
(2011) 07 UK CK 0198

In the Uttarakhand High Court

Case No : Special Appeal No. 137 of 2010

Shiv Kumar Pandey

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Citation : (2011) 2 UC 1435

Hon'ble Judges : Barin Ghosh, C.J;V.K. Bist, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—Delay Condonation Application No. 5901 of 2011 In the writ petition filed in 1992 before the Hon'ble Allahabad High Court (Lucknow Bench), the Appellant sought a mandamus commanding the Respondents to transfer him from hill cadre (Kumaon Mandal) to plain cadre (Faizabad/Mandal) or in the alternative, to transfer and appoint the Petitioner from hill cadre (Kumaon Mandal) to plain cadre. In the writ petition, it was contended that on 13th August, 1985, an appointment letter was issued containing names of various persons, including the name of the Appellant, whereby he was posted on the post of Assistant Teacher in L.T. Grade in Government Inter College, Sitlakheth, Almora in Kumaon Mandal. It is his case that he submitted joining report and made a request to honour his option by posting him in Faizabad division of the plain cadre. It was contended that the same was not honoured and, accordingly, he was forced to file the writ petition. The writ petition remained pending before the Allahabad High Court (Lucknow Bench) until 4th October, 2005 when the writ petition was dismissed for default. Subsequently, the writ petition was restored on 20th October, 2005 and thereafter, the same was directed to be transferred to this Court. When the writ petition was taken up by this Court, for consideration, noticing that the prayer was for transferring from hill cadre to plain cadre and noticing that such cadre stood abolished after the State of Uttarakhand was created, the writ petition was dismissed as infructuous. While dismissing the writ

petition, Court also noticed that the Appellant is not in employment. This order was passed on 9th December, 2009. The requisites for obtaining certified copy of the order dated 9th December, 2009 was submitted on 18th June, 2010. On 22nd June, 2010 after certified copy was made ready, notice was pasted in the notice board. On 19th July, 2010, delivery of the certified copy was obtained. In the application for condonation of delay in preferring the appeal, it has been stated that the Advocate engaged by the Appellant to conduct the writ petition did not communicate to the Appellant, the outcome of the writ petition, and that, by the order dated 9th December, 2009, the writ petition was dismissed. In the application for condonation of delay, it has been stated that on 16th June, 2010, the Appellant came to learn from his erstwhile Advocate, upon enquiry, that the writ petition has been dismissed as infructuous on 9th December, 2009. It has further been stated in the application that on 17th June, 2010, the new counsel engaged by the Appellant applied for a certified copy of the order dated 9th December, 2009 and the certified copy of the order was supplied to the new counsel on 19th July, 2010. The appeal was preferred along with the application for condonation of delay on 21st July, 2010. Appellant, thus, purported to explain the delay in preferring the appeal. In the affidavit, Appellant has quoted the judgments of Hon''ble Supreme Court rendered in the case of Rafiq and Another Vs. Munshilal and Another, and in the case of Collector, Land Acquisition, Anantnag and Anr. v. Mst. Katiji and Ors. reported in AIR 1987 SC 1353. In the case of Rafiq and Anr. (supra), the Hon''ble Supreme Court was concerned with default on the part of the Advocate chosen by a litigant, in appearing before the Court when the matter was taken up by the Court for consideration of the lis. That judgment has no application at all. In the case of Collector, Land Acquisition, Anantnag and Anr. (supra), the Court reminded that injustice must be avoided to the extent possible on technical grounds. However, the law of limitation still is in force in the country and, accordingly, just and reasonable grounds have to be made out for condonation of delay. The application for condonation of delay, though quotes the judgments of the Hon''ble Supreme Court, but there is not a single whisper, as to what the Appellant and his new lawyer were doing from 22nd June, 2010 when the certified copy was made ready and a notice in that regard was published, until 19th July, 2010, when the learned Counsel for the Appellant obtained the certified copy. The learned Counsel for the Appellant submitted that, the default, referred to in Rafiq and Anr. (supra), would also bring in failure on the part of the Advocate to communicate the outcome of the lis. We do not accept such contention.

2. We are of the view that no sufficient ground, far less any reasonable ground, has been made out for condonation of delay in preferring the appeal. The application for condonation of delay, accordingly, fails and the same is dismissed.