

(2009) 07 AHC CK 0368

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 33847 of 2009 and 33842 of 2009

Rajeev Kumar

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:

Citation : (2009) 123 FLR 120

Hon'ble Judges : Uma Nath Singh, J;Amitava Lala, J

Bench : Division Bench

Advocate : Ashok Kumar Singh and Smt. Rekha Singh, for the Appellant; Govind Saran, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Amitava Lala, J.—These writ petitions have been filed challenging the judgment and order dated 4th March, 2009 passed by the Central Administrative Tribunal. Allahabad Bench, Allahabad, by which the Original Application Nos. 221 of 2009 and 222 of 2009 were dismissed on the ground of delay and laches. The petitioners have contended that they have made successive representations since 22nd July, 1998. The date of last representation is 8th August, 2007, It is made for the purpose of regularisation of their service after completion of requisite number of days of total working. The Union of India, on the other hand, has contended that once the Original Applications were dismissed on the ground of delay and laches, if they are directed for consideration of the cause, it will lead to future litigation.

2. We are of the view that we are not sitting in the appellate forum from the order passed by the Central Administrative Tribunal. The Tribunal is Court of first instance in view of the judgment in L. Chandra Kumar Vs. Union of India and others, . We are sitting here to render equitable justice irrespective of the order passed by the Tribunal. But in the process we should not be forgetful about laying down provision of law made for the Tribunal. Since the Original

Applications have been dismissed on the ground of delay and laches we do not want to interfere in such order. In *Shiv Dass v. Union of India and others* 2007 (112) FLR 877 (SC), the Supreme Court has held as follows:

Normally, in the case of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court of course, the discretion has to be exercised judicially and reasonably.

(Emphasis supplied)

3. In *Gian Singh Mann Vs. High Court of Punjab and Haryana and Another*, , we find that the inordinate delay could not be overlooked on the ground that the petitioner has made successive representations to the Department. It says that the pendency of the representation will not be adequate explanation to overlook the delay similarly after turning down one representation making another on the similar ground will also not explain the delay. Therefore, the petitioners can not get any affirmative order against the order passed by the Central Administrative Tribunal on the ground of delay and laches.

4. Hence, the writ petitions are dismissed on such ground without imposing any cost.

Now it is open for the railway authority to consider or not to consider independently the cause of regularisation of the petitioner, if any, from the panel of the Casual workers from which reportedly juniors have been accommodated.

U.N. Singh, J.

15. I agree.