

(2010) 04 AHC CK 0297
In the Allahabad High Court
Case No : Special Appeal (D) No. 264 of 2004

State of U.P. and Another	Vs	APPELLANT
Bhupendra Singh, Constable		RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

High Court Rules, 1952 — Rule 10
Limitation Act, 1963 — Section 1

Citation : (2010) 4 AWC 3775

Hon'ble Judges : Amitava Lala, Acting C.J.; Ashok Srivastava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, A.C.J.

1. This appeal has been filed out of time by 6 years 336 days with an application for condonation of delay, arising out of an order passed by learned single Judge dated 27.3.1997. For preferring special appeal, limitation of thirty days has been prescribed, not only as per the Limitation Act but also as per the provisions of Chapter IX, Rule 10(i) of the High Court Rules, 1952.

2. According to the appellants, the copy of the impugned Judgment was received by the office of Senior Superintendent of Police (S.S.P.), Bulandshahr (for the sake of brevity hereinafter referred to as "S.S.P.") on 30.4.1997. After the receipt of the same on 7.5.1997 (wrongly written as "7.5.1995") an opinion was sought with regard to compliance of the Judgment from the Senior Prosecuting Officer, Bulandshahr who advised on 9.5.1997 to comply with the Judgment and order of the Court. Pursuant to the opinion, an order was passed by the S.S.P. on 29.5.1997 for reinstatement of the respondent-petitioner and the respondent-petitioner joined the service on 1.6.1997. After joining the service, when the respondent-petitioner was not paid his arrears of salary etc., an opinion was sought from the District Government Counsel (Civil), Bulandshahr, who, in turn on 12.6.1997 advised to file the special appeal. After the receipt of such opinion,

a letter was written on 13.6.1997 by the S.S.P. to Deputy Inspector General of Police (Karmik), Head Quarter, Allahabad, who, in turn, wrote a letter to the Under Secretary, Home (Police), Section 1, U. P. Government, Lucknow (for the sake of brevity hereinafter referred to as "Under Secretary") on 17.6.1997, wherein it has been indicated that without consulting the State Government, the Judgment has been complied with permitting the petitioner to join. Copy of letter was also sent to the S.S.P., who has written a letter on 20.7.1997 to the Under Secretary for taking appropriate steps. Thereafter, reminders have been sent on 14.11.1997, 20.11.1997 and 5.3.1998 awaiting for the decision of the State Government. Further, a letter was sent by the S.S.P. to the U. P. Police Headquarter, Allahabad on 14.2.2000 seeking further direction in this regard. Pursuant to the same, on 1.5.2000, a letter was written by the U. P. Police Headquarter, Allahabad to the Joint Secretary, Home (Police), Section 1, U. P. Government (for the sake of brevity hereinafter referred to as "Joint Secretary") sending reminder for intimation of the decision of the State Government. Again a reminder dated 30.5.2000 was sent by the office of the S.S.P. to the Joint Secretary. Again on 10.8.2000 S.S.P. contacted Joint Secretary and sought specific direction in this regard. On return, Special Officer concerned on 1.9.2000 has given his report that the Government has required the entire records of the writ petition, counter-affidavit and other details in this regard and a letter to the effect has also been sent by the Under Secretary on 14.9.2000 requiring the entire papers. Again, a reminder was sent by the office of Under Secretary on 18.11.2000 for sending the proposal. On 12.2.2001, a letter was written by the office of S.S.P. for compliance of the Judgment to the Under Secretary. Thereafter, on 28.3.2001 again certain information had been required by the office of the Under Secretary. Since no information was received by the State Government, therefore, on 30.4.2002 a letter was sent by the office of S.S.P. to the Under Secretary. Thereafter reminders were issued on 9.7.2002, 9.8.2002, 10.9.2002, 18.10.2002, 2.12.2002 and 17.2.2003. On 22.3.2003, again a letter was written by the Special Secretary, Home, U. P. Government, Lucknow for sending the details of the case through special messenger. On receipt of the same, a proposal was sent on 19.5.2003. After receiving the said letter, a letter had been written on 31.5.2003 by the Under Secretary requiring the explanation of the S.S.P. and in pursuance to that explanation a letter was sent on 4th June, 2003. Reminders were issued on 26.6.2003 and 14.7.2003 and on receipt of this letter on 11th August, 2003, the Under Secretary has written a letter to the S.S.P. requiring from him an explanation for not taking steps earlier. After receipt of the same, a letter was sent on 23rd August, 2003 by the S.S.P. to the Under Secretary. The Government felt that this explanation was not sufficient and, therefore, again by a letter dated 10.9.2003 further explanation was sought. On getting of the same, on 12.9.2003 required information was sent to the Government. The matter was consulted with the Department of Law and it granted permission for filing a special appeal against the Judgment and order dated 27.3.1997. The said permission was received by the office of S.S.P. on 10.11.2003. After collecting the necessary papers and requisite fee, the office of

the learned Chief Standing Counsel was contacted on 8.12.2003. Certified copy of the order was applied for on 12.12.2003 and in the meantime ground for condonation of delay was prepared and made available to the concerned Standing Counsel, who dictated the application for condonation of delay. Since the certified copy of the Judgment was not ready, the concerned department, being under impression that without a certified copy of the order, the appeal cannot be filed, did not contact the office of learned Chief Standing Counsel. Certified copy of the order was ready on 23.3.2004 which was received on 24.3.2004 and then the special appeal was filed.

3. This type of explanation is not acceptable to this Court.

4. In the instant case on one hand the order has been complied with and on the other hand only for the purpose of obtaining Instructions about backwages, six years and three hundred thirty six days had been consumed by the State. Against the similar background this Court has discouraged the filing of special appeal out of time. According to us, the matter is totally covered by the Division Bench Judgment of this Court in State of U.P. and Director, Rajya Shaikshik Anushandan Aur Prashikshan Parishad Vs. Vijay Prakash Bajpai, .

5. We have been informed that a SLP was preferred against the Judgment of Vijay Prakash Bajpai (supra) which is referred above, before the Supreme Court and the Supreme Court dismissed the SLP and confirmed the Judgment.

6. Therefore, we do not find any ground to condone the delay.

7. Accordingly, the application for condonation of delay is dismissed, however, without imposing any cost. Consequently, the special appeal also stands dismissed without any cost.

Ashok Srivastava, J.

8. I agree