

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

CDLSW no. 49/2012

c/w

LPASW no. 92/2012

CrMA no. 142/2012

Date of order: 27.02.2013

State of J&K

v. Rahat Hussain and ors.

Coram:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice

Hon'ble Mr. Justice J. P. Singh, Judge

Appearing counsel:

For the appellant(s) : Mrs. Deepika Mahajan, GA.

For the respondent(s) : Mr. Sudershan Sharma, Advocate.

Per M. M. Kumar, CJ

1. This is an application seeking condonation of 290 days delay in filing the appeal preferred under Clause 12 of the Letters Patent.

2. Notice of the application was issued and Mr. Sudershan Sharma, Advocate has entered appearance.

3. After hearing learned counsel for the parties, we are satisfied that the delay is not intentional or to gain any benefit. According to the averments made in the application, the delay has occurred on account of administrative and procedural wrangles, therefore, we find that there is a 'sufficient cause' to condone the delay.

4. As a sequel to the above discussion, the application is allowed and the delay of 290 days in filing the appeal is condoned.

LPASW no. 92/2012

5. With the consent of the parties the appeal has been taken up for final disposal and the same is formally admitted.

6. We have heard learned counsel for the parties. The grievance made by the appellant-State is that the learned Single Judge has issued direction to the appellants to consider the case of the petitioners for regularization of their services in accordance with rules governing the filed. A further direction has also been issued for release of minimum wages with effect from the date the writ petitioner-respondents were engaged in accordance with the provisions of Minimum Wages Act, 1948. The appellants were to take a decision in the matter within eight weeks. The writ petitioner-respondents are stated to be working as Night Chowkidars who were engaged on 25.04.1998. The claim made was that they have served the department for over 12 years.

7. The learned Single Judge did not issue notice calling upon the appellants to file objections and

proceeded to issue direction of binding nature. It is well settled that in order to secure a writ of Mandamus there should be a legal right and that legal right creates a corresponding obligation on the other side to do an Act. In the present case the learned Single Judge has presumed the authenticity of the version disclosed by the writ petitioner-respondents alone without calling upon the appellants to enter appearance and file objections. The order has been passed at the back of the appellants and without grant of any opportunity of hearing to them. The same is not sustainable in the eyes of law, as it goes against the primary principles of natural justice.

8. As a sequel to the above discussion, the order dated 14.10.2011 passed by the learned Single Judge is hereby set aside. The matter is remanded back to the learned Single Judge who shall decide the same in accordance with law. The appellants shall file their reply/objections to the writ petition which shall be listed on 30.04.2013.

(J. P. Singh)
Judge

(M. M. Kumar)
Chief Justice

Jammu,
27.02.2013
Parshant