

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

(Letters Patent Appellate Jurisdiction)

**L.P.A No. 19 of 2024**

1. State of Jharkhand
2. The Secretary, Department of Commercial Taxes, Government of Jharkhand, PO +PS-Doranda, Ranchi
3. The Commissioner of Commercial Taxes, Department of Commercial Taxes (Admn.), Jamshedpur, Division, Deptt. of Commercial Taxes, Jamshedpur, PO+PS-Jamshedpur, District-East Singhbhum, Jharkhand
4. The Joint Commissioner of State Taxes (Admn.), Jamshedpur Division, Jamshedpur Deptt. of Commercial Taxes, Jamshedpur, PO + PS- Jamshedpur, District-East Singhbhum, Jharkhand
5. The Deputy Commissioner of Commercial Taxes, Jamshedpur Circle, Jamshedpur, PO +PS-Jamshedpur, District-East Singhbhum

**... ... Appellants**

**Versus**

Kishori Rajak, s/o late Nathun Rajak, r/o Quarter No. 67, Bhatia Basti, Mandir Path, Kadma, PO-Kadma, PS-Kadma, Jamshedpur, District-East Singhbhum

**... ... Respondent**

**CORAM: HON'BLE THE ACTING CHIEF JUSTICE  
HON'BLE MR. JUSTICE NAVNEET KUMAR**

For the Appellants

: Ms. Anupma, AC to Sr. SC-II

For the Respondent

: Mr. Saurav Arun, Advocate

Mr. Bhanu Kumar No.1, Advocate

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2<sup>nd</sup> April 2024

Per, Shree Chandrashekhar, A.C.J

**I.A No. 367 of 2024**

This interlocutory application has been filed for condoning the delay of 127 days in preferring L.P.A No. 19 of 2024.

2. After hearing the learned counsel for the appellants and considering the facts and circumstances of this case and also after going through the cause shown in this interlocutory application seeking condonation of delay, we find sufficient grounds to condone the delay of 127 days and, accordingly, I.A No. 367 of 2024 is allowed.

**L.P.A No. 19 of 2024**

3. The State of Jharkhand is aggrieved by the order dated 31<sup>st</sup> July

2023 passed in W.P.(S) No. 1040 of 2021.

4. By the aforesaid order, the writ Court issued a direction for taking a decision on the claim of the respondent herein in the light of the order made in favor of other co-employees.

5. Before the writ Court, the State of Jharkhand objected to the claim made by the respondent for ACP/MACP benefits by relying on the inquiry report dated 11<sup>th</sup> February 2016.

6. In short, the objection taken by the State of Jharkhand is that the appointment of the respondent was not on a sanctioned vacant post.

7. As it would appear from the materials on record, the inquiry report dated 11<sup>th</sup> February 2016 was put to challenge by co-employee Nand Kishore Prasad and vide order dated 25<sup>th</sup> August 2017 the said inquiry report was held untenable in the proceeding in W.P.(S) No. 2678 of 2017.

8. With reference to the order passed in W.P.(S) No. 2678 of 2017, a series of orders have been passed by the writ Court and the Letters Patent Court whereunder the stand of the State of Jharkhand taken in relation to the other employees that they were not appointed on a sanctioned vacant post was not accepted by the Court.

9. In one of the cases vide L.P.A No. 125 of 2023, this Court has made the following observations:

“13. Now the respondent who shall be affected by a decision of this Court would have a legitimate expectation that the decision of this Court in “Surendra Choudhary” shall be followed in subsequent decisions, except where a clear distinction can be drawn. The matter pertains to judicial discipline and propriety inasmuch as the decision of the Court shall bind other Co-ordinate Benches of co-equal strength. This is also necessary to maintain uniformity and certainty in the legal system so that the litigants may arrange their affairs accordingly. In our opinion, the writ Court was bound by the decision in “Surendra Choudhary” and has rightly issued direction to the authority of the State of Jharkhand for regularizing the services of the respondent. Moreover, the State of Jharkhand has paid pensionary benefits to the respondent and while so it can be safely inferred that the State of Jharkhand has accepted the position that the employment of the respondent was substantive and permanent. Rule 58 of the Jharkhand Pension Rules, 2000 provides that the service of a government servant shall not qualify for pension unless it confirms to the three conditions viz (a) the service was under the government (b) the employment was substantive and permanent and (c) the service was paid by the government. These conditions are clearly fulfilled in the case of the respondent and, therefore, there was no justification for the State of

Jharkhand to decline the representation of the respondent for 1<sup>st</sup> and 2<sup>nd</sup> ACP benefits.

14. For the foregoing reasons, we are not inclined to entertain the present Letters Patent Appeal.

15. In the memorandum of the present appeal, the State of Jharkhand has raised the boggy of opening of floodgates but then this cannot be a ground for the Court not to pass an order wherever the situation demands (refer, “D.G.M. (HR) P.G. Corp. of India Ltd. v. T. Venkat Reddy” (2007) 4 SCC 710). Secondly, the State of Jharkhand seems to have forgotten its own litigation policy under which it has taken a pledge not to multiply litigations in the Court. The history of litigations in this case indicates that the respondent after serving 39 years under the Department of Commercial Taxation was compelled to approach this Court repeatedly; four times. In the present case, the State of Jharkhand was expected to accept the position as regards regularization of the employees in the Department of Commercial Taxation after the dismissal of the Special Leave Petition vide order dated 8<sup>th</sup> April 2022. In our opinion, the State of Jharkhand has committed a clear breach of its own avowed pledge in the litigation policy.

16. The practice of frivolous and unjust litigations by the State Government and statutory authorities was deprecated by the Hon’ble Supreme Court in “Urban Improvement Trust Vs. Mohan Lal” (2010) 1 SCC 512. The Hon’ble Supreme Court has expressed its anguish observing that frivolous, vexatious, technical objections taken by the State Governments and statutory authorities are serious obstructions to the path of justice. In yet another case, in “Madras Port Trust Vs. Hymanshu International (1979) 4 SCC 176 the Hon’ble Supreme Court observed as under:-

“2. We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (II of 1905). The plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable. Here, it is obvious that the claim of the respondent was a just claim supported as it was by the recommendation of the Assistant Collector of Customs and hence in the exercise of our discretion under Article 136 of the Constitution, we do not see any reason why we should proceed to hear this appeal and adjudicate upon the plea of the appellant based on Section 110 of the Madras Port Trust Act (II of 1905).”

10. Mr. Saurav Arun, the learned counsel for the respondent would urge that once pension has been granted to the respondent it must be inferred

in law that the post on which the respondent was appointed was a permanent sanctioned post, in terms of Rule 58 of the Jharkhand Pension Rules, 2000.

11. L.P.A No. 19 of 2024 is dismissed. Having regard to the frivolous nature of the litigation started by the State of Jharkhand and to maintain uniformity and consistency in the orders passed by this Court, a cost of Rs.1 Lakh is imposed on the State of Jharkhand to be deposited with St. Michael's Natraheen (Blind) Middle School, Ranchi for the welfare of children; as ordered in L.P.A No. 125 of 2023.

**(Shree Chandrashekhar, A.C.J.)**

**(Navneet Kumar, J.)**

Amit