
(2013) 11 RAJ CK 0137

In the Rajasthan High Court

Case No : Civil Restoration Petition No. 139 of 2013

State of Rajasthan and Others

APPELLANT

Vs

Hanumana Ram

RESPONDENT

Date of Decision : 09-11-2013

Acts Referred:

Citation : (2013) 11 RAJ CK 0137

Hon'ble Judges : Vishnu Kumar Mathur, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : Yashpal Khileree, Govt, for the Appellant;

Judgement

1. After having heard the learned Government counsel and having perused the material on record, we are unable to find even a wee bit of reason to entertain this grossly belated application for restoration of intra-court appeal, DBSAW No. 5932/2006 DR (J), which was preferred against the order dated 18.04.2006 passed by learned Single Judge of this Court in SBCWP No. 3810/1992; and which came to be dismissed for non-compliance of the requirements of the peremptory order dated 22.09.2008. Seeking restoration of appeal, which was dismissed pursuant to the peremptory order dated 22.09.2008 about 5 years back, this restoration application came to be filed on 02.07.2013. This application is reported to be time-barred by 1671 days. An application seeking condonation of delay has been filed, which does not furnish any reason worth its name for condonation of such an inordinate delay of about 5 years.

2. It is stated in the application seeking condonation of delay that the Officer Incharge, Dy. CMHO, Parbatsar, earlier filed the appeal and subsequently, in the year 2008, a new office of block Chief Medical Officer, Didwana came into existence wherein, the present Officer Incharge was given the posting and was given charge of the present case. It is also stated that the Officer Incharge contacted the Government Counsel inquiring about the progress of the case but he was informed that the said appeal was pending and the Officer Incharge was not aware about the defects pointed out in the appeal. Thereafter, the

peremptory order was passed on 22.09.2008 for removing the defects. After such averments, the reasons, if any, for the inordinate delay, have been stated as under:-

4. That it is reiterated that after filing the above appeal, a long time elapsed and the Officer Incharge of the case was also changed and present Officer Incharge Dr. A.K. Sharma joined on the post of Block Chief Medical Officer, Didwana only on 01.02.2008 and thereafter, he enquired about the status of the case. On making inquiry about the case, he was informed by the counsel that the appeal is in defect side as such after removing defects, he will be informed. Subsequently, it came to his notice that the case had already been dismissed in default.

5. That in the facts and circumstances, as the learned counsel did not inform regarding peremptory order, therefore the above appeal was dismissed in non compliance of peremptory order but there was no deliberate fault on the part of the humble applicants.

6. That later on when the notices of executing Court was received then the Officer Incharge inquired about the status of the case from the counsel for the appellants, he came to know that special appeal was dismissed in default on 04.11.2008 for non-compliance, therefore, an application has been filed for obtaining certified copy of the order dated 22.09.2008 & 04.11.2008 which were received on 22.04.2013.

7. That in the facts and circumstance, as the earlier counsel for humble applicants did not removed the defects pointed out by the registry nor informed about the defects, therefore the Special appeal was dismissed but there was no deliberate fault on the part of the applicants as they always tried to contact his earlier counsel time and again but the counsel did not properly responded. As such, the delay occurred in approaching this Hon''ble Court.

8. That the delay caused in filing the restoration petition is bonafide and unintentional which in the facts and circumstance, deserves to be condoned in the interest of justice. However, the applicants regret for the delay caused in filing the restoration petition.

9. Other grounds shall be submitted at the time of hearing.

3. This is but apparent that the burden for delay and default is sought to be shifted on the earlier counsel of the appellants without any explanation as to what the Officer Incharge did for all these years and as to why did he not take care about the progress of the appeal.

4. Apart from the above, it is noticed that the appeal, DBSAW No. 5932/2006 DR (J), was itself time-barred by 44 days. When the appeal was time-barred to the knowledge of Officer Incharge, who had filed an application seeking condonation of delay, it was moreover required of the department that due and proper care was taken for prosecution of the matter in appeal.

5. Moreover, after having glanced through the record, we are satisfied that dismissal of the appeal does not lead to termination of a case worth consideration.

6. The sum and substance of the matter remains that the writ-petitioner (respondent) sought directions for consideration of his case for promotion as LDC with effect from the date his juniors had been promoted. The only justification suggested on behalf of the appellants for denial of promotion to the writ-petitioner had been that he was working as cook; and there was no channel of promotion from the post of cook to the post of LDC. The learned Single Judge rejected these contentions with the observations that in the concerning service rules, the designation of cook was not included in the schedule and admittedly, the writ-petitioner had been appointed as a Class IV employee. The learned Single Judge found him eligible to be promoted against the permissible quota, as he was possessing the requisite academic qualification. The learned Single Judge also found that admittedly, the persons junior to the writ-petitioner had been promoted as LDC and he was sought to be denied on the baseless suggestions that he was working as cook. The learned Single Judge, therefore, allowed the writ petition and directed as under:-

Accordingly, the writ petition is allowed, and it is directed, that the case of the petitioner be considered for promotion to the post of LDC, w.e.f. the date, when persons junior to him had been promoted, including the persons detailed in para 16 & 17 of the writ petition, and unless otherwise found to be unfit for promotion, he shall be promoted, with all consequential benefits. This be done within a period of two months from today, and the amount so becoming payable, consequent upon such promotion, shall be calculated, and paid, to the petitioner, within a period of four months from today. It is made clear, that if this amount is not paid within four months, the amount will carry interest @ 12%, from the date, the amount became due, till the date of actual payment. It is further directed, that if this order is not complied with, it shall be executable by the Principal Civil Court concerned, as a Decree of Civil Court, in accordance with the provisions of Order 21 C.P.C. The Parties shall bear their own costs of this writ petition.

7. The directions so issued for promotion of a Class IV employee to the post of LDC from an appropriate date hardly calls for interference in the intra-court appeal.

8. For what has been discussed hereinabove, we find no reason to entertain this highly belated restoration application in relation to a meritless time-barred appeal. The application stands rejected.