

(2011) 06 UK CK 0104

In the Uttarakhand High Court

Case No : Restoration Application No. 1083 of 2010, Delay Condonation
Application No. 10920 of 2010 in Special Appeal No. 42 of 2004

Nagendra Kumar Ghildiyal and Others APPELLANT

Vs

Garhwal Mandal Vikas Nigam and Others RESPONDENT

Date of Decision : 29-06-2011

Acts Referred:

Citation : (2011) 2 UC 1392

Hon'ble Judges : Barin Ghosh, C.J.; Serves Kumar Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—The appeal was dismissed for want of prosecution on 14.8.2006. An application for restoration of the appeal and for recalling the order of dismissal was filed on 27.12.2010. Since there was delay in filing the said application, an application for condonation of delay has also been filed. In the application for restoration and in the application for condonation of delay, it has been averred that the learned advocate, then engaged by the Appellants, during the relevant time in 2006, was suffering from backache and, accordingly, was frequently moving out of Nainital for obtaining medical assistance. It has been stated in the applications that ultimately, the learned advocate had to undergo two successive operations, both carried out in the year 2010. That appears to be the principle reason why the appeal could not be attended when the same was dismissed for default and why there was delay in filing the application for restoration. The averments made in those two applications make it abundantly clear that the Appellants were not at all vigilant. For more than four years, Appellants did not even bother to know the status of their litigation. It is unbelievable that an advocate practicing in the court, who had undergone surgery only in the year 2010, would not be attentive to the cases in which he has been briefed by his client. We, therefore, see no reason, farless any just reason, for permitting the appeal to be dismissed for default. According to us, no

reason farless any sufficient reason, has been furnished in the application for condonation of delay. However, despite that, we are allowing both the said applications upon payment of cost of Rs. 2,000/-, as a condition precedent to be deposited within two weeks from today with the High Court Legal Service Committee, only on the ground that the learned Counsel for the Appellants submitted that he would argue the appeal on its merit today.

2. We, accordingly, heard the learned Counsel for the Appellants on the merit of the appeal. In the writ petition, Petitioners contended that they started serving Respondent No. 1 prior to Respondent No. 4 and, accordingly, they were senior to Respondent No. 4 and as such, while the Respondent No. 4 was given the pay scale of Rs. 515-865 w.e.f. 1.3.1989, there was no just reason not to give the selfsame pay scale to the Petitioners. With the said grievance, Petitioners approached the Court. By the judgment and order under appeal, the writ petition has been dismissed. Aggrieved thereby, the present appeal has been preferred.

3. Facts to which there appear to be no dispute are that prior to 30.12.1986, Appellants/Petitioners were engaged on daily wage basis. By an order dated 30.12.1986, the status of the Appellants was converted from daily wagers to employees entitled to monthly salary, a fixed allowance and yearly increment w.e.f. 1.1.1987. The said order dated 30.12.1986 made it clear that w.e.f. 1.1.1987, Appellants will be entitled to the status of Marketing Assistants. On 7.3.1987, Respondent No. 4 was appointed as Marketing Representative, but not as Marketing Assistant, as the Appellants were. Appellants were given consolidated pay of Rs. 1,100/- per month w.e.f. 1.7.1988, whereas the Respondent No. 4 was given consolidated pay of Rs. 1,400/- per month with effect from the same date, i.e. from 1.7.1988. Subsequently on 24.8.1988, Appellants were also given the consolidated pay of Rs. 1,400/- per month. Later on, as aforesaid, w.e.f. 1.3.1989, the Respondent No. 4 was given the pay scale of Rs. 515-865. In the writ petition, Petitioners contended that since they became monthly employees of Respondent No. 1 prior to Respondent No. 4, and since they and the Respondent No. 4 were on the same consolidated pay scale before the timescale was given to the Respondent No. 4 w.e.f. 1.3.1989, Petitioners being senior, could not be denied the said timescale. In the body of petition, nothing has been shown how Marketing Assistants are equal to Marketing Representatives. This was one of the grounds on which the representation of the Petitioners was rejected. Despite such knowledge, the Appellants did not at all make any endeavor to show that they were holding the same/equal post as that of Respondent No. 4 and were obliged to do same/similar work and, accordingly, in the matter of consideration of future advancement of Respondent No. 4, it was obligatory in law on the part of Respondent No. 1 to consider the future advancement of the Appellants too. That being the situation, we are of the view that there is no scope of interference. The appeal fails and the same is dismissed.