
(2019) 08 UK CK 0062

In the Uttarakhand High Court

Case No : Delay Condonation Application No. 8223 Of 2019 In Special Appeal
No. 630 Of 2019

State Of Uttarakhand & Others

APPELLANT

Vs

Atal Bihari

RESPONDENT

Date of Decision : 07-08-2019

Acts Referred:

Limitation Act, 1963 — Section 5
Allahabad High Court Rules, 1952 — Rule 5
Code Of Civil Procedure, 1908 — Order 21

Citation : (2019) 08 UK CK 0062

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Anil Kumar Bisht, Vijay Bhatt

Judgement

Alok Kumar Verma, .J

1. This is an application for condonation of delay and extension of time in filing of the instant Special Appeal, filed under Rule 5 of Chapter VIII of Allahabad High Court Rules, 1952, against the Judgment and Order dated 03.05.2017, passed in Writ Petition (S/S) No. 1867 of 2011, Atal Bihari Vs. State of Uttarakhand and others, which is barred by limitation of 746 days.

2. We have heard the learned counsel for the appellants and learned counsel for the respondent.

3. The learned counsel for the appellants (respondents in writ petition) submitted that the copy of Judgment and Order under appeal dated 03.05.2017 was received by the Additional Director, Secondary Education, Garhwal Mandal, Pauri through letter dated 14.07.2017 of Chief Education Officer, Tehri Garhwal. The Secondary Education Section of the Government vide letter dated 06.11.2017 directed to the department for taking action in the matter. After receiving the letter dated 06.11.2017, the Director vide letter dated 18.11.2017 directed to the Chief Education Officer to take action. After receiving the letter dated

18.11.2017, the Chief Education Officer vide letter dated 01.12.2017 sought directions from the Directorate for taking further action. The Director, Secondary Education, Uttarakhand, Dehradun directed to the Chief Education Officer vide letter dated 28.12.2017 to enquire in the matter through SIT. The Chief Education Officer, Tehri vide letter dated 20.01.2018, apprised to the Director, Secondary Education, Uttarakhand, Dehradun regarding the fact that the petitioner is not providing the original certificates to his office. The Director, Secondary Education, Uttarakhand, Dehradun vide letter dated 22.01.2018 again wrote a letter for SIT inquiry in the matter. The Director, Secondary Education vide letter dated 20.04.2018 directed to the Chief Education Officer, Tehri for providing the copy of the counter affidavit to his office. The Chief Education Officer, Tehri vide letter dated 21.04.2018 submitted the copy of the counter affidavit in the office of Director, Secondary Education, Uttarakhand, Dehradun. The Director General, School Education, Uttarakhand, Dehradun vide letter dated 06.09.2018 directed to the Director, Secondary Education to take action in regard to the payment of salary of the petitioner as per Rules. The department after preparing a proposal for filing Special Appeal against the Judgement and Order dated 03.05.2017, sent the same to the Government. The Law Department of the Government accorded sanction to file Special Appeal against the Judgment and Order under Appeal on 04.12.2018. After receiving the sanction the Director vide letter dated 12.12.2018 sent all the necessary papers to the Additional Director of Education, Garhwal Region, Pauri to file the Special Appeal. The Director, Secondary Education vide letter dated 21.02.2019 sent the narrative in regard to the condonation of delay to the Additional Director, Secondary Education, Garhwal Mandal, Pauri. After receiving the necessary directions from the higher authorities, one Official Pairokar was deputed for filing Special Appeal. The Official Pairokar approached to the office of the Chief Standing Counsel on 28.02.2019. After going through the records, it was found that the ground of delay were not properly explained by the department, therefore, a letter was written to the department for sending proper narrative. The office of the Director, on 27.03.2019, sent the amended narrative of the delay condonation application and, after going through the same the affidavit explaining the delay was prepared on 05.04.2019 and appeal has been filed without there being any further delay.

4. Per Contra, the learned counsel for the respondent submitted that the certified copy of the Judgment and Order under Appeal was submitted by the respondent in the office of the Principal of the College on 15.05.2017 and on 16.05.2017 and certified copies of the said Judgment and Order was sent by registered post to all the authorities concerned, including the Chief Education Officer, Tehri Garhwal. As such the delay in taking any action is purely of the department, and they cannot be given the chance of creating a false ground for condonation of delay. Therefore, the Special Appeal on the ground of the inordinate and unexplained delay deserves to be dismissed.

