

(2013) 03 DEL CK 0233
In the Delhi High Court
Case No : LPA 113 of 2013

BSES Yamuna Power Ltd.

APPELLANT

Vs

Babu Ram Jain and Others

RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:

Delhi High Court Act, 1966 — Section 10
Limitation Act, 1963 — Section 5

Citation : (2013) 03 DEL CK 0233

Hon'ble Judges : D. Murugesan, C.J;V.K. Jain, J

Bench : Division Bench

Advocate : Sandeep Sethi, Mr. Anupam Verma, Mr. Nikhil Sharma and Mr. Jibran, for the Appellant; Maninder Acharya, Advocate for Respondent No. 1, Mr. Jayant Nath , Mr. Sumeet Pushkarna, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

CM No. 3682/2013

Exemption is allowed, subject to all just exceptions.

The application stands disposed of.

CM No. 3681/2013 (condonation of delay of 541 days in filing appeal)

1. This is an application seeking condonation of delay of 541 days in filing this appeal. Vide impugned order dated 4th August, 2011 passed in WP(C) No. 1597/1998, the learned Single Judge held that in view of the decision of the Supreme Court in North Delhi Power Limited Vs. Govt. of National Capital Territory of Delhi and Others, , the appellant was liable for payment of benefits consequential to the penalty imposed upon the petitioner/respondent No. 1 being set aside. Accordingly, he directed the appellant to pay all consequential benefits by way of arrears of salary and other retiral benefits to respondent No. 1, within eight weeks from the date of the order. The appellant was also directed to grant notional promotions, to which respondent No. 1 was entitled. The appellant was

also directed to pay Rs. 5,000/- as cost to respondent No. 1. Initially the appellant was not impleaded as a party to the said writ petition. It was only vide order dated 4th August, 2011 that the learned Single Judge allowed applications for impleadment of the appellant in place of Delhi Vidyut Board(DVB), Delhi Power Company Limited (DPCL) and Delhi Vidyut Board Employees Provident Terminal Fund 2002 which were earlier impleaded as the respondents in the writ petition. It is stated in the application under consideration that the judgment and decree dated 4th August, 2011 having been passed in the absence of the counsel for the appellant, came to its knowledge only on 23rd August, 2011 when a representation dated 20th August, 2011 was submitted by respondent No. 1. It is further stated in the application that the appellant was advised by its counsel not to prefer an appeal against the impugned order dated 4th August, 2011 without the counsel realizing the implications of the directions contained in Paras 10 and 11 of the said judgment. The appellant, in part compliance of the said order, passed order treating the period from the date of the dismissal till date of the superannuation of respondent No. 1 as the period spent on duty and also granted notional promotion to him. His pay was revised and the arrears of salary for the period in question, based on revised salary and the cost of Rs. 5,000/- were paid to him. The appellant then calculated the leave encashment amount payable to respondent No. 1 and sent his pension file to respondent No. 3 Trust for release of the terminal benefits i.e. leave encashment, gratuity and pension. The Trust, vide noting dated 29th September, 2011 took the view that respondent No. 1 was not a beneficiary of Pension Trust he having already been removed from the service of the DVB and the Court having directed the appellant to release all his terminal benefits and pension, expressed its inability to release any benefit to respondent No. 1 and returned the file to the appellant. This was followed by exchange of notings dated 3rd October, 2011, 2nd December, 2011 and 8th December, 2011 on the file. The pension folder of respondent No. 1 was received by the appellant on 29th December, 2011. The matter was again examined by the appellant and was forwarded to the Trust on 3rd February, 2012. This led to further notings on the file and exchange of communication between the appellant and the Trust.

