
(2013) 02 DEL CK 0240
In the Delhi High Court
Case No : W.P. (C) 197/2007

Satya Pal Wadhera and Others

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Citation : (2013) 02 DEL CK 0240

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Judgement

Pratibha Rani, J.

CM No. 218/2011 (Restoration) CM No. 219/2011 (Condonation of delay)

1. CM No. 218/2011 seeking recalling of the order dated May 14, 2010 is accompanied by CM No. 219/2011 seeking condonation of delay in filing CM No. 218/2011. As on date, not only the Writ Petition No. 197/2007 is lying dismissed, even the CM No. 6668/2010 seeking restoration of Writ Petition and CM No. 6667/2010 seeking condonation of delay in filing CM No. 6668/2010 are also lying dismissed in default. Before considering the CM Nos. 218/2011 and 219/2011 filed by the petitioners, it is necessary to have a look at the case of the petitioners and the prayer made in the Writ Petition. The writ petitioners have impugned the order dated May 02, 2006 passed in O.A. No. 116/2004 passed by the Central Administrative Tribunal. The O.A. No. 116/2004 was filed by the petitioners seeking quashing of the communication dated 27.07.2001 vide which their request for adding 30% running allowance in ten months' average pay for the reason that they retired from service before 01.01.1993 and as such were not entitled to such benefit, was rejected. The Tribunal rejected the claim of the petitioners observing that the case of the petitioners was squarely covered by decision of Supreme Court referred as Surendra Kumar Vs. Union of India (UOI) and Others, .

2. Notice of the Writ Petition was issued to the respondents, Rule DB was issued

on November 19, 2007.

3. On February 16, 2009, an application bearing CM No. 2067/2009 for early hearing was moved by the petitioner which was allowed by this Court and at the request of the parties, the matter was adjourned to February 24, 2009.

4. Perusal of the record shows that despite the prayer for early hearing being allowed by the Court, on subsequent dates, the petitioners did not feel any urgency, as a result matter stood adjourned to February 24, 2009.

5. The writ again came up for hearing on May 20, 2009 but none appeared on behalf of the petitioners. The same conduct of the petitioners is reflected in the proceedings dated August 25, 2009. Though no adverse order was passed against the petitioner on May 20, 2009 and August 25, 2009 but on November 18, 2009 when again there was no appearance on behalf of petitioners, noting the previous conduct the Writ Petition was dismissed in default.

6. CM No. 6668/2010 praying for restoration of Writ Petition and CM No. 6667/2010 seeking condonation of delay of 62 days in filing CM No. 6668/2010 also met with the same fate as the petitioners appeared to be least interested in getting the Writ Petition restored on getting the delay condoned. CM Nos. 6668/2010 and 6667/2010 were dismissed for want of prosecution on May 14, 2010. The petitioners woke up from slumber after about seven months when CM Nos. 218/2011 and 219/2011 were filed on behalf of petitioner No. 4 Harbans Lal. These two applications are now under consideration.

7. On behalf of petitioners, it has been submitted that petitioners No. 1 and 5 have already expired and for the reasons explained in the applications i.e. CM Nos. 6668/2010 and 6667/2010, writ petition was dismissed. Hence, not only these applications i.e. CM Nos. 218/2011 and 219/2011 may be allowed, the other two applications i.e. CM Nos. 6668/2010 and 6667/2010 may also be allowed so that the Writ Petition stands restored.

8. In CM Nos. 218/2011 and 219/2011 prayer has been made for condonation of delay and restoration of the application on the ground that CM Nos. 6668/2010 and 6667/2010 were dismissed in default due to negligence on the part of their previous counsel and if the delay of 179 days in filing CM No. 218/2011 is not condoned, the petitioners would suffer irreparable loss and injury. It is also mentioned that their earlier counsel did not give them proper information in respect of the Writ Petition and ultimately, the petitioners asked the counsel to return the file which was returned by him only on 01.12.2010 and thereafter, another counsel was engaged and these two applications were filed. Thus, basically condonation and restoration have been prayed, putting blame on the earlier counsel for dismissal of CM Nos. 6668/2010 and 6667/2010.

9. In order to appreciate the contention, it is necessary to look into the conduct of the petitioners with effect from the date the application for early hearing i.e. CM No. 2067/2009 was allowed. In both the applications i.e. CM Nos. 218.2011

and 219/2011, nowhere it is stated that how despite knowing the fact that the Writ Petition has already been dismissed in default and it was the restoration application, which has also been moved after inordinate delay, accompanied with application seeking condonation of delay, why the petitioners were waiting for communication from their counsel. The applications are silent on the aspect as to which of the petitioner contacted the counsel and what was the information received about the status of the restoration application as well the application seeking condonation of delay. (which were filed for restoration of the Writ Petition).

10. There is no dispute that the Court should not defeat substantial rights of the parties on technical grounds and should have liberal approach as was held in the case 2007 (9) AD (Del) 679 Rabi Shaker Sen Gupta vs. ITDC.