5. Before we deal with the contentions of the learned counsel for the parties,

brief reference to the factual background is necessary, which is as follows:-

The writ petitioner was appointed substantively as an Assistant Teacher and was given first posting at Government Inter College, Nagragdhar, District Tehri Garhwal in L.T. Grade, whereby he joined on 19.09.1995. After a period of three years, he was transferred to the Government Inter College, Sahiya, District Dehradun, where he joined on 17.10.1998. In the beginning of the month of July, 2001, his health deteriorated. Therefore, he was on medical leave from 14.07.2001 to 17.04.2002. On 28.02.2002, when he was on medical leave, he was ordered to be promoted to the Lecturer Grade as a Lecturer (Geography) and he was directed to join at Government Inter College, Shivalidhar, District Tehri Garhwal. But, he was neither given joining as a Lecturer (Geography) at Government Inter College, Shivalidhar, Tehri nor he was paid his salary, which was due from 14.07.2001 to 17.04.2002, when he was on medical leave. The petitioner approached this Court and filed Writ Petition No.887 of 2002 (S/B). During the pendency of the said writ petition, the petitioner joined as Lecturer (Geography) in a Government Inter College and drew the salary of Lecturer. Then, the only controversy which remained to be settled was the payment of salary for the period of 14.07.2001 to 17.04.2002. In the said writ petition, the learned Single Judge observed that evidently, the petitioner did not work as a teacher during the period between 14.07.2001 to 17.04.2002. However, the petitioner contends that during this period, he was on medical leave. In the counter affidavit, the State, however, has denied this fact and stated that the petitioner was not sanctioned any leave and he remained absent without leave and is not liable to be given any salary for this period. The learned Single Judge observed that the petitioner shall now make a representation to the Director, School Education, Uttarakhand, Dehradun who shall determine as to whether, the petitioner was actually on sanctioned leave between 14.07.2001 to 17.04.2002 and if the leave was sanctioned, he shall be given salary, otherwise, arrears of salary shall not be given for the period between 14.07.2001 to 17.04.2002; the Director, School Education, Uttarakhand, Dehradun will also examine the second aspect and in case the petitioner has been wrongly deprived of the Lecturer Grade since February, 2002 i.e., the date when he was promoted to the Lecturer Grade, the same shall also be given to him. However, before taking any decision on these two aspects, the Director, School Education, Uttarakhand, Dehradun, must satisfy himself as to the fault of the parties; in other words, in case the petitioner was at fault either for not taking sanctioned leave or for not joining within the stipulated time, he will not be given any benefit; the contention of the petitioner is that the petitioner was ordered to be transfer from Nagrajadhar to Shivalidhar, but he was not posted at that relevant time and the transfer order is wholly erroneous; this fact and other facts which will be placed forward by the petitioner shall be taken note by the Director, School Education, Uttarakhand while deciding his representation.

Pursuant to the Judgment and Order dated 07.01.2011, the petitioner was asked to be present in the office of Director of School Education, Dehradun on

26.02.2011 with all relevant documents. The petitioner was present on the date fixed and time. Following the same, the petitioner submitted his reply to the Deputy Director (Legal), Directorate of School Education, Dehradun on 15.03.2011 which was supported by requisite documents as required. The petitioner moved an another representation on 14.05.2011 to the respondent No.1, wherein it was prayed that legal dues of the petitioner be paid to him at the earliest keeping in view his pathetic condition. The petitioner was further asked by the Principal, Government Inter College, Bhawan, Jaunpur, Tehri Garhwal, where the petitioner is posted, to submit certain information respecting his medical leave from 14.07.2001 to 17.04.2002, which was again provided to the Principal and to the District Inspector of Schools, through his reply dated 24.05.2011. The Director of School Education, Uttarakhand, Dehradun, respondent No.2, decided the matter and passed an impugned order on 26.09.2011 wherein he concluded unreasonably and unilaterally that claim of the petitioner are without any force and thus he discarded assertions made by the petitioner arbitrarily and in an illegal manner which is unjust, unfair and perverse to the material facts placed on record. Therefore, the writ petitioner filed the Writ Petition (S/S) No. 1867 of 2011 with the relief in the nature of certiorari for quashing the impugned order dated 26.09.2011; writ of mandamus commanding the respondents to sanction medical leave to the petitioner from 14.07.2001 to 17.04.2002; writ of mandamus commanding the respondents to pay the salary and dues of the petitioner of the Lecturer Grade from the date of passing of the order dated 28.02.2002 by which the petitioner had been ordered to be promoted to the Lecturer Grade; writ of mandamus commanding the respondents to pay legal dues to the petitioner as specified in paragraph 14 of his representation dated 15.03.2011.

6. The Writ Petition (S/S) No. 1867 of 2011 was decided on 03.05.2017. The learned Single Judge observed that the case of the petitioner, in a nutshell, is that he has not been considered for promotion from the due date i.e. 28.02.2002; the case of the respondent/State is that since the petitioner had not completed all the codal formalities, therefore, his case for promotion could not be considered; according to the petitioner, he had already furnished all the necessary documents which have been asked for; thereafter, the D.P.C. was regularly convened; the petitioner was found suitable in the D.P.C.; in view of this, the writ petition is disposed of; promotion order of the petitioner would relate back to the due date i.e. 28.02.2002.

