

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC[WP(C)] No. 7 of 2023

Date of Decision: 21.08.2023

Shri Bijoy Lal

Vs.

Union of India & 3 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Jindal, Legal Aid Counsel

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. K. Gurung, Adv.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER

1. It is the case of the petitioner that he had preferred a writ petition before the Hon'ble Gauhati High Court, Shillong Bench (as this Court then was) registered as WP(C) No. 81(SH) of 2008 being aggrieved with the order whereby he was discharged from service in the Assam Rifles, affected vide order dated 08.09.2007 of the authority concerned.

2. That in course of proceedings of the said writ petition, the same was dismissed for default vide order dated 30.10.2009. The reason for such dismissal according to the petitioner is that it was due to negligence of the conducting counsel who was entrusted to pursue the petition, but because of his callous conduct by not appearing diligently whenever the matter was heard, the Court was pleased to pass the said dismissal order. This fact was made known to the petitioner only in the year 2012.

3. The petitioner, who by then was residing in the village of Kothagi in the State of Uttarakhand, came to Guwahati to meet the said counsel who handed over the file to him with a remark that nothing could be done now.

4. The petitioner, on being advised, approached the Assam State Legal Services Authority for legal aid and accordingly, a Legal Aid Counsel was assigned to take up his case. However, this Legal Aid Counsel had sent a letter dated 17.04.2013 to the Assam State Legal Service Authority indicating to the effect that since the High Court of Meghalaya has started functioning, the petitioner may approach the same for revival of his dismissed petition. This letter, copy of which was enclosed to be forwarded to the petitioner, was never received by him. The petitioner came to know of the fate of his case only in the month of September 2022 when the Assam State Legal Services Authority forwarded all the related papers to the Meghalaya State Legal Services Authority.

5. The petitioner in the meantime was bereaved by the death of his mother who died on 31.03.2014 and that of his father who died on 05.04.2021 coupled with the fact that he is not financially sound, he is not able to come from Uttarakhand to enquire about his case. Having no option, the petitioner

wrote a letter to the Registrar, Gauhati High Court for being provided with an Amicus Curiae (Legal Aid Counsel) and the said application dated 18.07.2022 was forwarded to the Member Secretary, Meghalaya State Legal Services Authority and again, on receipt of such communication by the High Court Legal Services Committee, High Court of Meghalaya, the present Legal Aid Counsel was appointed to take care of the petitioner's case.

6. That in the light of the above narrative, there has occurred a delay of about 13 years or so in preferring the application for restoration of the writ petition of the petitioner and for which delay, this instant application for condonation of the same was filed.

7. In response to this, the respondent/Union of India has filed an affidavit-in-opposition raising points of objections to the averments made in the petition. The main objection is that the case of the petitioner, that is, WP(C) No. 81(SH) of 2008 was filed before the Gauhati High Court and was also dismissed by the said Court on 30.10.2009, which was then the common High Court. This petition is, therefore, not maintainable before this Court in view of the provision of sub-section (3) of Section 28-I of the North-Eastern Areas (Re-Organisation) Act, 1971 as amended by Section 4 of the North-Eastern Areas (Re-Organisation) and Other Related Laws (Amendment) Act, 2012.

8. The other objections raised were with regard to the conduct of the petitioner in not diligently pursuing the matter and that there was no day-to-day explanation of such delay.

9. Heard Mr. S. Jindal, learned Legal Aid Counsel, who has submitted

that the initial hurdle to overcome as far as the case of the petitioner is concerned is that, the fact that the writ petition filed by the petitioner was dismissed vide the relevant order dated 30.10.2009, the petitioner has now approached this Court for restoration of the said writ petition, in effect, to overturn the order dated 30.10.2009. However, to reach this point, the petitioner has incurred a delay of about 13 years or so to file such application. This being the case, the petitioner has therefore, now press his prayer before this Court for condonation of delay in filing the said restoration petition.

10. In the light of the abovementioned scenario, the learned legal aid counsel has submitted that the provision of Section 28-I and sub-section 3 of the same under the Re-organisation Act of 2012 will not be applicable in this regard.

11. The learned legal aid counsel has further submitted that sub-section 3 of Section 28-I contemplates a situation where the common High Court shall have jurisdiction to the exclusion of the High Court of Meghalaya, as the case may be, to entertain, hear and dispose appeals, applications for leave to the Supreme Court, applications for review and other proceedings where any such proceedings seek any relief in respect of any order passed by the common High Court.

