
(2001) 12 AHC CK 0078
In the Allahabad High Court
Case No : C.M.W.P. No. 11296 of 1999

Rakesh Kumar

APPELLANT

Vs

U.P. State Public Service Tribunal, Lucknow and Others

RESPONDENT

Date of Decision : 14-12-2001

Acts Referred:

Limitation Act, 1963 — Section 14, 14(1)

Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 4, 5(1)

Citation : (2002) 1 AWC 404 : (2002) 1 UPLBEC 319

Hon'ble Judges : Onkareshwar Bhatt, J;G.P. Mathur, J

Bench : Division Bench

Advocate : V.S. Singh and V.J. Singh, for the Appellant; Pradeep Kumar and Mukhtar Alam and S.C., for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—This petition under Article 226 of the Constitution has been filed for quashing the judgment and order dated 3.12.1998 of U. P. Public Service Tribunal, Lucknow (hereinafter referred to as the Tribunal) by which the Claim Petition No. 2/F/111/51 filed by the petitioner was dismissed.

2. The petitioner was appointed as a peon In U. P. Paschmi Kshetriya Vikas Nigam Ltd. (hereinafter referred to as the Corporation) in the year 1977. He was promoted as daftri and thereafter as Lower Division Clerk. On account of certain act of misconduct, he was placed under suspension on 12.5.1982. He was served with a charge-sheet and a disciplinary enquiry was held. Thereafter he was dismissed from service on 21.7.1982. The petitioner preferred a claim petition before the Tribunal praying that the order dismissing him from service be set aside and it may be declared that he continues in service. After considering the material on record, the Tribunal held that the petitioner had admitted the first charge levelled against him and in view of the evidence and the admission of the petitioner, the said charge is fully established. The Tribunal also held that the petitioner after opening the envelopes used to give papers and other documents

of the department to outsiders of which photostat copies were made and had thereby enabled outsider to get complete information regarding the business being transacted by the corporation. He had also used objectionable language against his superiors. Thus the Tribunal found that the second charge was also established. The Tribunal has also held that the claim petition was barred by limitation and also on the ground that the petitioner had not pursued the departmental remedy. In view of these findings, the claim petition was dismissed by the impugned order dated 3.12.1998.

3. We have heard Sri V. S. Singh for the petitioner at considerable length and have examined the record. Clause (b) of Sub-section (1) of Section 5 of the U. P. Public Service (Tribunal) Act 1976 (hereinafter referred to as the Act) which deals with limitation is being reproduced below :

"(b) The provisions of the Limitation Act, 1963 (Act 36 of 1963) shall mutatis mutandis apply to reference u/s 4 as if a reference were a suit filed in civil court so, however, that :

(i) notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year ;

(ii) in computing the period of limitation the period beginning with the date on which the public servant makes a representation or prefers an appeal, revision or any other petition (not being a memorial to the Governor), in accordance with the Rules or orders regulating his conditions of service, and ending with the date on which such public servant has knowledge of the final order passed on such representation, appeal, revision or petition, as the case may be, shall be excluded :

Provided that any reference for which the period of limitation prescribed by the Limitation Act, 1963 is more than one year, a reference u/s 4 may be made within the period prescribed by that Act, or within one year next after the commencement of the Uttar Pradesh Public Services (Tribunal) (Amendment) Act, 1985 whichever period expires earlier :

Provided further that nothing in this clause as substituted by the Uttar Pradesh Public Service (Tribunal) (Amendment) Act, 1985, shall affect any reference made before and pending at the commencement of the said Act. The period of limitation for filing a claim petition is one year in view of Sub-clause (t) of Clause

(b). The petitioner was dismissed from service on 21.7.1982 but the claim petition was filed after 8-1/2 years on 2.1.1991. Learned counsel for the petitioner has contended that the provisions of Limitation Act, 1963 are applicable to a reference made before the Tribunal and as the petitioner was pursuing his remedy in a suit which he had instituted in the civil court, he is entitled to the benefit of Section 14 of the Limitation Act and the claim petition is not barred by limitation. The petitioner has not filed plaint of the civil suit but has filed a copy of the Judgment in Civil Suit No. 89 of 1982 decided by the 1st Addl.

Civil Judge. Bareilly on 23.11.1990. As the judgment shows the array of parties in the suit were as follows :

1. Pan Singh resident 127. Civil Lines, Bareilly.
2. Rakesh Kumar, Tilak Colony. Bareilly.
3. Brahma Prakash Shukla, Faridpur. District Bareilly.
4. Abdul Rahim. Mohalla Bankhana Bareilly.
5. G. K. Pillai, 153 Bagh Brigtan. Bareilly.

..... Plaintiffs

Versus

1. Board of Director, U. P. Paschmi Kshetriya Vikas Nigam Bareilly.
2. Sri B, M. Singh, Managing Director, Uproktya Company, Bareilly.
3. Sri Ramesh Chandra Singh, B.D.O., Gubhour district Badaun.
4. Sri Devi Dayal Sharma, B.D.O. Puwaiya district Shahjahanpur.