7. The learned Standing Counsel appearing for the appellants has submitted that the petitioner remained on medical leave from 14.07.2001 to 17.04.2002, although the same was not sanctioned by the department; the petitioner has been given ad hoc promotion w.e.f. 28.02.2002, whereas he has been given the benefit of salary for the same from the date of taking charge on the post w.e.f. 15.08.2003 i.e. the date when he joined the post as an ad hoc Lecturer; the services of the Lecturers are governed by Uttarakhand Special Subordinate Education (Lecturer's Cadre) Service Rules, 2008, as amended in the year, 2010;

so far as the question of substantive appointment of the petitioner, the same was given to the petitioner on 06.08.2010, after recommendation of the Public Service Commission; after receiving the recommendation of the Public Service Commission, the Directorate vide order dated 06.08.2010 promoted the petitioner against the recruitment year 2003-04; the promotion had been made on the basis of the year-wise vacancy; the petitioner was promoted substantively on the post of Lecturer (Geography) only in the year 2010, against the selection year 2003-04, therefore, the petitioner can only be granted seniority in the Lecturer's cadre w.e.f. 06.08.2010 and not from the date of ad hoc promotion.

8. The Section 5 of the Limitation Act, 1963 extends prescribed period of limitation in filing an application or an appeal except under the provisions of Order 21 of Civil Procedure Code, 1908 and gives power to the Court to admit the appeal or application after prescribed period. The mandate of Section 5 is that if a Court is satisfied about the applicant having sufficient cause for not preferring the appeal or any other application, the delay may be condoned.

9. In the matter of the condonation of delay and extension of time in filing of the Special Appeal, the only condition is to be seen that whether the applicants had sufficient cause for not preferring the appeal within prescribed period. The Section 5 of the Limitation Act, 1963 confers on the court a discretion which is to be exercised by it in the way in which the judicial power and discretion ought to be exercised upon principles. It is well settled that "sufficient cause" has to be construed liberally so as to advance the cause of justice and not the cause of technicalities unless the applicants are guilty of gross negligence or inaction in prosecuting the matter. The true guide is whether the applicants have acted with due diligence.

10. The expression "sufficient cause" cannot be interpreted in an iron frame. The expression "sufficient cause" is sufficiently elastic for the purpose of a meaningful interpretation. What constitute "sufficient cause" cannot be laid down by hard and fast rules. In *Shakuntala Devi Jain Vs. Kuntal Kumari*, 1969 (1) SCR 1006, the Hon'ble Apex Court has held that unless want of bonafides of inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned. In *New India Insurance Com. Ltd. Vs. Shanti Misra, Adult*, AIR 1976 page 237, the Hon'ble Apex Court has held that discretion given by Section 5 should not be defined or crystallised so as to convert a discretionary matter into a rigid rule of law. The expression "sufficient cause" should receive a liberal construction. In *Perumon Bhagvathy Devaswom Vs. Bhargavi Amma*, (2008) 8 SCC 321, the Hon'ble Apex Court has held that the words "sufficient cause" in Section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bonafides, deliberate inaction or negligence on the part of the appellant. In Civil Appeal No. 4669 of 2019 *Bhivchandra Shankar More Vs. Balu Gangaram More*, the Hon'ble Apex Court on 07.05.2019, has held in para No. 15, "It is fairly

well settled law that "sufficient cause" should be given liberal construction so as to advance sustainable justice when there is no inaction, no negligence nor want of bonafide could be imputable to the appellant."

11. In the case of State of Bihar Vs. Kameshwar Prasad Singh (2000)9 SCC 94 the Hon'ble Apex Court had taken a liberal approach for condoning the delay in case of Government, to do substantial justice. In State (NCT of Delhi) Vs. Ahmed Jaan, 2008(14) SCC 582, it was held that it is axiomatic that decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing, the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default, no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice - oriented approach rather than the technical detection of sufficient cause for explaining every days' delay. In the event of decision to file appeal, needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or an application since he is a person legally injured while State is an impersonal machinery working through its officers or servants.

12. When a case with arguable points is shut out on prescriptions of limitation only, it results in throwing out a good case at the threshold with the only necessary implication of injustice being perpetuated and justice being defeated. The instant appeal has arguable points. Keeping in view of the importance of the questions of law involved in this matter, and after perusal of the ground urged in the affidavit and the submissions put forth by the applicants for condonation of delay, and on the facts and circumstances of the case, we are satisfied that sufficient cause exists for the delay. According to us, the explanations offered are plausible and deserve to be accepted. Therefore, we are inclined to condone the delay subject to payment of costs which we fix at Rs.5,000/-, to be paid within a period of three days from today. The delay is condoned subject to the payment of aforesaid amount as costs. After making the payment, receipt thereof shall be filed before this Court alongwith an affidavit.

13. Post this matter on 13.08.2019.