

(1992) 08 AHC CK 0082

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 5596 of 1987

Parmeshwari Dayal Saxena

APPELLANT

Vs

The President U.P. Basic Shiksha Parishad and Others

RESPONDENT

Date of Decision : 28-08-1992

Acts Referred:

Citation : (1993) 2 AWC 735 : (1993) 1 UPLBEC 205

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Advocate : S.N. Srivastava, for the Appellant;

Final Decision : Allowed

Judgement

M.L. Bhat, J.—The Petitioner's appeal against an order dated 6-6-77 filed by the Petitioner on 27-1-86 has been dismissed by Respondent No. 1 as barred by time. The Petitioner challenges the said order in this writ petition as also the basic order of his dismissal and prays for a writ of certiorari to quash the impugned orders dated 6-6-77 and 1-12-86.

2. For proper understanding of the case, it is necessary to mention facts briefly.

3. The Petitioner came to be appointed as Head Master of Buodelkhand Purv Madhyamik Vidyalaya, Hamirpur on 6-7-72. His services are said to have been confirmed on 31-1-74. His services were, thereafter terminated by a resolution dated 17-3-77 on coming to know about the order of management, the Petitioner is said to have represented his case before Respondent No. 2. The order of termination of the services of the Petitioner was disapproved by Respondent No. 2 on 18-5-77. Thereafter, there was some correspondence between the management of the institution and Respondent No, 2 and the order of termination of Petitioner's services was approved on 6-6-77 without affording an opportunity of being heard to the Petitioner. The Petitioner's case is that the order of termination was illegal inasmuch as no enquiry was held against the Petitioner, nor was any charge-sheet given to him. His further case is that once

the order of termination was disapproved it could not be approved subsequently at the back of the Petitioner. The Petitioner, thereafter, filed a civil suit in 1977 Respondent No. 3 seems to have raised an objection of jurisdiction before the trial court. The trial court by its order dated 27-5-82 held that it had the jurisdiction to try the suit. Against the order of the trial court, Respondent No. 3 seems to have preferred a revision petition which came to be registered as Revision No. 19 of 1982. The revision was heard by IVth Additional District Judge. Provisional court held that the Civil Court had no jurisdiction to try the suit by its order dated 17-4-85. The file was remitted back to the trial court which dismissed the suit on 7-11-85 and granted liberty to the Petitioner to seek remedy from the proper forum, there upon the Petitioner filed an appeal before Respondent No. 1 which was dismissed as time barred on 1-12-86.

4. It is submitted that period for filing the appeal is six months but in this case the Petitioner was pursuing remedy in Civil court against the order of termination of his services and an objection raised by Respondent No. 3 the Civil Court held that it had no Jurisdiction to try the suit; the appeal was filed after a period of six months. He therefore, wants to set aside the order passed by Respondent No. 1 and seeks a direction for hearing of the appeal by Respondent No. 1.

5. Learned Counsel for the opposite parties has argued that the appeal filed by the Petitioner before Respondent No, 1 was hopelessly barred by time, therefore, it was rightly rejected. The Petitioner's services were terminated in June, 1977. He could file an appeal thereafter within a period of limitation before Respondent No. 1. He instead filed a Civil suit which was not maintainable and pursued a remedy in wrong forum against the order of termination of his services, which remedy was not available to him under law.

6. It is also stated by the Respondents that the termination of the Petitioner's services were never disapproved as contended by the Petitioner.

7. It appears that on receipt of resolution of termination in respect of the Petitioner, Respondent No. 2 had, vide its letter dated 18-5-77, asked the managing committee that before the services of the Petitioner are terminated, prior approval of Respondent No. 2 should be obtained otherwise it is likely that some complication may arise. The management appears to have thereafter, sought approval of Respondent No. 2 by its letter dated 24-5-77 for terminating the services of the Petitioner. The approval was granted on 6-6-77 by the Respondent No. 2. It is not a case in which Respondent No. 2 had disapproved the action of the managing committee, so reviewed its order at the back of the Petitioner. He had only informed Respondent No. 3 to take action only after his approval. Therefore, this is not a case where any order was reviewed by Respondent No. 2. He granted the approval on 6-6-77 in pursuance of the letter of the management dated 24-5-77. Therefore, the statement of learned Counsel for the Petitioner in respect of exercise of power of reviewing his order by Respondent No. 2 does not appear to be correct.

8. The Petitioner wanted this Court to go into the merits of the Impugned order of termination of Petitioner's services dated 17-5-77 approved by Respondent No. 2 on 6-6-77. This Court does not propose to do so for the reasons which would follow.

9. It is admitted fact that an appeal was filed by the Petitioner after about more than eight and half years period. The appellate authority could entertain an appeal within a period of six months. It had the power to condone the delay if it was satisfied from the explanation tendered by the Petitioner before the appellate authority that the delay caused by the Petitioner, in filing the appeal was not deliberate and the Petitioner was not negligent in any manner. The burden was on the Petitioner to tender plausible explanation for condensation of delay in filing the appeal. It was for Respondent No. 1 to accept that explanation or to reject that explanation only after it had applied its mind objectively to the facts of the case. It was not sufficient for Respondent No. 1 to say that the appeal was barred by time. This has, for all times to come, closed the doors for the Petitioner to seek redressed of his grievance. The Petitioner had suffered punishment of termination of services. It was, therefore, necessary for the appellate authority to look into the memo of appeal as to whether the explanation given by the Petitioner for condoning the delay in filing the appeal could be considered as reasonable or it was pretext to bring time barred appeal within time.