12. The prohibition under Section 28-I (3) therefore applies to only the following categories viz;

a) appeals; b) applications for leave to the Supreme Court; c) review; and d) other proceedings, where such proceedings seek any relief in respect of any order passed by the common High Court, that is, the

Gauhati High Court.

13. The learned Legal Aid Counsel then went on to submit that the present petition filed by the petitioner being a petition for condonation of delay, it obviously does not fall under either of the abovementioned categories since the petitioner is not seeking any relief against any order passed by the court at this point of time but has sought for leave to seek such relief only in the event the delay for filing of the application for restoration of the writ petition is condoned by the court.

14. To further elaborate on this point, the learned Legal Aid Counsel has stressed on the use and definition of the word or term '*relief*' to say that in ***P. Ramanatha Aiyar's 'The Law Lexicon', 2nd Edition, 2008***, relief has been defined as under:

““RELIEF” means the remedy which a Court of Justice may afford in relation of some actual or apprehended wrong or injury”

15. The learned counsel has reiterated that the petitioner is not seeking relief as contemplated under Section 28-I (3) of the Reorganisation Act, 2012 as the petition for condonation of delay is not because of a right being infringed, but is rather an imploration before this Court for exercise of its discretionary power to condone the delay in filing the petition for restoration of the writ petition. Even if this Court chooses to condone the delay, the prayer seeking restoration of the dismissed petition would still not be one where relief for an alleged wrong being inflicted is sought for, but again, the discretionary power of this Court is sought to be exercised for restoration of the writ proceedings since dismissed.

16. As to the ratio of the order passed by a Division Bench of this Court in the case of *Shri Manish Bhattacharjee v. State Bank of India & Ors. in MC (WA) No. 45 of 2016*, the same speaks only of the applicability of Section 28-I (3) in the context of appeals, application for leave to Supreme Court and review petition, but the fourth category, that is, ‘other reliefs’ was not discussed by this Court and thereby have been consciously omitted, submits the learned counsel.

17. The learned counsel has finally submitted that in the interest of justice and practicality, this Court may be pleased to allow the prayer of the petitioner and to pass necessary order keeping in mind that when substantial justice is to be done, the technical considerations thereto have to give way to the former. The case of *Collector, Land Acquisition, Anantnag & Anr. v. Mst Katiji & Ors.; (1987) 2 SCC 107*, para 3(4) was referred to where the Hon’ble Supreme Court has observed that:

“3. ...

(4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.”

18. Dr. N. Mozika, learned DSGI while opposing the stand and prayer made by the petitioner has led this Court to the provision of Section 28-I (3) of the North-Eastern Areas (Re-Organisation) and Other Related Laws (Amendment) Act, 2012 and has submitted that this provision makes it very clear that the jurisdiction of this Court is barred as far as entertainment of appeals, applications for leave to the Supreme Court, applications for review and other proceedings where such proceedings seeks any relief in respect of

any order passed by the common High Court before the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012.

19. This situation was reaffirmed by the order of a Division Bench of this Court passed in the case of *Manish Bhattacharjee* (supra) where it was held that:

“...We are thus, of the opinion that the present intra-court appeal could not have been filed before the Meghalaya High Court in view of the explicit mandatory provision contained in Sub-section (3) of Section 28-I of the Act of 2012...”

20. The learned DSGI has submitted that the contention of the petitioner that no relief is sought for as far as the prayer for condonation of delay is concerned is not correct, since an application for condonation of delay is an ancillary proceeding in aid of the application for restoration of the dismissed writ petition. As such, if the court does not have the power to restore, it can also have no power to condone the delay.

21. The earlier writ petition having been dismissed/disposed of by the common High Court, it would be but proper for the relevant procedure to be followed and on this application being filed before the common High Court, that is, the Gauhati High Court, perhaps the matter may be transferred to this Court for adjudication as is provided under sub-section (4) of Section 28-I of the North-Eastern Areas (Re-Organisation) and Other Related Laws (Amendment) Act, 2012.

22. This Court having heard the parties, at the outset, would observe that the moot issue required to be decided herein is as regard the applicability of

the provision of Section 28-I of the North-Eastern Areas (Re-Organisation) and Other Related Laws (Amendment) Act, 2012.

