

(2011) 04 AHC CK 0393
In the Allahabad High Court
Case No : Special Appeal No. 1340 of 2004

Smt. Swarna Kanti Dixit	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2011) 04 AHC CK 0393

Hon'ble Judges : Dilip Gupta, J;Arun Tandon, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Civil Misc. Delay Condonation Application No. 105802 of 2010

1. Heard learned Counsel for the applicant and the learned Counsel appearing for the Respondents.
2. In view of the averments made in the affidavit filed in support of the application u/s 5 of the Limitation Act, we are satisfied that the applicant was prevented by sufficient cause from preferring the Restoration Application within the period of limitation.
3. The application is, accordingly, allowed.

Civil Misc. Recall Application No. 105803 of 2010

4. Heard counsel for the Appellant.
5. This application seeks recall of the order dated 12.10.2004 by which the Special Appeal was dismissed on merits after noticing that no body was present on behalf of the Appellant.
6. It is contended by the learned Counsel for the Appellant that in view of the judgment of the Supreme Court in the case of Ajit Kumar Singh and Others Vs. Chiranjibi Lal and Others, the appeal could not have been decided on merits if

the learned Counsel for the Appellant was not present. It is his submission that the appeal should have been dismissed in default.

7. We have examined the contention advanced on behalf of the Appellant as well as the judgment of the Supreme Court in the case of Ajit Kumar Singh (supra).

8. The decision of the Supreme Court in Ajit Kumar Singh (supra), was delivered in proceedings arising out of an order passed in Second Appeal.

9. We have, however, proceeded to hear the learned Counsel for the Appellant on merits afresh.

10. Counsel for the Appellant pointed out that the Division Bench of this Court in the earlier Special Appeal No. 329 of 1996 filed by the Appellant had observed:

It is not disputed before us that though the Appellant was given a seasonal employment during 1980-81, she continued as Stenographer in the department till 18.8.93, when she was denied to work. Therefore, it is not reasonable to hold that the Appellant is not entitled to the benefit of priority consideration for fresh employment on the basis of the Government Order dated 13.10.1982.

On consideration of the entire matter, we dispose of this special appeal with the order that if the Appellant files an application for appointment in the future vacancy of the post (Stenographer) in the department, her application will be considered by the competent authority in accordance with the Government Order dated 13.10.1982 (Annexure "1" to the stay application).

11. Learned Counsel for the Appellant, therefore, submits that since a categorical finding was recorded that the Appellant was entitled for appointment on the basis of the Government Order dated 13.10.1982, the Commissioner could not have rejected the application.

12. It transpires that the Commissioner rejected the application filed by the Petitioner after recording a finding that the Petitioner was initially engaged in 1977 against a seasonal/leave vacancy but she tendered her resignation which was accepted on 6.8.1977. The Petitioner did not work thereafter. However, in the year 1981-82, for the period upto 30.6.1981 she was offered only contract/temporary appointment and after 30.6.1981 the Petitioner did not work. In such circumstances, a categorical finding has been recorded that the Petitioner is not entitled to the benefit of the Government Order dated 13.10.1982 inasmuch as the conditions mentioned in the said Government Order do not stand satisfied.

13. It is against this order that the Petitioner filed the writ petition which was dismissed by the learned Single Judge after recording a categorical finding that the Petitioner could not demonstrate that the finding recorded by the Commissioner were incorrect and, therefore, the benefit of the Government Order dated 13.10.1982 will not be available to the Petitioner.

14. The only contention pressed by learned Counsel for the Appellant before us is that the order passed by the Division Bench on 23.4.1996 referred to above, has

not been followed and the Commissioner should have offered appointment to the Petitioner in terms of the Government Order dated 13.10.1982.

15. We are of the considered opinion that the learned Single Judge was justified in dismissing the writ petition as the Division Bench had only directed for consideration of the application of the Petitioner by the Competent Authority in accordance with the Government Order dated 13.10.1982. However, since the conditions of the Government Order were not satisfied, the Commissioner was justified in rejecting the application filed by the Petitioner.

16. The application for recalling the order is misconceived. The application is, accordingly, rejected and we hold that the appeal was rightly dismissed.