7. Ordinarily, the Court should adopt a liberal approach while disposing of applications for condonation of delay and that the word "sufficient cause" used u/s 5 of the Limitation Act should receive a liberal construction so as to advance the cause of substantial justice. There is also no quarrel with the proposition that as against a technical and pedantic approach of throwing out a party on grounds of delay and laches, ends of justice are better met by rendering a decision on merits.

11. At the same time, the litigants who just choke the Board of the Court by filing various cases but thereafter do not prosecute diligently cannot be rewarded by adopting liberal approach in restoring their petitions at their convenience.

12. Once the petitioners were aware that their Writ Petition was lying dismissed in default, the restoration application as well application seeking condonation of delay i.e. CM Nos. 6668/2010 and 6667/2010 were to be heard, the petitioners were expected to be extra vigilant so that the restoration application does not meet the same fate.

13. Perusal of CM Nos. 218/2011 and 219/2011 reveal that except attributing negligence to the counsel, the petitioner is absolutely silent about the mode of communication with the counsel (all the petitioners are residents of Punjab), or the approximate date or month when they tried to inquire about the status of their case and the steps taken by them to ensure that at least one of the petitioners remain in touch with the counsel so that the restoration application can be heard and disposed of on merits.

14. There cannot be any dispute that for negligence of the counsel, the petitioner should not suffer but at the same time, a litigant cannot claim absolute immunity by putting the entire blame on his counsel as was held in the decision reported as Salil Dutta Vs. T.M. and M.C. Private Ltd., .

15. Taking into consideration that the petitioners have preferred to choose the date i.e. 01.12.2010 of their own when they came to know about the dismissal of Writ Petition and prayed that computation of limitation period should be with

effect from the date of knowledge, this plea has to be rejected. It is worth mentioning here that Writ Petition was already lying dismissed in default and restoration was filed on behalf of petitioners in February, 2010. At least after coming to know about the dismissal of Writ Petition way back on 18.11.2009, the petitioners were required to be extra vigilant.

16. Thus, I do not find any reason to allow the prayer made in CM No. 219/2011 seeking condonation of delay in filing the restoration application i.e. CM No. 218/2011 or sufficient cause for restoration of CM Nos. 6668/2010 and 6667/2010.

17. Though, as a result of dismissal of CM Nos. 218/2011 and 219/2011, no further discussion is required on CM Nos. 6668/2010 and 6667/2010 but in order to bring on record the reasons given in these applications which are identically worded, about the circumstance in which the Writ Petition was dismissed in default, a brief reference is necessary so that petitioners do not get the impression that substantial justice has been denied to them on technical grounds.

18. The Writ Petition has been filed by Mr. B.S. Mainne and Ms. Menu Mainne, Advocates. CM No. 6668/2010 seeking restoration of Writ Petition and CM No. 6667/2010 seeking condonation of delay in filing CM No. 6667/2010 have been filed by Ms. Menu Mainne, Advocate and the reasons given in the two applications for non-appearance on 18.11.2009 are:

- (i) Counsel could not notice the matter in the cause list due to oversight;
- (ii) Counsel for the petitioner met with an accident and was advised rest initially for two month and then extended for further six weeks;
- (iii) The petitioner was assured that the matter would be attended to by the counsel.

19. The two applications are lacking in following material particulars:-

- (i) Which of the two advocates met with an accident and on which date;
- (ii) No prescription or treatment record advising complete rest for about 3? months or even name of the doctor or hospital is specified;
- (iii) The fate of other cases with the two advocates, which were listed during the period the counsel was confined to bed or whether either of them was attending to the matters;
- (iv) When learned counsel for the petitioner knew that after the accident, he would not be able to attend the cases for a long time so as to honour the commitment towards the client, what steps were taken to inform the petitioners or other clients by the Advocate;
- (v) The application seeking condonation of delay has been moved for condoning the delay of 62 days. The total period of confinement, due to accident, even as per learned counsel for the petitioner, at that time was two months initially

followed by six weeks rest, whereas the petition was dismissed in default on 18.11.2009 and restoration application i.e. CM No. 6668/2010 was filed on 18.02.2010 i.e. after a period of three months from the date of dismissal. Even if the 30 days are excluded, still the remaining part of delay of two months in moving the restoration application remains unexplained.

(vi) Above all, the matter might have been missed by the counsel due to oversight on that particular day in the morning but by evening or at least by next day, the counsel must have come to know about this oversight and checked the proceedings by having access to the internet.

20. Thus, in view of above, no justification for condonation of delay and restoration of Writ Petition can be noticed.

21. In a case like the present one where the petitioners knew that the earlier counsel engaged by them was not paying due attending to their case and not keeping them well informed, the least that was expected was that on filing of CM Nos. 6668/2010 and 6667/2010, they should have been vigilant but the restoration application i.e. CM No. 218/2011, as discussed above, is silent on the vital aspect as to what steps were taken to prosecute their case. There is not even an assertion that any complaint was filed against the counsel for he being not diligent enough to protect the interest of his client in following up the writ and restoration application.

22. For the aforesaid reasons, we are not inclined to exercise any discretion in favour of the petitioners by allowing CM Nos. 218/2011 and 219/2011. Accordingly, the CM Nos. 218/2011 and 219/2011 are dismissed.