

(2011) 05 UK CK 0159

In the Uttarakhand High Court

Case No : Restoration Application No. 336 of 2001 and Delay Condonation Application in Restoration No. 5035 of 2011 in Writ Petition No. 1342 of 2008 (S/S)

Pan Singh and Others

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 25-05-2011

Acts Referred:

Citation : (2011) 05 UK CK 0159

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—The writ petition challenged a relieving order passed on 17.12.2008. On the writ petition, a stay order was passed. The said order was continued from time to time. Ultimately, the writ petition was permitted to be dismissed for non-prosecution. The said order stood vacated. No sooner the relieving order, which remained stayed, was revived, an application for restoration with an application for condonation of delay in filing the application for restoration have been filed. The reason assigned in restoration application is that since 2.3.2001 was a non-working day of this Court, learned Counsel engaged by the Petitioners did not feel it necessary to attend this Court on 28.2.2011 and 1.3.2011, for he had gone to his native place on 26.2.2011, which being a Saturday, was a non-working day of this Court. The said state of affair clearly indicates that there was utter negligence on the part of the counsel engaged by the Petitioners in permitting the writ petition to be dismissed for non-prosecution. Be that as it may, a litigant should not suffer for the laches on the part of the counsel engaged by him, having regard to the system of dispensation of justice adopted in this country, where a litigant is pre-dominantly dependent on the efficiency, integrity and rightfulness of his chosen advocate. In such circumstances, the default is required to be compensated by the defaulting counsel by paying cost from his own resources. That is also a settled law.

However, in the instant case, the earlier Advocate, on whose default the writ petition stood dismissed for non-prosecution on 1.3.2011, is no longer appearing on behalf of Petitioners and, accordingly, Petitioners had to take change in favour of their new advocate, who was not in default on 1.3.2011. We, accordingly, allow the application for condonation of delay, which is not being seriously objected by learned Counsel for the Respondents and also the application for restoration, without imposing any cost.

2. It appears to be the contention of the Petitioners that they are ordinary residents of the State of Uttarakhand and that they had also opted for being allocated to the State of Uttarakhand but on 29.11.2005, they have been allocated to the State of Uttar Pradesh. It is being contended that the said allocation is contrary to the Policy of the Central Government. The Policy of the Central Government nowhere highlights that an ordinary resident of the State of Uttarakhand, opting for State of Uttarakhand, would be ipso facto allocated to the State of Uttarakhand. The Policy only suggests that the option, as given by an employee, would be honoured, as far as practicable and that, if an employee is an ordinary resident of a particular State, and if he has also opted for the selfsame State, every effort shall be made to allocate him to the said State. However, allocation can only be made against available posts. In other words, if 10 posts are available in the State of Uttarakhand, and if 20 people, ordinarily residing in the State of Uttarkahand opt for the State of Uttarakhand, all of them cannot be allocated to the State of Uttarakhand. In such a situation, the Policy suggests that if the employees have been appointed in batches, representatives of all such batches should be accommodated on the basis of their ratio. Petitioners were clerks, but no effort has been made by them to show that as many posts of clerks were available in the State of Uttarkahand, against which some number of clerks opted for the State of Uttarakhand who were also residing in the State of Uttarakhand. Petitioners have not also brought on record any fact which would suggest that there were batch-wise appointments, but the proportionate representations of these batches have not been taken into account while final allocation was made. Be that as it may, the tentative allocation list was published on 6.4.2005, which did not contain the names of the Petitioners showing that they were proposed to be allocated to the State of Uttarakhand. There is no document brought on record of the writ petition which would suggest that immediately after publication of the tentative allocation list, and before the final allocation list was published, Petitioners made any representation highlighting that the allocations, proposed in the tentative list, are inappropriate. That being a situation, there is hardly any scope of interference with the final allocation made on 29.11.2005. We, accordingly, dismiss the writ petition.

3. Learned Counsel for the Petitioners submits that Petitioners belong to scheduled tribe community and, in the State of Uttar Pradesh, the Tribe, to which Petitioners belong, is no longer recognized as a scheduled tribe and as such, Petitioners cannot be allocated to the State of Uttar Pradesh. This aspect of the matter has not been highlighted in the body of writ petition. In the event,

Petitioners belong to a scheduled tribe and after creation of the State of Uttarkhand, the State of Uttar Pradesh has no tribe, to which the Petitioners belong, recognized as scheduled tribe, then it shall be open to the Petitioners to take such recourse of law, as they may be advised including re-approaching this Court by filing a writ petition.