

(2005) 05 AHC CK 0226

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 35805 of 2005

Umesh Chandra Pandey

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-05-2005

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21(1), 21(2), 21(3)
Constitution of India, 1950 — Article 14, 16, 226

Citation : (2005) 3 ESC 1980

Hon'ble Judges : B.B. Agarwal, J;A.K. Yog, J

Bench : Division Bench

Advocate : Namwar Singh and Sanjiv Singh, for the Appellant; Vivek Singh, for the Respondent

Final Decision : Allowed

Judgement

A.K. Yog and B.B. Agarwal, JJ.—Heard Sri Sanjiv Singh, Advocate, representing the petitioner and Sri Vivek Singh, Advocate, appearing on behalf of the respondents.

2. It is admitted at the bar that no notice need be sent to Respondent No. 5, Central Administrative Tribunal, Allahabad Bench, Allahabad (called "the CAT") as it is non contesting/ redundant party. Since all the contenting respondents are represented and issue raised in this petition can be adjudicated on undisputed facts discernable from the documents filed along with this petition, we decide this writ petition finally at admission stage as contemplated under Chapter XXII Rule 2, Explanation II, Rules of Court, 1952.

3. The salient and relevant factual matrix of the case, required for appreciating and to decide this petition are simple and short.

4. Petitioner is an employee of Northern Railway (now North Central Railway, Allahabad). He was engaged as Mobile Booking Clerk at Vindhyachal Railway Station in early 1982. He worked for the period from 15.1.1982 to 27.1.1982.

Certain scheme was evolved by the respondents-railway contemplating absorption/regularisation after reinstating Mobile Booking Clerk who had worked for certain periods contemplated in said scheme in 1989. Some Booking Clerk approached "Central Administrative Tribunal the Principal Bench, New Delhi" which gave direction to the respondents-Railway to reinstate/regularise Mobile Booking Clerk in view of the decision in the case of Miss Usha Kumar Anand and Ors. v. Union of India and Ors. AIR 1989 C.A.T.37.

5. Railway Board honouring aforesaid directions of the Court/Tribunal evolved a "scheme for reinstatement/regularisation those persons who had worked as Mobile Booking Clerks on the basis of various judgments of the Tribunal or by the Supreme Court.

6. According to the petitioner, several persons who had worked along with the petitioner, approached the Tribunal, who directed the respondents to produce list of 584 selected volunteers in 1981-82 during Ardh Kumbha Fair. In pursuance to the said direction the respondents had submitted the list of only 99 volunteers, in which names of those persons were also included who were not eligible as will be evident from the judgment and order in Review Application No. 2056 of 1991 in Original Application No. 86 of 1991 (Kishore Kumar Srivastava v. Union of India and Ors.). Petitioner had also approached the respondents claiming reinstatement/regularisation under aforementioned circular of the Railway Board but no action was taken and being constrained petitioner filed Original Application No. 139 of 1993 before C.A.T., Allahabad for direction to the Respondents to reinstate him and confer benefits of regularisation under aforementioned circular. This claim petition was dismissed on 19.12.1994.

7. Against the judgment and order dated 19.12.1994, petitioner filed SLP before the Supreme Court, which was allowed by the Supreme Court with direction to consider the case of the petitioner as per direction given by the "C.A.T", New Delhi in the case of Miss Usha Kumari Anand(supra). In pursuance thereto, petitioner filed representation (claiming reinstatement/ regularisation) before the concerned authority. This representation was, however, rejected by Respondent No. 3, Chairman/President, Railway Board, Northern Railway (now North Central Railway), Allahabad by means of order dated 10.4.1996 (Annexure 9 to the writ petition). The relevant extract of the said order reads :-

"It is further informed that your alleged working days as well as working certificates are fake and also your certificate of working days has not been issued on the prescribed printed Casual Labour Service Card (duly machine numbered)/ by the competent authority as per extent rules.

It is also relevant to mention here that the persons who were engaged as other than Mobile Booking Clerks, such as during Ardh Kumbh Mela etc. for short period etc. are not M.B.Cs and as per directions of the Hon"ble Supreme Court given in the SLP No. CC-24442 dated 7.4.1994 in re. Union of India and Ors. v. Lalji Shukla and Ors., matter was considered by the Railway and it was decided not to

frame any scheme to re-engage and regularise such persons viz. volunteers, Ticket Collectors etc. against statutory provisions which also hit the provisions of Articles 14 and 16 of the Constitution of India.

Sd/-" for Divi. Rly Manager (Comml) Northern Railway, Allahabad."

8. Being aggrieved petitioner filed, as he was then advised. Original Suit No. 54 of 1998 before the Court of Civil Judge (Sr.D), Allahabad- Umesh Chandra Pandey v. Union of India and Ors.

9. Endorsement on the first page of the plaint, as per photostat copy of Annexure 10 to the writ petition, shows that it was instituted in Court on 31.1.1998. The period between 10.4.1996 (the order which was sought to be challenged in the said suit) and 31.1.1998, when suit was instituted have been explained by indicating that the certificate in question (showing/verifying his period of working) was ignored and rejected on the ground being fake. No opportunity was given to the petitioner in his defence to show that it was not fake.

10. In para 6, 7 and 8 of the plaint, it is pleaded by the petitioner that he had filed representation/review petition for reconsidering order dated 10.4.1996 but respondent-authorities paid no heed and in spite of notice being given by Registered Post on 27.9.1997 no action was taken and consequently being constrained, petitioner filed aforesaid civil suit. Suit was dismissed on 21.12.1999. The petitioner pursued civil proceedings up to Second Appeal which was also dismissed on August 2, 2004, by this Court- Annexure 13-A to the writ petition.

