
(2001) 02 AHC CK 0126
In the Allahabad High Court
Case No : Special Appeal No. 282 of 2000

District Judge and Another	Vs	APPELLANT
Bhudev Sharma		RESPONDENT

Date of Decision : 06-02-2001

Acts Referred:

Constitution of India, 1950 — Article 235

Citation : (2001) AWC 934 : (2001) 1 UPLBEC 574

Hon'ble Judges : D.R. Chaudhary, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : K.R. Sirohi and Sudhir Agarwal, for the Appellant; Y.S. Bohra and V.K. Shukla, for the Respondent

Final Decision : Allowed

Judgement

Binod Kumar Roy and D.R. Chaudhary, JJ.—Re : Civil Misc. (Delay Contortion) Application No. 2881 of 2000 alongwith Affidavit dated 17.5.2000 the Courier-affidavit dated 14.9.2000 of the Respondent and Rejoinder Affidavit elated 2.11.2000.

Through this Special Appeal filed on 25.5.2000 the Appellants-the District judge. Bulaudshahr and Chairman of the Selection Committee, assail validity of the Judgment and order dated 25th September, 1997 passed by a learned. Single Judge of this Court allowing Respondent's Civil Misc. writ petition No. 5649 of 1997 filed for quashing the order dated 21.1.1994 passed by Appellant No. 1 rejecting his representation dated 15.1.1994 with a further prayer to command the appellants to consider his appointment against Class III post in reserved category pursuant to the 1992 examination. By the impugned Judgment and Order the learned Single Judge had disposed of the writ petition directing the Appellant No. 1 to offer an appointment to the Respondent against Class III post which may be existing on that day with a further direction that if no vacancy is in existence at the moment, then he shall be appointed against the very next vacancy which may occur in near future after holding that the Respondent has

made out an iron-cast case for being appointed in one of post in class III under the quota of physically handicapped persons.

2. Delay of 2 years 212/213 days in filing of the Special Appeal is sought for in the following backdrop constituting sufficiency of the cause--Even though vacancy for physically handicapped persons to be appointed as a Class III employee pursuant to 1992 Examination Test stood filled up and thereby there was no vacancy on which the Respondent, who because of his total blindness cannot work at all, and had not even qualified in the written examination could not be appointed in terms of his prayer made in his writ petition bearing Civil Misc. Writ Petition No. 5649 of 1997, yet a learned Single Judge of this Court, without considering the true factual and legal position emerging out of two G.O.'s, issued a mandamus commanding the District Judge, Bulandshahr to offer an appointment to him against Class III post which may be existing today or if no vacancy is in existence at the moment in that event he shall be appointed against the very next vacancy which may occur in judgeship in near future showing all respect and obedience to the aforesaid, direction the then District Judge, Bulandshahr gave an appointment to the Respondent on Class III post vide his order dated 7.11.1997 (Annexure-1), the Respondent was/is not in a position to work due to his total blindness, despite this, the matter was being considered as to what remedy may be sought for against the order passed by the learned Single Judge of this Court, as it was not legally possible to accommodate the Respondent as there was no vacancy, finally the District Judge, Bulandshahr sought guidance vide letter dated 17.4.1999 (Annexure-2), the matter was placed before the Hon'ble Acting Chief Justice of this Court on 25.4.2000 proposing that the District Judge, Bulandshahr may be asked to file Special Appeal; the Hon'ble Acting Chief Justice was pleased to approve the proposal vide order dated 26.4.2000; thereafter a communication was made on 8.5.2000 by the Joint Registrar of the Court to the District Judge, Bulandshahr vide letter No. 6451/22-A Admin (D) which was received by the District Judge, Bulandshahr on 12.5.2000 (copy of the letter appended as Annexure-3); immediately on receipt of the same steps were taken to file this Special appeal; the appellants have neither committed wilful default nor negligence in moving this Court; the appellants shall suffer irreparable harm and injury and as such in the facts and circumstances the delay be condoned.

