

IN THE HIGH COURT OF JHARKHAND AT RANCHI
L.P.A. No. 33 of 2024

1. The State of Jharkhand
2. The Principal Secretary, Personnel Administrative Reforms and Rajbhasa Department, Government of Jharkhand, Ranchi, Project Bhawan, Dhurwa, P.O. & P.S. - Dhurwa, District- Ranchi
3. The Deputy Secretary, Personnel Administrative Reforms and Rajbhasa Department, Government of Jharkhand, Ranchi, Project Bhawan, Dhurwa, P.O. & P.S. - Dhurwa, District- Ranchi.

... Appellants

Versus

1. Rupesh Kumar, Son of Vijay Prasad, Resident of Village-Sihodih, P.O. - Sirsiya, P.S. - Giridih (M), District - Giridih.
 2. The Deputy Commissioner, Giridih, P.O. & P.S. - Giridih, District - Giridih.
- Respondents

CORAM : HON'BLE DR. JUSTICE S.N. PATHAK
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Appellants-State	: Mrs. Vandana Singh, Sr. SC-I
For the Res. No. 1	: Mr. Rajendra Krishna, Advocate

I.A. No. 6776 of 2024

06/ 18.07.2024 This interlocutory application has been preferred under Section 5 of the Limitation Act for condoning the delay of 196 days in preferring this Letters Patent Appeal.

2. Heard leaned counsel for the parties.
3. Having regard to the averments made in the instant application and submissions made on behalf of the appellant, we are of the view that sufficient reason has been narrated by the appellant in not filing the appeal within the period of limitation. As such, the delay of 196 days in preferring the appeal is hereby condoned.
4. I.A. No. 6776 of 2024 stands allowed.

L.P.A. No. 33 of 2024

5. The appellant-State has preferred this intra-court appeal

challenging the order dated 15.09.2023 passed in W.P.(S) No. 6507 of 2016, by which the learned Single Judge has been pleased to quash and set aside the charge-sheet dated 8.7.2015 and suspension order dated 5.7.2018.

6. At the very outset, Ms. Vandana Singh, learned counsel representing the State confines her prayer to the extent that a direction be given to the respondent-State to proceed in accordance with law by issuance of fresh charge sheet and by suitably modifying the order impugned.

7. The writ petitioner had filed the writ petition for quashing of the charge-sheet dated 08.07.2015, second show cause dated 18.10.2016, order of cancellation of caste and residential certificate dated 8.11.2014 and the suspension order contained in memo no. 924 dated 5.7.2018.

8. In the writ petition, it was pleaded that the writ petitioner was appointed in the cadre of State Administrative Service under the category of BC-I. A show cause notice was issued to the writ petitioner on 29.12.2014 stating therein that he is not a member of BC-I category, though he was appointed under the said reserved category. A memo of charge was also issued on 8.7.2015 to this effect. The enquiry officer has not found the charge true and he was exonerated accordingly. However, the disciplinary authority differing with the findings returned by the enquiry officer, issued second show cause notice dated 18.10.2016, which was under challenge in the writ petition. Meanwhile, the caste certificate issued to the writ petitioner was also cancelled by the order of Sub-Divisional Officer, Giridih on 8.11.2014. The writ petitioner was again suspended on 5.7.2018. Feeling aggrieved with all the impugned decisions, the writ petitioner had filed the writ petition, being W.P.(S) No. 6507 of 2016.

9. The parties were heard at length by the learned Writ

Court. Considering the ratios laid down by the Hon'ble Apex Court in the cases of *Union of India Vs. B.V. Gopinath*, reported in (2014) 1 SCC 351 and *State of Tamil Nadu Rep. by Secretary to Govt. (Home) Vs. Pramod Kumar IPS & Anr*, decided in Civil Appeal Nos. 8427-8428 of 2018, as also the judgment rendered by this Court in the case of *Abhay Kumar Vs. The State of Jharkhand*, reported in 2016 (3) JBCJ 506, coupled with Rule 17(3) of the Jharkhand Government Servants (Classification, Control & Appeal) Rules, 2016, the learned Single Judge was of the view that the memo of charge was to be issued by the appointing authority and non-approval of the memo of charge by the appointing authority makes it unauthorized and nullity in the eyes of law. Since in the present case, the memo of charge not was issued by the appointing authority, the learned Single Judge has been pleased to quash and set aside the memo of charge dated 8.7.2015. The learned Single Judge was also of the view that since the very charge-sheet has been quashed, the suspension order dated 5.7.2018 also stood quashed. The learned Writ Court has not gone to interfere with the order of cancellation of caste certificate of the writ petitioner and liberty was given to him to challenge the same before appropriate proceeding in accordance with law. So far as issuance of second show cause notice is concerned, the learned Writ Court found no illegality in issuance of second show cause notice, as the disciplinary authority has assigned sufficient reasons for differing with the findings arrived by the enquiry officer.

10. In this intra-court appeal, Ms. Vandana Singh, learned counsel appearing for the appellant-State makes a limited prayer to the extent that the respondent-State may be given a liberty to proceed further in the departmental proceeding at the stage of issuance of memo of charge. She submits that admittedly there is a charge against the petitioner to have obtained appointment on the basis of forged caste certificate. This is a serious misconduct on the part of the

writ petitioner, for which the petitioner cannot be left scot free only on the basis of some technicality / lacunae in taking approval from the competent authority. Learned counsel for the State submits that the appellant-State is bound to act in accordance with law and hence, the modification to that extent only is necessary to take legal recourse against the writ petitioner for his alleged misconduct.

11. It has been argued by Mr. Rajendra Krishna, learned counsel appearing for the writ petitioner-respondent no. 1 that the order passed by the learned Single Judge is fully justified. Since the charge-sheet has been quashed and no further direction was given, it is always open for the respondents to proceed in accordance with law.

12. Having heard the learned counsel for the parties, it appears that the learned Single Judge has not interfered with the second show cause notice. The cancellation of caste certificate of the writ petitioner has also not been interfered by the learned Single Judge. The memo of charge has been quashed merely on the ground of some technicality of taking approval from the appointing authority. Merely of some lacuna will not vitiate the entire allegations. The Hon'ble Apex Court in the case of *State of Tamil Nadu Rep. By Secretary to Govt. (Home)* (*supra*) while concurring with the ratio laid down in the case of *B.V. Gopinath* (*supra*) to the effect that the charge-sheet / charge memo having not been approved by the disciplinary authority was non est in the eye of the law, was of the view that "*we would like to make is to give liberty to the disciplinary authority to issue a charge memo afresh after taking approval from the disciplinary authority*".

13. The learned Single Judge while disposing of the writ petition has not considered the aforesaid aspect that the State be given a liberty to proceed afresh against the writ petitioner. For the ends of justice and looking into the allegations levelled against the writ petitioner, it would suffice if a direction is given to the

respondent-State to proceed in accordance with law after issuance of a fresh charge-sheet.

14. The order of the learned Single Judge is modified to the extent that the appellant-State is at liberty to proceed in the matter at the stage of issuance of fresh memo of charge in accordance with law.

15. This intra-court appeal is partly allowed to the aforesaid extent only.

(Dr. S. N. Pathak, J.)

(Arun Kumar Rai, J.)

Umesh-Abhishek/-