ petition is dismissed.

Mere perusal of the impugned order would go to show that in substance, the appellant (writ petitioner) had challenged in her writ petition an order by which her services were dispensed with. This order of dispensation was passed on 17.10.2001 whereas the appellant filed the writ petition in the year 2013 to challenge the said order. It also appears that the appellant had also challenged one order dt 24.12.2003 by which her name was not included in the list in one earlier writ petition being W.P.(C) No 1979 of 2005 and this writ petition was dismissed yielding no result to her.

It is with this admitted background, the learned single judge was of the view that the writ petition was bad and deserves dismissal on the ground of delay and laches because it seeks to challenge the order of dispensation almost after a period of 13 years (order of dispensation was passed in 2001 and writ petition was filed in 2013) and secondly the earlier dismissal of the writ petition questioning the order dt 24.12.2003 bars the subsequent filing of the writ petition.

Heard Mr. N.N.Karmakar, learned counsel for the appellant and Mr. PN Goswami, learned Standing Counsel for Education Department.

Having heard learned counsel for the parties and on perusal of the record of the case, we find no merit in this appeal.

In our considered opinion, the delay in filing the writ petition to challenge the dispensation order appears to be too inordinate and cannot be countenanced. No reasons much less justifiable one were pleaded by the writ petitioner as to why she waited for so long in approaching the writ court after a long delay of almost 12

years.

It is a settled law that though filing of the writ petition under article 226/227 of the Constitution of India is not governed by the provisions of the Limitation Act, yet it is ruled that the aggrieved person must file the writ petition within reasonable time from the date of accrual of cause of action and in any case it should not be beyond the period of three years that being the maximum period of limitation prescribed under the law of limitation under article 181 of the Limitation Act unless he is able to explain sufficiently the cause for delay in filing the writ petition so late. No such cause was either pleaded or proved to the satisfaction of the writ court.

That apart, the dismissal of the earlier writ petition would bar filing of the present writ petition out of which this appeal arises. It is for the reason that the order not including the petitioners name in the list which was impugned in the earlier writ petition was issued on the basis of original order of dispensation of the appellants services.

Once such writ petition was dismissed then the remedy of the appellant was to pursue that matter in appeal rather than to file fresh writ petition and that too after a long time. We, therefore, concur with the aforementioned two reasonings of the writ court for upholding the impugned order.

In the light of these two grounds, which, in our opinion, are fatal to the appellants writ petition and now for survival of appeal, this appeal has no merit and hence deserves dismissal in limini. It is accordingly dismissed in limini. No cost.

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