

(2014) 10 AHC CK 0092

In the Allahabad High Court

Case No : Civil Miscellaneous Appeal No. 97072 of 2014 in Special Appeal
Defective No. 585 of 2014

Rajnish Kumar Pandey

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 08-10-2014

Acts Referred:

Citation : (2014) 9 ADJ 64 : (2015) 1 ALJ 212 : (2015) 1 AWC 227 : (2015) 1
ESC 81

Hon'ble Judges : Arvind Kumar Tripathi, J;Amreshwar Pratap Sahi, J

Bench : Division Bench

Advocate : I.M. Pandey and Arun Kumar Pandey, Advocate for the Appellant

Judgement

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1. Heard Sri I.M. Pandey, learned counsel for the appellants, Sri K.K. Pandey for the respondent No. 3 and Sri S. Chaudhary, learned Additional Chief Standing Counsel for the respondents No. 1 and 2.

2. This appeal questions the correctness of the judgment of the learned Single Judge dated 18.7.2014 whereby the appellants have been refused a mandamus allowing them to appear in the counselling for the post of Ayurvedic Pharmacist. The appellants contend that they have completed their diploma in pharmacy, and against the advertisement made on 2.6.2014 the appellants had applied for recruitment to the post of Ayurvedic Pharmacist. The last date for receipt of the applications prescribed was 15.6.2014 by which date the applications had to be received in the office of the Director, Ayurvedic Services, Government of Uttar Pradesh, Lucknow.

3. All the appellants contend that they had dispatched their applications through registered post and that the same had been delivered by the post office to the Medical and Health, Department of the respondent-State. However, while executing the delivery, the postal delivery agent instead of serving the said

applications on the Director, Ayurvedic Services, U.P. Lucknow, had delivered it wrongly to the Director General, Medical and Health, Swasthya Bhavan, Lucknow. The contention, therefore, is that in the absence of any fault or defect in the mode, adopted by the appellants, the error committed by the post office in delivering the letters on the wrong addressee cannot be a ground to deny the appellants the opportunity to be considered for appointment on such posts that were advertised on 2.6.2014. The contention, therefore, is that the learned Single Judge has not correctly appreciated the aforesaid background and has erroneously refused to exercise discretion in law. The writ petition deserved to be allowed.

4. Learned counsel for the appellants has relied on the judgment of a learned Single Judge in Writ Petition No. 47264 of 2014, decided on 8.9.2014 to substantiate his submissions. The order is extracted herein under:-

"Court No.-59

Case:-WRIT-A No.-47264 of 2014 Petitioner:-Ram Dhani Yadav And 2 Ors
Respondent:-State Of U.P. And Another Counsel for Petitioner:-V.K. Singh, D.K. Singh Counsel for Respondent:-C.S.C.

Hon"ble Manoj Kumar Gupta, J.

Supplementary affidavit filed today is taken on record.

Heard counsel for the parties. With their consent, this writ petition is being disposed of finally without inviting counter affidavit.

Petitioners No. 1 and 2 have completed their diploma in Pharmacy in the year 1992 and the petitioner No. 3 in the year 1990. The respondents issued an advertisement on 2.6.2014 inviting applications for recruitment to the post of Ayurvedic Pharmacist. According to counsel for the petitioners, the advertisement prescribed 14.6.2014, as last date for receipt of the applications.

The case of the petitioners is that they made application on 5.6.2014 but on account of postal mistake, it was inadvertently delivered to Director General, Medical Health, Swasthya Bhawan.

The petitioners made a representation in this regard before the Director, Ayurvedic who held an enquiry and whereupon, Chief Post Master, G.P.O. Lucknow, by his letter dated 9.7.2014 informed the Director Ayurvedic that by inadvertence the letter was delivered to wrong person. It is thus the contention of the petitioners that the mistake was of the postal department and the petitioners have been wrongly ousted from the counseling, which was done by the respondents.

The petitioners have now approached this Court for a writ of mandamus directing the respondents to include the names of the petitioners in the counseling list and after holding their counseling they be appointed on the post of Ayurvedic Pharmacist.

On the other hand, learned standing counsel submitted that under the advertisement, two modes were prescribed for sending the applications i.e. by post and by hand personally. He thus submits that the petitioners, who have chosen one of the prescribed modes, cannot complain of the postal delay as the post office was working as the agent of the petitioners. He further very fairly submitted that since the Director Ayurvedic has already called for information from the G.P.O. Lucknow and, therefore, he is competent to take decision in the matter.

After considering the submissions made by learned counsel for the parties and the material on record, I am of the opinion that interest of justice would be served in directing the respondent No. 2 to take appropriate decision on the claim made by the petitioners for being permitted to participate in the counseling.

Accordingly, this writ petition is disposed of with liberty to the petitioners to file fresh representation alongwith certified copy of this order before respondent No. 2. In the event, any such representation is made, respondent No. 2 shall consider and decide the same in accordance with law expeditiously and preferably within next three weeks.

It is clarified that this Court has not adjudicated on the merits of the claim of the petitioners and it shall be examined by respondent No. 2, while taking decision in the matter.

(Manoj Kumar Gupta, J.)

Order Date:-8.9.2014"

5. Learned counsel for the appellants submits that in the absence of any error on the part of the appellants, the mistake cannot be attributed to them and their applications being competent, the appellants deserve to be considered for being appointed on the posts in question. In essence, the argument is that the applications had been correctly dispatched and had also been received by the State, but delivered in the office of an officer who was not authorized to receive the same.