On 31st July, 2012, respondent No. 1 filed a Contempt Petition alleging disobedience of order dated 4th August, 2011. Vide order dated 26th September, 2012, the Court while issuing notice directed the appellant to file reply to the Contempt Petition. Yet another order came to be passed in the said contempt case on 9th January, 2013. On 21st January, 2013, the appellant preferred a Review Petition against the order dated 4th August, 2011. The Review Petition having been dismissed, vide order dated 15th February, 2013 the appellant is before us by way of an appeal not only against the order dated 15th February, 2013 but also against the order dated 4th August, 2011.

2. As far as appeal against the order dismissing the Review Petition filed by the appellant is concerned, the question as to whether such an appeal is maintainable or not came up for our consideration in LPA No. 73/2007 titled

"Govt. of NCT of Delhi & Ors. vs. Mool Chand Sharma" decided on 26.2.2013 and it was held that an order dismissing a Review Petition is not a `judgment" either within the meaning of Section 10 of Delhi High Court Act or Clause 10 of Letters Patent and therefore no LPA against such an order is maintainable.

3. As regards condonation of delay to the extent the appeal impugns, the order dated 4th August, 2011, we may, before we examine the explanation given in the application under consideration, would like to refer to a few decisions of the Supreme Court on the subject.

In Balwant Singh (Dead) Vs. Jagdish Singh and Others, , Supreme Court, inter alia, held as under:-

The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. (sic a lis). These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

In Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, , considering the expression "sufficient cause" used in Section 5 of Limitation Act in the context of Municipal Corporation of Brihan, Mumbai, Supreme Court, inter alia, observed as under:-

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

25. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.

In Office of the Office of The Chief Post Master General and Others Vs. Living

Media India Ltd. and Another, , after reviewing its earlier decisions on the subject, inter alia, held as under:-

12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a SLP in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/ years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.

It is the appellant's own case that it had come to know of the order dated 4th August, 2011, on 23rd August, 2011 when it received a copy of the representation dated 20th August, 2011 submitted to it by respondent No. 1. This is also the case of the appellant that the aforesaid order dated 4th August, 2011 was examined by its counsel who advised not to prefer any appeal against the said order. As noted earlier by us, vide order dated 4th August, 2011, the learned Single Judge expressly held that in view of the decision in North Delhi Power Ltd. (supra), the appellant was liable to payment all consequential benefits to the petitioner/respondent No. 1. Accordingly, it directed the appellant to pay all consequential benefits by way of arrears of salary and other retiral benefits to

respondent No. 1, within a period of eight weeks from the date of the order. The order dated 4th August, 2011 being absolutely clear and unambiguous, the appellant ought to have, if it disputed the correctness of the aforesaid order, impugned the said order by way of an appeal, instead of sending the file to the Trust for making payment of leave encashment and pension to respondent No. 1. Be that as it may, admittedly, the Trust, vide noting dated 29th September, 2011 took a clear stand that it was not liable to pay the leave encashment, gratuity and pension to respondent No. 1 and sent the file back to the appellant. In view of the stand taken by the Trust, the appellant ought not to have waited further and should immediately thereafter have come to this Court by way of an appeal. There was no justification in the appellant to continue exchange of notings with the Trust, when not only the order passed by the learned Single Judge directed payment of all terminal benefits by the appellant, the Trust had also taken an unequivocal stand that it was not liable to pay the said benefits to respondent No. 1. Therefore, in our view, there is no satisfactory explanation for the appellant not filing this appeal soon after 29th September, 2011. In fact, even on issue of contempt notice, vide order dated 26th September, 2012, the appellant did not bother to either file a Review Petition or an appeal to this Court. The Review Petition was filed on 21st January, 2013 whereas the appeal was filed on 25th February, 2013. In these circumstances, there is no escape from the conclusion that the appellant has failed to furnish any satisfactory explanation for the inordinate delay in filing this appeal.

For the reasons stated hereinabove, the application under consideration is, hereby, dismissed.

LPA No. 113/2013

Since CM No. 3681/2013 seeking condonation of delay in filing the appeal has been dismissed, the appeal is liable to be dismissed being barred by limitation.

The appeal is dismissed accordingly.