
(2014) 09 OHC CK 0038

In the Orissa High Court

Case No : Writ Petition (Civil) No. 16310 of 2014

Umesh Ch. Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-09-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 54

Citation : (2015) 119 CLT 161 : (2014) 2 OLR 750

Hon'ble Judges : P. Mohanty, J; Biswajit Mohanty, J

Bench : Division Bench

Judgement

1. Heard Mr. Dhalsamant, learned counsel for the petitioner and Mr. Bose, learned Asst. Solicitor General.

2. In this writ petition, the petitioner has prayed to quash the order dated 06.08.2014 vide Annexure-4 passed in M.A. No. 308 of 2013 and 309 of 2013 and order dated 22.11.2011 vide Annexure-3 passed in O.A. No. 259 of 2011 and order dated 11.4.2011 vide Annexure-2 passed by Opp. party No. 3.

3. The fact of the case in brief is that the petitioner was appointed as Gramin Dak Sevak Branch Post Master under Kirmira Branch Office on 17.3.2010. All on a sudden, the services of the petitioner was terminated by the opp. party No. 3- Superintendent of Post Offices, Sambalpur Division, Sambalpur on 11.4.2011 by paying one month salary in lieu of one month notice. Being aggrieved with the said order of termination, the petitioner preferred O.A. No. 259 of 2011 before the Central Administrative Tribunal, Cuttack Bench, Cuttack. The Tribunal vide order dated 21.11.2011 held that since neither the applicant nor his counsel was interested to prosecute this case, the O.A. was dismissed for default.

4. Learned counsel for the petitioner submits that the order of dismissal dated 21.11.2011 was neither intimated to the petitioner by his counsel nor the said order was sent to him by the Registry of the Tribunal. After knowing that the Similar Original Application No. 818 of 2010 has been disposed of by the

Tribunal, the petitioner ascertained from the Registry that his case was dismissed for default vide order dated 21.11.2011. Thereafter, the petitioner filed an application bearing M.A. No. 308 of 2013 for restoration of O.A. No. 259 of 2011 on 29.4.2013 along with an application for condonation of delay, i.e., M.A. No. 309 of 2013 after lapse of one year and five months. The Tribunal vide order dated 6.8.2014 dismissed the application for condonation along with the application for restoration holding that the ground taken by the applicant does not appeal to the judicial conscience so as exercise the judicial discretion to condone the delay. Being aggrieved with the same, the petitioner has preferred the present writ petition.

5. Mr. Bose, learned Asst. Solicitor General submits that in the entire petition, no whisper has been made by the petitioner as to when he could know that the O.A. has been dismissed for default and from that date what prevented him from filing the petition for condonation of delay. As per the provision for filing an application for condonation of delay, the same must be supported by affidavit which is lacking in the instant case. He further submits that relying on the cases of the Apex Court reported in Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T. Murali Babu, and Brijesh Kumar and Others Vs. State of Haryana and Others, , the Tribunal has rightly passed the impugned orders. Therefore, there is no illegality, impropriety or error in dismissing the M.As. filed by the petitioner for condonation of delay and restoration application.

6. On the other hand, learned counsel for the petitioner submits that the decisions cited above are factually distinguishable and considering the said decisions, the Tribunal could not have dismissed the restoration and condonation applications filed by the petitioner. Therefore, the order passed by the Tribunal is bad in law and the same should be interfered with by this Court.

7. Perused the records, went through the orders of the Tribunal as well as the decisions cited by the Tribunal in the cases reported in Chennai Metropolitan Water Supply (supra) and Brijesh Kumar (supra).

8. In the case reported in Chennai Metropolitan Water Supply (supra), respondent was dismissed from service on account of unauthorized absence. He preferred writ petition four years after dismissal of his appeal by the appellate authority. In such background, it was held that when an aggrieved person, without adequate reasons, approaches the Court at his own leisure and pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Accordingly, the Court observed that such delay does not deserve any indulgence and on the said ground alone the writ Court should have thrown the petition overboard at the very threshold.

9. In the case reported in Brijesh Kumar (supra), the Punjab and Haryana High Court had dismissed Civil Misc. Application for condonation of delay of more than 10 years in filing the appeal under Section 54 of the Land Acquisition Act, 1894. Such dismissal was challenged before Hon''ble Supreme Court. There it was held

that when mandatory provision was not complied with and that delay was not properly, satisfactorily and convincingly explained, the Court should not condone the delay on sympathetic grounds alone.

10. In the instant case, the facts are different. Here, in the O.A. No. 259 of 2014, since the engaged counsel was not interested to prosecute the case, the O.A. was dismissed for default and the said fact was also not communicated to the petitioner. The petitioner after knowing about dismissal of the O.A. from other sources, came to the Tribunal and filed restoration application along with the petition for condonation of delay through another counsel. Therefore, the petitioner should not suffer due to laches on the part of his counsel. In both the Supreme Court judgments, referred to above, facts do not involve lack of diligence on the part of the lawyer to prosecute the case. It is well settled that for the fault of the Advocate, a party should not be penalized. (See Balajinath Padhi Vs. Central Administrative Tribunal and Others, . In the instant case, delay has been explained by the petitioner properly. Therefore, the Tribunal should not have rejected the petitions filed by the petitioner. In the case reported in (2000) 10 SCC 264 (Mahkali Engineering Corporation and another v. R.C. Subramanyam and others), it has been held that where order impugned in review petition was passed in absence of counsel for review petitioner, the High Court ought to have allowed the review petition and heard the matter on merits.

11. In view of the above, this Court sets aside the order dated 06.08.2014 vide Annexure-4 passed in M.A. No. 308 of 2013 and 309 of 2013 and order dated 22.11.2011 vide Annexure-3 passed in O.A. No. 259 of 2011 and restores the O.A. No. 259 of 2011 to file. This Court further requests the learned Tribunal to dispose of O.A. No. 259 of 2011 as expeditiously as possible.

12. Accordingly, the writ petition is allowed. No cost.