

(2009) 05 AHC CK 0278
In the Allahabad High Court

Ajay Singh & others

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 07-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0278

Hon'ble Judges : Pradeep Kant, J and Syed Nazim Husain Zaidi, J

Final Decision : Dismissed

Judgement

S.N.H.Zaidi, J.

This special appeal has been filed with a delay of more than ten months. The appeal is accompanied by an application for condonation of delay supported by an affidavit. The Special Appeal can be entertained after the period of limitation, if the delay is appropriately explained. Even if strictly the delay is not explained, the Court can condone the delay in the interest of justice and to avoid miscarriage of justice but in a case where the appeal is filed for taking a chance to have the benefit of an order passed in the appeals of those, who had approached the Court in time, and that too without giving any valid reasons for not coming to the Court within time, the Court would be fully justified to reject the application for condonation of delay.

The instant appeal has been filed against the order passed by the learned Single Judge in writ petition preferred by the petitioners claiming the appointment on the post of Pharmacist on the basis of diploma, for considering their cases first, ignoring the merit of subsequent batches of pharmacists, they being the diploma holders of the prior batch.

This plea that the appellants (petitioners in the writ petition) were entitled to be considered first for appointment because of their being prior diploma holders even if the diploma holders who were awarded the diploma in subsequent batches were higher in merit, in terms of Rule 15(2) of the U.P. Pharmacists Service Rules, 1980 was rejected by the learned Single Judge.

We are informed that about eight hundred pharmacists filed writ petitions, but many of them did not file special appeal and only about 300 pharmacists filed the special appeals. The diploma holders, who have chosen not to approach this Court, have acquiesced to the order passed by the learned Single Judge and, therefore, we considered the cases of only those who did file Special Appeals.

The order passed in Special Appeal No. 377 of 2008, Prem Chandra and others Vs. State of U.P. & others, and connected matters, gives a direction to the State to consider the case of those appellants only, in the same manner as was being done by the State Government, till the year 1998, but this benefit shall not be given to those pharmacists who have, though, filed writ petitions, but did not challenge the order passed by the learned Single Judge and also to those, who have raised no grievance, about their non selection.

It appears that on coming to know about the proceedings of Special Appeal which were going on for a pretty long time, a couple of days ago, the appellants applied for receiving the certified copy of the order only on 24.4.2009 and then filed a Special Appeal after a long delay claiming that they are also entitled for the benefit to the aforesaid order of the Court.

In the affidavit filed by the appellants for condonation of delay, not a single word has been put in to explain the delay. It contains, only six paragraphs and the explanation given is that judgment and order in the bunch of writ petitions was reserved by the learned Single Judge and the same was delivered on 23.5.2008, but the appellants could only come to know of the judgment and order of the learned Single Judge in the month of June, 2008, therefore, the Special Appeal could not be filed in the Month of June, 2008, as the summer vacation intervened.

The judgment was delivered by the learned Single Judge on 23.5.2008. It has not been stated in the affidavit that the judgment was delivered without indicating the date of delivery or that the appellants' counsel was not made aware about the date of delivery of the judgment. If the judgment is delivered in the writ petition, in which the parties are served with notice, it can not be said that they were not aware about the date of delivery of the judgment. Even assuming that the appellants could come to know about the delivery of judgment in June, 2008, we still fail to appreciate the explanation given by the appellants that because summer vacation of 2008 intervened, therefore, the appeal has been filed after the summer vacation, hence, some delay has caused. The appeal has been filed on 5.5.2009 and there is no explanation at all for not filing the Special Appeal right from June, 2008 or July, 2008, till may 2009.

The application, therefore, does not make any case for condoning the delay.

It is also to be kept in mind that every litigant must come to the Court with clean hands and he is supposed to place correct facts on record. If a litigant knows about the facts that they are not correct and only a concocted story for obtaining orders is made, this Court would not entertain such an application.

Section 5 of the Limitation Act, though gives plenary power to condone the delay in appropriate matters, but that does not give corresponding right to the litigants to make incorrect, unbelievable and worthless explanations in the application for condonation of delay for getting advantage or benefit of Court's order. The provision for condoning the delay in filing the appeal has been made for giving an opportunity to a bonafide litigant, who for valid and genuine reason, could not file the appeal in time, but it can not be allowed to be misused. Such litigants are not entitled for sympathy by the Court.

It is obvious that the appellants had conceded the fact that the writ petition was dismissed on 23.5.2008 and despite acquiring knowledge, the Special Appeal has been preferred with gross delay i.e. only after they became hopeful that the special appeals already filed may be allowed, and in fact, the appeal has been filed on 5.5.09 only after decision in the pending appeals, viz. special appeal no. 377 of 2008 alongwith connected matters which were decided on 4.5.09. They did not choose to file the Special Appeal challenging the order passed by the learned Single Judge earlier. The appeal filed by the appellants is barred by limitation. There is no explanation worth the name for condoning the delay.

Under the facts and circumstances of the present case, there being no good ground for condoning the delay, the application for condonation of delay stands rejected.

Since the application for condonation of delay has been rejected, the appeal being barred by time is also dismissed.