
(2011) 03 AHC CK 0453
In the Allahabad High Court
Case No : Special Appeal No. 186 of 2011

Anoop Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

Citation : (2011) 131 FLR 198

Hon'ble Judges : Vedpal, J;Pradeep Kant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pradeep Kant and Vedpal, JJ.—Heard the Counsel for the appellant Sri Pankaj Kumar Tiwari and Sri Alok Mathur for the respondents.

2. This special appeal challenges the judgment and order dated 10.12.2010 passed by the learned Single Judge, by means of which the challenge of the appellant to his order of transfer from Lucknow to Jharkhand, has been rejected. The appellant has, however, been given three months further time to remain at Lucknow and for that period the order of transfer has been kept in abeyance by the learned Single Judge.

3. This special appeal has been filed with a delay of more than two months. An application for condonation of delay has been filed along with affidavit.

4. The affidavit accompanying the application for condonation of delay says that the appellant could not gather knowledge of the order passed by the learned Single Judge as his Counsel did not inform about the same and it was only on 9.3.2011 that he could know about dismissal of the writ petition, when the authorities called him to join at the transferred place, saying that the time granted by the Court stands expired.

5. The aforesaid theory is being opposed by the learned Counsel for the respondents saying that, as a matter of fact, the appellant enjoyed the

advantage of additional three months of stay at Lucknow in terms of the order passed by the learned Single Judge but on the last day, when the period was to expire, he thought of filing an appeal so as to gain some more time for staying at Lucknow.

6. The High Court in matters of delay in filing special appeals normally takes a lenient view, the reason being, that at many a times it is not due to fault of the litigant but because of the lawyers who are engaged for filing appeal, who could not get time, and delay occurs, in some cases there are bona fide reasons for not being able to approach the Court within limitation.

7. There are also cases where because of slight casual attitude of the litigant, delay occurs in coming to the Court in special appeal. In such a case, if the Court finds that the action is bona fide, then, of course the delay is normally condoned.

8. In the instant case, more than two months" delay is not such so as not to condone the same but it is a case where this Court finds that the entire action of the appellant is designed, motivated and not bona fide.

9. The appellant was diligently pursuing the case in the writ petition, a fact which is not being disputed. He was enjoying the time bound interim order passed on 3.12.2010 and, therefore, there had to be an anxiety to the appellant all the time, whether the interim order has been extended or not. It was a time bound interim order and, therefore, appellant could not have stayed at Lucknow, unless this interim order was extended on every date.

10. It is not the case of the appellant that he was not aware about the time bound interim order or it was not known that it was vacated or not.

11. This meets the first objection of the Counsel for the respondents that the appellant was very well pursuing the writ petition and to his knowledge, he was enjoying the interim order and, therefore, the plea that he could not know about the order, cannot be accepted.

12. Learned Counsel has further drawn the attention of the Court that on the very date when this order was passed on 10.12.2010 in open Court, rejoinder affidavit was sworn by the appellant in the campus of the High Court at 10:30 a.m. and was filed in the Court at the time of hearing of the writ petition.

13. This establishes beyond doubt the presence of the appellant in the Court on the date of hearing and passing of the judgment and order dated 10.12.2010.

14. The plea, therefore, in the application for condonation of delay is not only concocted and false but has been deliberately made just to get an order from the Court.

15. This apart, it is also a fact that the appellant enjoyed his stay of three months, as allowed by the learned Single Judge and it cannot be a matter of sheer co-incidence that on the eve of expiry of the aforesaid period, he suddenly got information and became active in filing the special appeal.

16. Even the averments made in Para 4 of the affidavit that he was called upon by the authorities on 9.3.2011, is absolutely vague, as it does not name any authority, who called him and, of course, number of authorities cannot call him on one day.

17. The aforesaid averments thus, are fallacious and palpably false.

18. We thus, do not find any ground to condone the delay. The application moved for the purpose is not bona fide and absolutely a false and frivolous story has been cooked up and though we do not want to comment upon the drafting of the application but express our concern that the lawyer who has drafted the application ought to have been careful in checking and confirming the facts before bringing the same before the Court on affidavit.

19. Even otherwise, transfer of the appellant in the circumstances, taken into account by the concerned authority of the department, cannot be said to be mala fide or illegal. Since the petitioner belongs to a disciplined force, we do not find any reason to interfere with the order passed by the learned Single Judge.

20. For the reason aforesaid, the application for condonation of delay is rejected and consequently, the special appeal is dismissed.