6. Learned Standing Counsel, on the other hand, has relied on the Full Bench judgment of this Court in the case of Neena Chaturvedi Vs. Public Service Commission, to contend that the appellants having chosen their agency and there being two modes prescribed for furnishing the applications, any defect by the post office in making delivery of the envelopes would not entitle the appellants for grant of any relief.

7. Learned Standing Counsel submits that the judgment of the learned Single Judge does not suffer from any infirmity and the aforesaid issue has not been considered or decided by the learned Single Judge in the case relied upon by the learned counsel for the appellants. The submission, therefore, is that the impugned judgment of the learned Single Judge dated 18.7.2014, which is prior in point of time to the judgment dated 8.9.2014, deserves to be upheld.

8. Having considered the aforesaid submissions, we find from the advertisement that it is correct that the applications had to be received by 15.6.2014 under registered post. This mode is prescribed in Clause 3 of the advertisement, copy whereof has been filed at page No. 35 of the paper book of this appeal. Clause 4 of the advertisement also provides for receipt of applications during office hours at the given address by the date fixed.

9. It is undisputed that at least the appellants No. 1, 2, 4, 5, 9, 10, 13, 15 and 16 have dispatched their applications at the correct given address and a certificate has been issued by the post office, Department of Posts of the G.P.O., Lucknow certifying the receipt of such envelopes and their delivery by 9.6.2014. It is thus clear that at least these appellants had sent their applications and their applications had been delivered by 9.6.2014.

10. The only dispute is that by inadvertence on the part of the post office delivery man, the envelopes were delivered to the Director General, Medical & Health, Swasthya Bhawan, Lucknow instead of the Director Ayurvedic Services 9th Floor, Ashok Marg at Lucknow. It is on account of this incorrect delivery to the wrong office by the post office that the appellants' applications did not reach the concerned officer for such consideration. Hence, the appellants approached this Court by filing the writ petition that has given rise to the present special appeal.

11. The learned Single Judge has dismissed the petition on the ground that once the applications had not reached the correct office then the respondent-State cannot be said to be at fault for not holding or inviting the appellants for counselling.

12. Having considered the aforesaid submission, we find that the Full Bench decision in the case of Neena Chaturvedi (*supra*) was called upon to revisit the law in an already decided issue in relation to the mode of applications and the service by the post office in the event there are two modes prescribed for inviting applications. The Full Bench held that any inconvenience or hardship cannot be a cause for invoking discretion when such a post or parcel is not delivered inasmuch as if there is any other mode prescribed then the appellants and the person concerned chooses the mode of postal services at his/her own risk. Consequently, the Full Bench came to the conclusion that the earlier decision in the case of Pramod Kumar Singh Vs. State of U.P. and another, 2005(4) ESC 2820 (All) (DB) lays down the law correctly.

13. In the instant case, we find that on facts the case of the appellants, particularly the appellants No. 1,2,4,5,9,10,13,15 and 16 stand on a slightly different footing in the sense that the respondents also admit the receipt of the envelopes but by the officer who was not concerned or obliged to receive such an envelope. The appellants, therefore, cannot be said to be at fault in either dispatching or choosing the agency as prescribed in the advertisement itself. In such a peculiar situation the learned Single Judge in the case of Ram Dhani

Yadav Vs. State of U.P. And another, Writ Petition No. 47264 of 2014, had in our opinion vide judgment dated 8.9.2014 rightly proceeded to issue a direction to the Director to take an appropriate decision on such claims that was on account of the inadvertence as indicated above. Even otherwise the "pari delicto" principle would not be attracted to the advantage of the respondents as no laches or mistake are traceable at the end of the appellants. The choice of postal agency was bonafidely adopted as per the terms of the advertisement without any voluntary decipherable flaw on their part. It is not the case of the respondents that a wrong address was transcribed by the appellants. To the contrary the receipts containing the address match with the address given in the advertisement. We are, therefore, inclined to remind ourselves of the principle that Law is good but Justice is better and the judgment dated 8.9.2014 clearly conforms to the said principle.

14. We would, therefore, most respectfully set aside the judgment dated 18.7.2014 and adopted the reasoning given by the learned Single Judge in the case of Ram Dhani Yadav (supra).

15. The special appeal is accordingly allowed and the judgment dated 18.7.2014 is set aside.

16. A direction is issued in the nature of mandamus commanding the respondent No. 2 to proceed to consider the claim of the appellants No. 1, 2, 4, 5, 9, 10, 13, 15 and 16 in accordance with the judgment dated 8.9.2014 and pass appropriate orders thereon.

17. We have selected the aforesaid appellants for the relief prayed for on the fact that it is only these appellants who have filed their certificates from the post office indicating the dispatch of their applications and delivery thereof on 9.6.2014 which is prior to the last date of submission of application form.

18. So far as the other appellants are concerned, in the event they are able to establish by getting of any certificate from the Department of Post and Telegraph that their envelopes had also been delivered prior to the cut off date in the same manner as in the case of the other appellants then in that event such appellants, apart from those mentioned above, would also be entitled to the same benefit under this judgment.

19. With the said observations and directions, the special appeal is allowed.

20. Cause shown for the delay in filing the special appeal is sufficient.

21. The application is allowed. The delay is condoned.