10. Copy of the memo of appeal filed by the Petitioner before Respondent No. 1 is on the file. In para 12 of the memo of appeal, the Petitioner seems to have explained the delay and the explanation tendered by the Petitioner is based on facts and is not incorrect. The Petitioner had stated that he had challenged the order of termination in Civil court and the Civil court refused to consider the same on the ground that it had no Jurisdiction to entertain this suit against an order of termination. It is interesting to note that challenge to the Civil Court's jurisdiction was thrown by Respondent No. 3. The trial court has assumed the jurisdiction by deciding the issue of the jurisdiction in favour of the Petitioner refuting the contention of Respondent No. 3 to the objection of the jurisdiction. However, Respondent No. 3 filed a revision before the District Judge which came to be decided by IV Additional District judge. It was held in the said revision that Civil Court has no jurisdiction to try the suit of the Petitioner and consequently the suit was dismissed by the Munsif on 7-11-85. Thereafter, the Petitioner filed an appeal on 27-1-86 which was dismissed as barred by time on 1-4-86.

11. Respondent No. 1 seems to have taken technical view in the matter. There was an explanation before him as to why the Petitioner could not file the appeal within time. Respondent No. 1 was requested to consider the appeal on merits after taking the explanation into consideration. Respondent No. 1 has not said a single word about the explanation given by the Petitioner in the appeal in which he had failed to explain the delay in filing the appeal. It is not the case of Respondent No. 3 that the Petitioner had any bad faith in contesting the civil suit.

The Petitioner seems to have been contesting the civil suit bonafide in the hope that his grievance would be considered by the Civil Court. When the Civil Court refused to consider his grievance on the question of jurisdiction and directed him to choose proper forum for redress of his grievance, the Petitioner at once filed the appeal with proper explanation about the delay in filing the appeal. It cannot be conceived that the Petitioner had deliberately failed to file the appeal within time. He could not file the appeal because he was contesting his claim in wrong forum in a bonafide manner. Lack of bona fide cannot be attributed to (he) Petitioner for causing delay in filing the appeal before Respondent No. 1. The explanation given by the Petitioner seems to be reasonable and should have convinced Respondent No. 1 about the bona fide of the Petitioner. It has in a cryptic manner dismissed the appeal as barred by time. The appeal of the Petitioner was barred by time, but if his explanation was considered and if there was no lack of bonafide in the Petitioner, the delay could be condoned by Respondent No. 1 and it should have been treated to have been filed within time.

12. After going through the record, I am of the opinion that the Petitioner's explanation before the appellate authority is bona fide and based on facts. Respondent No. 1 was discharging his quasi-judicial function. Therefore, it has to assess the whole matter objectively. The objectivity of approach of Respondent No. 1 to deal with the Petitioner's appeal seems to be absent.

13. During the recent years Judicial Review of the administrative orders has become less technical, less compartmentalised, more imaginative and more creative. The procedural safeguards in a statute are to be interpreted and applied in such a manner which will help achieve the ends of justice rather than defeat it. If the Tribunal is vested with powers to condone the delay in filing an appeal before it, it is bound to consider the explanation for condensation of delay to find out whether reasonable causal was shown by the party for condensation of delay. Its omission to consider the explanation would amount to refuse to consider the explanation which in constitutional realm is known as arbitrary or pedantic approach of the authority.

14. The objection tendered by the Petitioner for delay in filing the appeal, therefore, was necessarily to be considered and decided by Respondent No. 1. Respondent No. 1 has omitted to do so. The approach of Respondent No. 1 is, therefore, subjective and cannot stand the test of fair play, equity and justice.

15. On going through the record, it appears that Respondent No. 1 has omitted to consider the question of condensation of delay though there was material for consideration of this question. It is, therefore, no use to ask Respondent No. 1 to consider the question of delay. The Petitioner has given a plausible explanation for delay in filing the appeal. Law of limitation admits exceptions also. Lack of bonafide cannot be attributed to the Petitioner. Therefore, law of limitation would not be invoked in such a manner which would have the effect of penalising the Petitioner. In the facts and circumstances of this case, the ends of justice would be served if the Impugned order dated 1-12-86 passed by Respondent No. 1 is

quashed and he is directed to rehear the appeal on merits. No matter, it was filed before him after about more than 8 1/2 years. The Respondent No. 1 is bound to consider the appeal on merits and to go into the validity or otherwise of the order dated 17-5-77 and 6-6-77 by which the Petitioner's services are terminated.

16. This Court has not deemed it proper to consider the validity or otherwise of the Petitioner's termination order because that is the matter for Respondent No. 1 to be considered in appeal. The Petitioner's appeal has been dismissed on technical ground. Respondent No. 1 will not consider the appeal on merits. The appeal shall be treated by Respondent No. 1 to have been filed within time. In this view of the matter refrain to pronounce on the merits of the impugned orders dated 17-5-77 and 6-6-77.

17. For the reasons stated above, the writ petition succeeds and is allowed to the extent indicated below

(i) The impugned order dated 1-12-86 passed by Respondent No. 1 holding the appeal of the Petitioner to be barred by time is hereby quashed as being arbitrary and against the provisions of law.

(ii) By a writ of mandamus Respondent No. 1 is directed to consider the appeal of the Petitioner on merits treating it to have been filed within time. Respondent No. 1 is also directed to give an opportunity of being heard to the Petitioner as also to Respondent No. 3 while deciding the appeal.

(iii) Respondent No. 1 is further directed by a writ of mandamus to decide the appeal finally on merits within three months from the date of presentation of a certified copy of this judgment before him by either of the parties.

18. A certified copy of this judgment shall be given to the Petitioner and Respondent No. 3 on payment of usual charges within one week.