

(2011) 10 MP CK 0010
In the Madhya Pradesh High Court
Case No : M.C.C. No. 1326 of 2011

Union of India and Others

APPELLANT

Vs

Ukku Singh and Others

RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Citation : (2011) 10 MP CK 0010

Hon'ble Judges : Vimla Jain, J;K.K. Lahoti, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This application is filed seeking restoration of Review Petition No. 477/2009, which was dismissed because of non compliance of peremptory order dated 4.12.2009. This application is also barred by limitation of 1 year 228 days, for which the applicants have filed I.A. No. 11872/2011 seeking condonation of delay in filing M.C.C. No. 1326/2011.

2. The facts of the case are that respondent Ukku Singh filed a writ petition before this Court, which was registered as W.P. No. 545/2003 and was decided by order dated 2.4.2007 by this Court. In the writ petition a Division Bench of this Court directed thus :

In view of the aforesaid, we command the respondents keeping in view the consonance of the direction of the tribunal shall take the appellant in service as a casual laborer and his case shall be considered for regularization as per direction of the tribunal on preferential basis. We have said so as we have been apprised that benefits of regularization has been conferred on respondents 5 and 6 but the order of the tribunal has not been given effect to in respect of the petitioner. The petitioner be taken back in service, if he is not working, within a period of one month from the date of receipt of the order passed today, as agreed to by Mr. Dharmadhikari. Needless to emphasize order of a forum has to be respected unless it is modified. The preferential treatment qua respondents 5 and 6 shall be

adjudged on the parameters and paradigms of the scheme within a period of three months.

Accordingly the writ petition is allowed without any order as to costs.

C.C., as per rules within three days.

3. Thereafter the applicants herein filed a review petition, which was registered as M.C.C. No. 1766/2007. The aforesaid review petition was listed for hearing on 21.8.2009, on which date the Division Bench passed an order, which reads thus :

Heard Mr. S.A. Dharmadhikari, learned counsel for the petitioner and Mr. Manas Verma, learned counsel for the respondent.

This application has been filed for review of order dated 2.4.2007 passed in W.P. No. 545 of 2003. In course of hearing, it is submitted by Mr. Dharmadhikari that the writ petitioner, Ukku Singh had already been allowed to work as a casual worker since 18.1.2009 and he is given 18 days work in a month and the same shall not be reduced. As further stated by Mr. Dharmadhikari that the wages for the said period shall be religiously and punctually be paid to be worker unless he remains absent. It is submitted by learned counsel that when the question of regularization arises, his case shall be considered regard being had to the concept of seniority.

Mr. Verma, learned counsel for the respondent has no objection.

In view of the aforesaid, the order dated 2.4.2007 is modified to the extent indicated above. The application for review stands disposed of.

M.C.C., stands disposed of.

4. The Review Petition No. 477/2009 was filed seeking review of order dated 21.8.2009 (supra) on the ground that the statement made by Mr. S.A. Dharmadhikari that Ukku Singh had already been allowed to work as casual worker since 18.1.2009 and he is given 18 days work in a month and the same shall not be reduced, was made without any instructions of the applicants herein. This statement was objected in Review Petition No. 477/2009.

5. Learned counsel for applicants fairly submitted that the affidavit of Shri S.A. Dharmadhikari was not filed in review petition in support of contention that the aforesaid statement was made without any authority of applicants. The review petition was filed along with the affidavit of Lt. Col. Navneet Mehta, working as CO 54, COY ASC, Supply Depot, Jabalpur, but in absence of any affidavit of Shri Dharmadhikari, the aforesaid question could not have gone into.

6. It will be pertinent to mention here that Shri Dharmadhikari is still standing counsel for Union of India, though another counsel has been engaged in this case. The aforesaid review petition was listed for hearing on 4.12.2009, because there were certain defaults and the Division Bench on 4.12.2009 directed applicants herein to make the default good within two weeks, failing which

review petition was directed to be dismissed. Though the default no. 3 and 4 were cured, but because of non-compliance of peremptory order, R.P. No. 477/2009 has suffered dismissal. Thereafter this application M.C.C. No. 1326/2011 has been filed, which is barred by limitation of 1 year 228 days. In the application seeking condonation of delay, it is stated that the applicants were not aware of dismissal of the case. The applicants were also not aware in respect of peremptory order passed by this Court. No affidavit in support of this application has been filed to show bonafide on the part of applicants. Apart from this, the counsel who were appearing in R.P. No. 477/2009 have also not filed any affidavit in support of this application seeking condonation of delay.

7. In view of aforesaid, we do not find any reason to condone long delay of 1 year 228 days in filing this M.C.C. No. 1326/2011. Accordingly, this application (I.A. No. 11872/2011) is rejected. In view of rejection of application seeking condonation of delay, M.C.C. No. 1326/2011 is also dismissed, with no order as to costs.