

(2014) 01 AHC CK 0311

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4235 of 2014

Maheshwar Dayal Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Citation : (2014) 3 ADJ 118 : (2014) 3 AWC 2432

Hon'ble Judges : Rajesh Kumar Agrawal, J

Bench : Single Bench

Advocate : K.N. Shukla and Sanjay Kumar Dubey, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Heard learned counsel for the petitioner and learned Standing Counsel for the respondents. The petitioner was a Constable. It appears that the petitioner was involved in a criminal case and his services have been terminated on 14.4.1980. It appears that the petitioner has been acquitted in criminal case. The petitioner has not challenged the termination order. When the petitioner was acquitted in a criminal case, he moved an application for his reinstatement, appears to be some time in 1986. When the application has not been considered, the petitioner filed Civil Misc. Writ Petition No. 246 of 1987, which has been disposed of vide order dated 5.1.1987 with the direction to the Senior Superintendent of Police to dispose of the representation of the petitioner within two months. In pursuance thereof, the representation of the petitioner has been decided on 25.5.1988 and the same has been rejected on the ground that he has no power to review his own order. It is also observed that the petitioner's services were temporary.

2. It was the contention of the petitioner that he had sent the memorandum of appeal on 12.8.2002 by registered post. It appears that when the appeal has not been decided, the petitioner filed Civil Misc. Writ Petition No. 52296 of 2011 for the direction to decide the appeal. The writ petition has been disposed of vide

order dated 9.9.2011 asking the appellate authority to decide the appeal within three months. It appears that when the appeal has not been decided, the petitioner filed a Contempt Application No. 3625 of 2012, which has been disposed of vide order dated 24.8.2012 asking the appellate authority to comply with the order of this Court. In pursuance thereof, the appeal has been decided vide order dated 16.9.2012, which is Annexure-14 to the writ petition. In the said order, it is stated that the alleged appeal dated 12.8.2002 has not been received in the office. The petitioner was not able to produce any documents to prove that the appeal was filed on 12.8.2002. It is stated that for the first time, the memorandum of appeal has been provided on 1.4.2012. It is observed that the limitation to file the appeal was three months and under Rule 20(6) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, the power to condone the delay is only for six months and the appeal has been accordingly dismissed as barred by limitation. Against the said order, the petitioner filed revision, which has also been dismissed vide order dated 24.8.2013, which is impugned in the present writ petition.

3. Learned counsel for the petitioner submitted that the rejection of appeal as barred by limitation is wholly unjustified. Since the petitioner has been acquitted in the criminal proceeding, he is entitled to be reinstated.

4. I do not find any substance in the argument of learned counsel for the petitioner.

5. Admittedly, the petitioner has not challenged the termination order. The same has become final. The petitioner moved reinstatement application some time in the year 1986. The representation has been decided and rejected on 25.5.1988. The Apex Court in the case of The Deputy Inspector General of Police and Another Vs. S. Samuthiram, , has held that merely because an employee is acquitted in a criminal proceeding, he cannot be automatically reinstated in the absence of any provision. Moreover, it depends upon the facts and circumstances of each case.

6. Even if it is accepted that the appeal has been filed on 12.8.2002 and has been sent by registered post, the petitioner is not able to demonstrate that what step has been taken from 1988 to 2002. Further the petitioner is not able to establish that the appeal has been sent on 12.8.2002. Even if it is taken that the appeal was sent by registered post in 2002, there is nothing to demonstrate that what the petitioner was doing upto 2011. The petitioner filed the writ petition in the year 2011 seeking a direction to the appellate authority to decide the appeal. The appellate authority has rightly rejected the appeal as barred by limitation and the revisional authority has also rightly upheld the order of the appellate authority. Rule 20(6) of the Rules, 1991 the appellate authority has the power to condone the delay for six months. In this way, if the appeal is filed beyond 9 months, the appellate authority has no power to condone the delay. In the facts and circumstances, the Court declines to interfere in the matter. The writ petition fails and is dismissed.