

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Appellate Jurisdiction)
Appeal Case (Single Bench) No. 20 of 2010

Subhendu Madhab Sarkar **Appellant**
Versus
Managing Committee, J.C. High School, Ghatsila & Others
..... **Respondents**

CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through : Video Conferencing)

For the Appellant : Mr. Manoj Tandon, Advocate.
For the Respondents : M/s. Swati Shalini, Advocate.

07/Dated: 11/09/2020

The appeal has been listed 'For Orders' with office note that nobody has appeared on behalf of the appellant even after notice by this Court as appellant has taken no objection from previous counsel.

Today, when the case is taken up, learned counsel for the appellant, Mr. Manoj Tandon has submitted that Ratnesh Anand, Shiv Shankar Kumar and Micky Kumari are appearing in this case and they have filed Vakalatnama duly executed by the appellant on 12.12.2017.

Under the aforesaid circumstances, office is directed to verify and place Vakalatnama on record, if it has been filed.

Heard, learned counsel for the appellant, Mr. Manoj Tondan.

Learned counsel for the appellant, Mr. Manoj Tondan, has submitted that the impugned order has been passed on the merits as well as on the point of limitation. The dismissal order/stop from working has been passed in the year 2007. The application has been preferred before the Jharkhand Education Tribunal in the year 2009. The learned Tribunal has mentioned that limitation is six months and there is no application for condonation of delay.

Learned counsel for the appellant has submitted that it is an apparent error of record as the limitation petition was already filed and was on record before the Jharkhand Education Tribunal.

Learned counsel for the appellant has further submitted that to substantiate his argument that Lower Court Records is necessary and may be called for.

Learned counsel for the appellant has further submitted that though the counter affidavit is not disclosing that entire procedure of departmental proceeding has been followed before passing the order of dismissal but from the impugned order, it appears that learned Tribunal has considered that everything is followed, as such, Lower Court Records is necessary.

Learned counsel for the appellant has further submitted that the document appended with the counter affidavit does not disclose/establish that principle of the departmental proceeding has been followed.

Upon this, learned counsel for the respondents, M/s. Swati Salini has opposed the prayer and has submitted that the court has not called for Lower Court Records at the time of admission on 17.02.2011. After approximately nine years, it is very difficult to locate all these records and that will linger the appeal.

Learned counsel for the respondents has submitted that after ten years, learned counsel for the appellant should first establish his case by filing those documents after obtaining certified copy of the same from the learned tribunal and the things which has not been pleaded in the memo of the appeal cannot be allowed to be raised without having any pleading, as such, this Court may not call for documents from the learned Tribunal as the impugned order has been passed ten years ago and a documents can only be preserved for seven years and thereafter, it may be destroyed, as such, any observation made by this Court may prejudice the case of the parties and may also linger the appeal.

Learned counsel for the respondents has submitted that without filing any documents such averment has been made by the learned counsel for the appellant, which has already been taken note by the Jharkhand Education Tribunal in paragraph-5 of the impugned order assailed before this Court.

Considering such submissions and looking after the office note as the appeal has not been listed under heading "For Hearing", this case is adjourned to be listed under the heading "For Hearing", and

office shall ascertain whether Vakalatnama has been filed by the aforesaid advocates or not and if filed, bring it to record.

This Court is not calling for any record from the Jharkhand Education Tribunal, however, liberty is given to learned counsel for the appellant to substantiate his argument by filing certified copy/ authenticated correct and genuine copy of relevant documents. The appellant must know about the document filed and if found fabricated document, this court shall proceed against him in accordance with law.

However, four weeks' time is granted by way of last chance to the appellant to file and bring on record such documents on affidavit, stating therein that these are genuine / authenticate document. The appellant cannot file a document after four weeks without leave of the court.

Learned counsel for the respondents shall examine the document and shall file counter affidavit in detail thereafter within four weeks.

Put up this case after eight weeks under the heading 'For Hearing'.

(Kailash Prasad Deo, J.)

Sunil-Jay/