..... Defendants

The judgment shows that the aforesaid suit was filed by five persons wherein the petitioner was arrayed as plaintiff No. 2. The case of the plaintiffs was that as they had put in over three years with the Corporation, they were entitled to be declared as permanent. According to the allegations made in the suit, the plaintiff No. 1, namely, Pan Singh apprehended that some action was likely to be taken against him and he may be given notice of termination of service. The case of the petitioner, namely, Rakesh Kumar (plaintiff No. 2 in the suit) was that attempts were being made to terminate his service. The plea taken in the written statement was that the plaintiffs in the suit were employees of Uttar Pradesh Pashchmi Kshetriya Vikas Nigam Ltd., Bareilly and as the said body (Corporation) had not been arrayed as defendant, the suit was not maintainable. A specific plea was also taken that in view of U. P. Public Services (Tribunal) Act. the suit was not maintainable as the plaintiffs were employees of a Government Corporation and were public servants within the meaning of Section 2 (b) of the Act. Besides, several other pleas like misjoinder of the parties and misjoinder of causes of action were also taken, Several issues were framed and Issue No. 7 was whether the suit was not maintainable in view of U. P. Public Services (Tribunal) Act. After considering the evidence on record, the 1st Addl. Civil Judge, Bareilly dismissed the suit on 23.11.1990. Thereafter the petitioner preferred the claim petition before the Tribunal on 2.1.1991. The question which requires consideration is whether the petitioner is entitled to the benefit of Section 14 of the Limitation Act. Sub-section (1) of Section 14 of the Act reads as follows :

"(1) In computing the period of limitation for any suit, the time during which the

plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

A perusal of the above quoted provision shows that the same would apply provided the plaintiff has prosecuted with due diligence, another civil proceedings against the defendant and the proceedings relate to the same matter in issue and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature is unable to entertain it. The judgment of the civil suit shows that the employer viz., Uttar Pradesh Paschmi Kshetriya Vikas Nlgam Ltd., was not impleaded as party and was not arrayed as defendant in the suit. In order to attract Section 14, it is absolutely essential that earlier proceeding which had been instituted in a Court which has no jurisdiction should be against the same defendant. But the petitioner had not impleaded his employer, i.e., Corporation as defendant in the suit against whom the present claim petition has been filed. The other aspect of the matter is that the dismissal order dated 21.7.1982 which was challenged before the Claims Tribunal was not the subject-matter of challenge in the civil suit. In fact, in the civil suit, the petitioner did not make any mention of the fact that dismissal order had been passed against him on 21.7.1982. Another requirement of Section 14 is that earlier proceedings should have been prosecuted by the plaintiff with due diligence and in good faith in the Court which had no jurisdiction. A written statement had been filed in the suit wherein a specific plea had been taken that civil court had no jurisdiction in view of U. P. Public Services (Tribunal) Act. In fact, Issue No. 7 had been specifically framed on this point. The petitioner even after becoming aware of the legal position that the suit was not maintainable persisted with the same which was ultimately dismissed after a long time on 23.11.1990. It cannot, therefore, be said that the petitioner had prosecuted the suit "in good faith" in a Court which had no jurisdiction. The petitioner, therefore, does not satisfy the requirement of Sub-section (1) of Section 14 of the Limitation Act and Is not entitled to claim that period spent In prosecuting the civil suit from 1982 till 23.11.1990 should be excluded. In this view of the matter, the U. P. Public Services (Tribunal) was perfectly justified in holding that the claim petition preferred by the petitioner was barred by limitation.

4. Section 4 of the Act deals with reference of claims to Tribunal and the second and third provisos thereof read as follows :

"Provided further that no reference shall ordinarily be entertained by the Tribunal until the claimant has exhausted his departmental remedies under the Rules applicable to him :

Provided also that where no final order is made by the competent authority, that is to say, the State Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or

representation made by the claimant within one year from the date on which such appeal was preferred or representation was made, the claimant may by a written notice require such competent authority to pass the order and if the order is not passed within one month of the service of notice, the claimant shall be deemed to have exhausted his departmental remedy.

The Tribunal has held that the petitioner did not avail of the departmental remedy against the dismissal order and straight-away filed the claim petition and, therefore, in view of the above quoted provision, the claim petition is barred. Learned counsel for the petitioner has not been able to point out anything as to how the aforesaid finding of the Tribunal suffers from any legal infirmity.

5. Sri V. S. Singh has also urged that the authority which passed the dismissal order had no jurisdiction to do so and, therefore, the order dated 21.7.1982 dismissing the petitioner from service is liable to be set aside. The plea raised requires examination of the question as to who was competent to pass the dismissal order against the petitioner, Para 5 of the judgment of the Tribunal shows that only two points were urged before it. The contention now being raised in the writ petition that the dismissal order had been passed by an authority who had no jurisdiction to do so was not at all raised before the Tribunal and was given up. This is not a pure question of law but will depend upon several factors. There is no averment in the writ petition that the statement made by the Tribunal in para 5 of the judgment is factually incorrect. The petitioner having not raised this plea before the Tribunal, it is not open to him to raise the same for the first time in the present writ petition. It is not open to a party to raise a new plea while assailing the judgment of a Tribunal under Article 226 of the Constitution.

6. For the reasons mentioned above, we find no merit in the writ petition which is hereby dismissed.