(2010) 02 AHC CK 0195

In the Allahabad High Court

Ram Nath Ram APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:

Citation : (2010) 02 AHC CK 0195

Hon'ble Judges : Sunil Ambwani, J;Satish Chandra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Sri Shailendra Kumar Singh, learned Counsel for the petitioner. Learned Standing Counsel appears for the State respondents.

2. The State Public Services Tribunal, Lucknow has dismissed the Claim Petition filed by the petitioner against the censure entry dated 17.6.1994 and the order dated 23.12.1995, by which the representation of the petitioner was rejected as barred by limitation u/s 5 of the U.P. Public Services (Tribunal) Act, 1976, giving rise to this writ petition.

3. Brief facts stated in the claim petition are that at the relevant time the petitioner was posted at Ballia on the post of Entertainment Tax Inspector Grade-II. A charge sheet was given to him for shortfall in the deposits of entertainment tax as compared to cent percent and 11.02% less in comparison to previous years. The petitioner submitted a reply to the charge sheet dated 22.12.1993 stating that all the five cinema halls in his jurisdiction were getting benefit of the subsidy scheme. The district was affected by drought and that the dish antennas and video cassettes had affected the business of cinema. Besides in November 1993 87.74% collection was made.

4. A departmental enquiry was held in which, it is alleged, that without issuing further show cause notice after receiving the enquiry report an order of punishment was passed in mechanical manner. The petitioner''s representation was also rejected on 23.12.1995, without giving any reasons.

5. The Tribunal found that the petitioner''s representation was rejected by the Government on 19.12.1995. The order was intimated by letter of Deputy Commissioner, Entertainment Tax, U.P. dated 23.12.1995 whereas the claim petition was filed in the Tribunal on 10.2.1997. The petitioner has denied the knowledge of the order prior to February 26, 1996. He, however, has not specifically denied the contents of paragraph-3 of the written statement, and has not given explanation as to when he received the letter. The delay was as such not convincingly explained. The Claim Petition No. 390/1997 was consequently dismissed on 20.4.2007 as barred by limitation. A review petition against the judgment was also dismissed on 14.11.2007 on the ground that admittedly the petitioner has stated in paragraph-4(21) and 5(18) and para 6 that the rejection order was communicated to him on 26.2.1996 but no proof has been filed to substantiate the order.

6. It is submitted by learned Counsel for the petitioner that notwithstanding the period of limitation prescribed in the Limitation Act, 1963, the period of limitation for a reference u/s 5(1)(b)(i) is one year. Section 5(1)(b)(ii) provides as follows:

5(1)(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 where 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 (Tribunals) (Amendment) Act, 1985 whichever period expires earlier:

Provided further that nothing in this clause as substituted by the Uttar Pradesh Public Services (Tribunal) (Amendment) Act, 1985, shall affect any reference made before and pending at the commencement of the said Act.

7. Section 5 provides for a period of one year as limitation for filing the reference. The method of computation of the period of limitation is also provided in the Section. The period beginning with the date on which a representation, appeal, revision or other petition (not being a memorial to the Governor) in accordance with the rules or orders regulating his continuous of service, and

ending with the date on which such public servant has knowledge of the final order is to be excluded from the period of one year. The knowledge of the final order on the representation, appeal, revision or petition is the last date to be taken into account for counting the period of exclusion.

8. In the present case in paragraph-IV (21) of the Claim Petition, the petitioner stated as follows:

21. That the order passed by the opposite party No. 1 in respect of the representation of the claimant was passed on 23rd December, 1995 but it was communicated to the claimant in the month of February, 26th, 1996.

9. In the written statement filed by the respondents in the Tribunal, it was stated by Shri A.K. Upadhyay, Deputy Entertainment Tax Commissioner in para 23 that the contents of para IV (23) are denied and it is stated that the information regarding disposal of the representation was sent to the petitioner within time and is proved by Annexure-2 to the petition itself.

10. Section 5(1)(b)(ii) of the Act does not give the date of the order as the last date of the point of start of limitation. It is the knowledge of the order, which is the relevant date. The word ''knowledge'' has been defined in ''The Law Lexicon'' by P. Ramanatha Aiyar 2nd Edition Reprint 2007'' as perception of truth; belief, which amounts to or results in moral certainty, indubitable apprehension; information; intelligence; implying truth; proof and conviction; the Act or state of knowing; clear perception of fact; that which is or may be known; acquaintance with things ascertainable; specific information; settled belief; reasonable conviction; anything which may be the subject of human instruction.

11. The difference between ''knowledge'' and ''notice'' is described in Law Lexicon as follows:

Knowledge and Notice. "Knowledge" is not synonymous with notice, but when a person is spoken of as having actual or constructive notice it means no more than that under the indicated circumstances the man is legally chargeable with knowledge.

The terms "knowledge" and "notice" are not synonymous or interchangeable, and should not, therefore, be confounded the one with the other. That which clearly does not amount to positive knowledge may often, in a legal sense, constitute actual notice.

"Knowledge" and "notice" are not synonymous, although the effects produced by notice are the same, in many cases, as result from actual knowledge.

12. The legislature has used the word ''knowledge'' and not ''notice'' in Section 5(1)(b)(ii) of the Act. The knowledge in the context, in which the word has been used for counting the period of limitation, means a certain and clear perception of a fact. It means that the applicant must have knowledge, not merely of the fact that an order has been passed against him by a particular officer, it would

also mean and include the knowledge of the contents of the order, to challenge it same in the Tribunal. The knowledge u/s 5(1)(b)(ii) of the Act would not mean the information alone but the actual notice of the order passed against him which will also include the fact, that the order has been passed on a particular date by a particular authority, for a particular reason. It is only then that a person may be able to comprehend, and challenge the order in the Tribunal. The mere information is not sufficient.

13. In the present case, the order, by which petitioner''s representation against the ensure entry was made on 23.12.1995. The document annexed as Annexure-2, by which petitioner''s representation was rejected, was communicated to the petitioner by the Under Secretary, Government of U.P., through the District Entertainment Tax Officer, Azamgarh. There is nothing on record nor there was any assertion in the written statement that the order was served or that the petitioner was communicated with the order prior to 26.2.1996. The petitioner had clearly averred in paragraph IV (21) of the Claim Petition that it was communicated to him on February 26, 1996. There was thus no other material on record for the Tribunal to have disbelieved the statement.

14. We find that the Tribunal has erred in law in dismissing the Claim Petition, as barred by limitation.

15. The writ petition is allowed. The judgment of the U.P. Public Services Tribunal dated 20.4.2007 in Claim Petition No. 390 of 1997, and the order by which the Review Petition No. 48 of 2007 was rejected on 14.11.2007, are set aside. The Tribunal is directed to decide the matter afresh on merits in accordance with the law, very expeditiously.

