
(2001) 10 AHC CK 0009
In the Allahabad High Court
Case No : Special Appeal No. 149 of 1996

State of U.P.	Vs	APPELLANT
Mohan Lal		RESPONDENT

Date of Decision : 06-10-2001

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2002) 1 UPLBEC 590

Hon'ble Judges : S.K. Sen, C.J;R.K. Agarwal, J

Bench : Division Bench

Advocate : K.S. Kushwaha and Ranvijay Singh, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Sen, C.J.—We are of the view that sufficient ground exists for condonation of delay of 66 days in preferring the special appeal. The delay is accordingly condoned. The application u/s 5 of Limitation Act, stands allowed.

2. We have heard Mr. Ranvijay Singh, learned Standing Counsel appearing on behalf of the appellant State of U.P.

3. This special appeal which arises at the instance of State of U.P. is directed against an order allowing the writ petition whereby the termination of the writ petitioner respondent herein was kept in abeyance. Mr. Ran Vijay Singh, learned Standing Counsel has contended that the appointment of the petitioner respondent herein being illegal, his service were rightly terminated and as such, the order of the learned Single Judge allowing the writ petition is not sustainable.

4. It is the admitted position that no counter affidavit has been filed in the writ petition. Therefore, the allegations contained in the writ petition stand uncontroverted. It appears from the Judgment under appeal that admittedly, a similarly situated person namely, Shashi Pal who is junior to the writ petitioner, is still working as Class IV employee in the school, whereas the services of the writ petitioner were terminated on the ground that his services were no long

required. We are of the view that the appellant authorities should have adopted the policy of last come first go. Retaining a junior in service and terminating the services of the senior is absolutely unfair, unjust, arbitrary and discriminatory in nature. In that view of the matter, the contention of the learned Standing Counsel cannot be accepted. Accordingly, we are not inclined to interfere with the order passed by learned Single Judge.

5. Moreover, from the order under appeal we find that the learned Single Judge has also given an opportunity to the authorities to reconsider the matter so that the grievance of the writ petitioner to the effect that his junior was retained in service may be reconsidered. As such, we find that the order passed by learned Single Judge does not call for interference.

6. Special appeal fails and is accordingly dismissed.