11. Petitioner promptly filed Original Application No. 1527 of 200 along with application for condonation of delay but the same has been rejected by means of judgment and order dated 15.12.2004, Annexure 5 to the writ petition. The Tribunal has noted facts stated above and there is no contest on the same as far as facts of the case are concerned, relevant observation in the impugned judgment of the C.A.T may be reproduced for convenience and ready reference:-

".....Thereafter the competent authority considered the matter and passed the Order dated 10.4.1996 rejecting the applicant's claim for regularisation. The applicant then preferred a Civil Suit No. 54/98 which was dismissed by the Trial Court but in appeal preferred by the Department it was held not maintainable and second appeal came to be dismissed by the High Court vide order dated 2.8.2004. The O.A., instituted on 22.11.2004 is liable to be dismissed on the ground of delay and laches. However, we have heard counsel for the parties on merit also. According to the scheme formulated for regularisation, a casual worker can stake his claim for regularisation provided he has completed three years of service. The applicant in the instant case had completed only 12 days of service on casual and honorary basis. No case is made out of interference.

Accordingly, the M.A. for condonation of delay and the O.A are dismissed.

No order as to costs."

Sa/- -S.C. Chaubey Sd/- -Hon. S.R. Singh, J AM VC"

12. From the aforequoted extract of the judgment of the C.A.T. it is clear that it has rejected petitioner's Original Application on two score namely, (i) petitioner's application was liable to be dismissed on the ground of delay and laches (ii) accordingly to the scheme formulated by the respondents claim for regularisation could be made on completing three years of service whereas petitioner had, according to his own, worked 12 days only.

13. We shall deal with both the reasons adopted by CAT in seriatim.

14. As far as the question of Original Application No. 1527 of 2004 is concerned, we find that petitioner had amply demonstrated on record that he was pursuing his remedy bona fide and diligently during 10.4.1996 to 02.08.2004 i.e. when Second Appeal was dismissed.

15. No plausible excuse or ulterior motive on the part of the petitioner pointed out to pursue Civil Court proceedings or to delay the matter in order to gain advantage in any manner. On the other hand, one finds delay in the case was prejudicial to the cause/interest of the petitioner.

16. As noted earlier, petitioner has explained the delay between 10.4.1996 and 31.1.1998 (date of instituting civil suit) vide para 6, 7 and 8 of his plaint. There is nothing on record to suggest that petitioner was acting malafide or deliberately delaying the matter. It is well settled that provisions for granting condonation of delay, should not be construed in a pedantic manner but pragmatically considering of all the attending circumstances to advance substantial justice.

17. We have ourselves considered the question of condonation of delay on the ground of "sufficient cause" in the facts of present case.

18. We are conscious that we need not examine evidence with microscopic approach as it would be an insult to justice oriented judicial system (see AIR 2004 SCW 5162

19. Sub-section 3 of Section 21, Administrative Tribunal Act, 1985 reads :-

3. Notwithstanding anything contained in Sub-section (1) or Sub-section (2) an application may be admitted after the period of one year specified in Clause (a) or Clause (b) or Sub-section (1) or, as the case may be, the period of six months specified in Sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

20. The Tribunal has failed to notice and made perfunctory passing reference while dealing with the issue of limitation. Tribunal has failed to consider and no finding recorded that the petitioner was pursuing remedy before civil court malafide or in good faith. The above statutory provision contemplates condonation of delay and Tribunal was under statutory obligation to consider this

aspect of " sufficient cause" warranting condonation when statute provide for "limitation". As observed by the Tribunal there is no question of " laches" like the Writ proceedings under Article 226, Court of India. The question is of "limitation" and jurisdiction for condonation in law.

21. In view of the above, it was statutory obligation on the part of the Tribunal to have considered as to whether petitioner had sufficient cause for not making the application within of limitation period u/s 21(1) of the Act. Not having done so the Tribunal has failed to exercise jurisdiction vested in law and its finding to that extent can not be sustained and liable to be set aside.

22. In the instant case, petitioner was acting in good faith, diligently and bona fide through to pursue his remedy apparently with no ulterior motive or any malice on his part; particularly when there is nothing contrary to show in the pleadings or the evidence of the Respondents. The period consumed in prosecuting his remedy before alternative forum; namely, Civil Court is liable to be excluded.

23. We have no hesitation to hold that petitioner is not guilty of delay or laches at all. The period spent during 10.4.1996 till dismissal of Second appeal on 2.8.2004 is liable to be excluded on the ground that there is, on the record, sufficient cause to explain the delay. In that event, Original application cannot be said to be time-barred and it could not be dismissed on the ground of limitation.

24. As far as second ground available to the petitioner for seeking regularisation under departmental scheme is concerned, we find petitioner has been through out claiming right of reinstatement under certain scheme and for that Department were required to consider his claim in consonance to a direction given by Supreme Court in the light of direction in the case of Miss Usha Kumar Anand (supra). The Tribunal has not applied its mind to the term and conditions as well as requirement under relevant circular/ scheme dealing with reinstatement. Tribunal has passed a cryptic order in this respect.

25. In view of the above, we are not in agreement with the judgment and order dated 15.12.2004 (Annexure 10 to the writ petition) passed by Central Administrative Tribunal, Allahabad is hereby set aside.

26. Considering the delay in the matter, is bound to prove fatal the interest of justice requiring that departmental order dated 10.4.1996 passed by Respondent No. 3 on the basis of its exparte finding that working certificate was "false" and was issued without giving adequate opportunity to the petitioner, is set aside and we further direct the concerned authority to decide the matter afresh on the basis of the record before it, after giving opportunity of hearing to the petitioner exercising unfettered discretion within four months of receipt of the certified copy of this judgment.

27. Writ petition stands allowed subject to the above observation.

28. No order as to costs.