

(2010) 12 AHC CK 0130
In the Allahabad High Court
Case No : Writ Petition No. 1826 (S/B) of 2010

State of U.P.and others	Vs	APPELLANT
Neeraj Kumari Mishra Deo and another		RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2010) 12 AHC CK 0130

Hon'ble Judges : F.I.Rebello, CJ and Pradeep Kant, J

Final Decision : Disposed Of

Judgement

Pradeep Kant, J.—Heard the learned Counsel for the petitioner Sri Arshad Rizvi and Sri M.M. Asthana, for the respondents.

2. The representation by the private respondent regarding seniority was rejected in the year 2000. Respondent did not challenge the rejection of the said representation. Thereafter one Smt. Geeta Agnihotri filed Civil Misc. Writ Petition No. 25699 of 2000 before this Court. That was against the claim for seniority list dated 31.01.2000. That petition, on the facts of that case, came to be allowed and the seniority list dated 31.01.2000 was set aside to the extent it related to the placement of petitioner. The respondents were directed to fix the seniority of the petitioner of that writ petition in terms of the recommendation of the Commission dated 23.02.1998 and pass an order with all consequential benefits to which she was entitled to in accordance with law.

3. It is the case of the private respondent that when this order came to his knowledge, he approached this Court by means of Writ Petition No. 1501 of 2008 (SB). That petition was disposed of vide order dated 16.10.2008. Learned Bench of this Court noted that the petitioner had alternative remedy before the U.P. State Public Services Tribunal and as such the Court chose not to interfere and disposed of the petition with the direction that if the petitioner files a claim petition within a period of one month from that day, the same shall be disposed of on merit expeditiously and preferably within one year from the date of filing of

the claim petition. That claim petition has since been allowed and consequently, the present writ petition by the State, which is aggrieved by the order passed by the Tribunal aforesaid. It is submitted on behalf of the petitioners that the claim was time barred and consequently it could not have been considered.

4. Our attention has been drawn to a judgment of this Court in the case of Karan Kumar Yadav vs U.P. State Public Services Tribunal, and others, reported in 2008 (2) AWC 1987 (LB). By that judgment the learned Bench of this Court has taken a view that the provisions of Section 5 of Limitation Act are not applicable to claim petition and consequently, there is no question of condoning the delay.

5. The first issue before us is, whether the order of this Court 16.10.2008 passed in Writ Petition No. 1501 (SB) of 2008 can be considered or treated to be an order condoning the delay. We make it clear that if there is no provision under the Act to condone the delay, this Court in exercise of its extra ordinary jurisdiction, cannot condone the delay which the authorities themselves could not have condoned. In these circumstances, the order dated 16.10.2008 passed in Writ Petition No. 1501(SB) of 2008 must be read in context that if the claim petition was maintainable, then the same would be heard on merits, in so far as there is no inconsistency in law.

6. The second question, for consideration is whether, because another petitioner got relief from this Court, the respondent herein also is entitled for the same. The petitioner, there, had challenged her placement in the seniority list by way of filing a Civil Misc. Writ Petition No. 25699 of 2000. That petition came to be disposed of in the year 2006. The petitioner therein was vigilant of her rights. The respondent herein, who did not choose to challenge the wrong seniority, now cannot take benefit of the order, passed in favour of the petitioner of the above writ petition, who successfully pursued the matter and got the order in her favour.

7. In our opinion, once the respondent has not challenged the fixation of his seniority and allowed other persons to claim their right, it will not be possible for this Court to interfere moreso against those persons whose rights stand concluded. The issue cannot be reopened by this Court.

8. Considering the above, we hold that the Tribunal had no power to condone the delay. The writ petition is, therefore, allowed and the impugned order is set aside.