3. In the counter-affidavit filed by the respondent the prayer has been opposed stating, inter alia, that with effect from 13.11.1997 till date he has been regularly discharging his duty as Class III employee of the Judgeship of Bulandshahr on the basis of an order issued by the then District Judge on 7.11.1997; there has been no complaint whatsoever against his functioning; no explanation whatsoever has been given for the period commencing with effect from 7.11.1997 upto 17.4.1999 and there has been a gross delay and laches on the part of the appellants in moving this Court; it has not at all been disclosed as to in what way and manner after offering his appointment the matter was being considered; factually incorrect, fictitious and false affidavit has been filed without

any semblance of truth; the letter dated 17.4.1999 (Annexure-2) was not. at all in respect of preference of the appeal, the contents of which he was never apprised at any point of time earlier, the counter-affidavit filed by the appellants in the writ petition also contained incorrect facts; and that thus in all factuality the delay condonation application is liable to be dismissed with cost.

4. The appellants in their Rejoinder reassert the correctness of facts stated in the Affidavit filed along with the limitation petition.

5. Sri Sudhir Agrawal, learned Special Counsel of the Court appearing in support of the delay condonation application, contended as follows ; It would be in the interest of justice to condone the delay occurred in view of the apparent facts and the legal position specially that the quota for physically handicapped persons against which the writ petitioner claimed appointment had already filled up and there was no other vacancy at all against that quota or any other quota and thus the learned Single Judge could not have issued the mandamus for his appointment against a non-existing vacancy; there was no prayer of the Respondent for commanding the State to create a post for him since 7.11.1997 the Respondent being totally blind has not at all discharged any function of a Class III employee, yet he was paid full pay, dearness allowance etc. as a result of which there is possibility of growing in-discipline in other employees as he was getting his salary etc. without any work; and in this backdrop it was requested from this Hon''ble Court on its administrative side for giving a proper direction in regard to taking work by him of a Class III employee and utility of his services; ultimately this Hon''ble Court on its administrative side permitted the appellants to prefer the Special Appeal; by now it is well settled by a catena of decisions of the Apex Court viz-a-viz. (i) G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, , (ii) State of Haryana Vs. Chandra Mani and others, , and (iii) N. Balakrishnan Vs. M. Krishnamurthy, , that when the question of public justice or expenditure of public exchequer are involved the Court should hear the matter on merits after condoning the delay and the facts and circumstances of this case are such in which an opportunity be granted to the appellants so that the questions involved in the Special Appeal be finally adjudicated by this Hon''ble Court.

6. Sri V. K. Shukla, learned Counsel for the respondent, on the other hand contended that the appellants have failed to allege and prove sufficiency of the cause justifying condonation of delay. He also contended that in view of the decision of the Apex Court in State of Gujarat Vs. Sayed Mohd. Baquir El Edross, , a strong case for acceptance of this Special Appeal on merits is no good ground for condemnation of delay.

7. The question before us is as to whether the Appellants have established sufficiency of the cause for Condonation of delay occurred in preference of this Special Appeal. Undisputedly the appellants are constitutionally subordinate to the High Court under Article 235 of Constitution of India. They were parties to the Judgment passed by this Court which was thus binding on them. The

Appellant No. 1 sought for a guidance, on the administrative side of this Court. The Court on its administrative side asked them to file a Special Appeal and that is how this appeal was filed. These facts have not been put in dispute by Sri Shukla before us. True it is that we cannot express ourselves at this stage in regard to the merits of the Special Appeal nor we intend to do so in view of the decision strongly relied upon by Sri Shukla. However in view of the three decisions cited at the Bar by Sri Agrawal we are of the view that a sufficient cause has been successfully made out by the appellants through the condonation application and their rejoinder to the counter-affidavit of the respondent. Thus we are satisfied of the sufficiency of cause pleaded and condone the delay occurred in preference of this Special Appeal.

8. The delay condonation application is allowed.

9. Let the Stamp Reporter submit a further report and the after the office will place this Special Appeal for its admission at the earliest.