23. On the factual aspect, the learned Legal Aid Counsel has impressed upon this Court that though the ultimate goal of the petitioner is to get the writ petition, since dismissed, restored to file, however, before the merits of the related application for restoration is to be urged upon before this Court, the initial hurdle sought to be overcome by the petitioner is the issue of delay in filing such application, for without condonation or waiving of such delay, the said application for restoration would not be taken up by the Court.

24. Again, the learned Legal Aid Counsel has submitted before this Court that the prayer for condonation of delay is not a relief sought for, as for a relief to be granted, it presupposes that a wrong has been inflicted upon the one who has sought such relief, whereas, for condonation of delay a relief is not prayed for but the discretionary powers of the Court is sought to be exercised to allow the petitioner to move to the next step, that is, to seek appropriate relief upon such delay being condoned.

25. The logic applied by the petitioner herein cannot be comprehended by this Court since the main thrust of the petitioner's case is for restoration of the said WP(C) No. 81(SH) of 2008, that the application for such restoration was not filed within reasonable time but after a delay of about 13 years or so, the prayer for condonation of such delay though incidental, cannot be entirely divorced from the main prayer, where relief is sought for. It is, therefore, logical to conclude that if the delay is condoned, the application wherein relief is sought for would be taken up for consideration and conversely, if the delay is not condoned, the application would stand dismissed. The prayer for

condonation of delay would be, in other words, a relief prayed for. In such a scenario, in the context of the case of the petitioner, the provision of sub-section 3 of Section 28-I (supra) would apply.

26. Coming to the other aspect of the matter, the case of *Manish Bhattacharjee* (supra) referred to by the learned DSGI is indeed relevant to the issue raised herein inasmuch as in the said case, the Division Bench of this Court was dealing with a matter where condonation of delay of 1108 days in filing the related appeal has been prayed for. Even while holding that there was no sufficient cause to explain the delay, the court has elaborately explained the purport of sub-section (3) of Section 28-I of the said Act.

27. It would be worthwhile to note the observations made by the Division Bench of this Court in the said case which reads as follows:

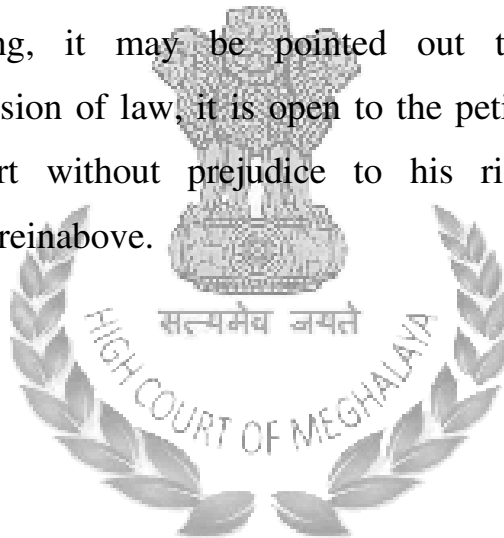
“...Sub Section (3) of Section 28-I makes it apparently clear that the provision is mandatory giving no choice to the litigant to choose between the two forums. The applicability and the fairness of this provision can be seen from another angle. An order which is passed by the Gauhati High Court, if it is reviewed by the Meghalaya High Court in an appeal or on a review application or on an application seeking leave to appeal would create anomalous situation. One High Court which has dealt with one matter should conclude the matter and bring finality to it and should not leave it open to another High Court to dwell further into the matter. The Legislature was conscious of the matter and in order to avoid the anomalous situation, a mandatory provision was created confining that petition, which was decided by the common High Court to achieve finality from that Court itself. Thus, the decision of the common High Court cannot be criticised or overruled or set aside before the appellate forum by another High Court. The word “shall” was consciously used making it apparent and explicit that a litigant who has availed the jurisdiction of the Guahati High Court can only file an intra-court appeal before the same High Court and cannot be given a choice to choose the common High

Court, namely, Gauhati High Court or Meghalaya High Court....”

28. In the light of the above, this Court is of the considered opinion that no effective order can be passed in the instant matter in view of the stated position of law as is found in sub-section (3) of Section 28-I of the North-Eastern Areas (Re-Organisation) Act, 1971 as amended by Section 4 of the North-Eastern Areas (Re-Organisation) and other related laws (Amendment) Act, 2012.

29. This petition is accordingly dismissed.

30. Before parting, it may be pointed out that in view of the aforementioned provision of law, it is open to the petitioner to approach the common High Court without prejudice to his rights in spite of the observations made hereinabove.



Judge

Meghalaya
21.08.2023
"Tiprilynti-PS"