

(1993) 04 AHC CK 0084

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17221 of 1993

U.P. State Sugar Corporation Unit

APPELLANT

Vs

Assistant Labour Commissioner/Conciliation Officer and
Another

RESPONDENT

Date of Decision : 17-04-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 3, 5
Uttar Pradesh Industrial Disputes Act, 1947 — Section 2A

Citation : (1994) 1 AWC 98

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : H.S. Nigam, for the Appellant;

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—This petition under Article 226 of the Constitution of India filed by the employer U.P. State Sugar Corporation, is directed against the order dated 8-6-92, and dated 6-2-93 (Annexure 6 and 8 respectively) to the petition.

2. The workman, Respondent no. 2 made an application for reinstatement u/s 2-A of the U.P. Industrial Disputes Act, 1947, (for short the Act), but the same was time barred. The explanation was furnished for the delay and a prayer was made that the delay may be condoned and the application may be treated to be within time and the matter may be decided on merits The Conciliation Officer by order dated 8-6-92 has treated the cause to be sufficient and condoned the delay. Against that order the Petitioner preferred a review application and the same was dismissed by order dated 6-2-93, holding that there was no provision for review.

3. Sri H. S. Nigam, learned counsel for the Petitioner laid great emphasis that no finding was recorded about the sufficient cause in the impugned order, and consequently there was no justification for condonation of delay, and each day's delay was not explained. He placed reliance on Sitaram Ramcharan etc. Vs. M.N.

Nagarshana and Others, ; and Bharat Barrel and Drum Manufacturing Co. Pvt. Ltd. Vs. Bharat Barrel Employees Union, .

4. The case of Sita Ram Ram Charan v. M N. Nagarashana Authority, (supra), was a case where (in para 19 at page 265), it was held that in dealing with the question of delay u/s 5 of the Limitation Act, the party has to satisfy the Court that he had sufficient cause for not preferring the appeal or making the "application within the prescribed time, and this has always been understood to mean that the explanation has to cover the whole of the period of delay. There is no dispute with the dictum laid down by their Lordships of the Supreme Court in that case. But it was a case decided On the particular facts of that case.

5. In G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, , the apex Court struck a note of caution in respect of interpretation of Section 5 of the Limitation Act plaining to the condonation of delay. It was emphasised that Section 5 of the Limitation Act has to be interpreted in a justice oriented way and not in a pedantic manner. In another case their Lordships ruled that the earlier concept of every day"s delay to be explained satisfactorily, was not taken to be conducive in the prevailing situation, as that would not stand the test of going further deeper ,in the matter as to why not every hour"s delay and every minute"s delay and every second"s delay was explained. In substance, one aspect of the matter requires emphasis. The legal effect of the delay hot being condoned and the application for condonation of delay being rejected, would be that the meritorious matter would be thrown out at the very threshold and thus the -cause of justice would suffer, rather in a case where even though, no finding of sufficient cause having been recorded technically, as the learned counsel for the Petitioner emphasised, nevertheless if the delay is condoned, the effect! would be that the sufficient cause was made out and only thereafter the delay ? as been condoned. In case the delay is condoned, even though not technically, by an order recording finding that sufficient cause has been made out and the satisfaction of the Court was also recorded, in that event the effect would be that both the parties would be called upon to lead evidence to get the matter decided on merits after the parties have opportunity of being heard. One fact has to be kept in mind that the Conciliation Officer, while exercising jurisdiction under the second proviso of the Order issued u/s 3 of the Act, was not acting as a Civil Court, nor the provisions of the Code op Civil Procedure was strictly applicable to the provision, as the Act contains provisions to bring about peace in respect of unrest and dissatisfaction prevailing in the industries. In such matters, if it appears that the Conciliation Officer has applied his mind to the cause of delay, that would itself be sufficient.

6. M/s. Bharat Barrel & Drum Manufacturing Co. v. Bharat Barrel Employees Union, (supra), was not a case directly on the point, as that was a case dealing with the principles of res judicata being made applicable. Specific guidelines in respect of plea of res judicata Have been indicated. As we are concerned with the controversy as to whether sufficient cause has been made out in condoning the

delay, consequently with profound regards, I do not prefer to consider that case in detail.

7. I have examined the impugned orders and I am satisfied that unlike the Civil Court, the Conciliation Officer has passed substantially a correct order. A pedantic approach need not be made to scrutinise as to whether first the finding about sufficient cause has been recorded or not. What is required as the apex Court has struck a caution, that while interpreting Section 5 of the Limitation Act or similar provision, the approach of the Court must be justice oriented. I have made every endeavour to make the approach in that direction. I do not find any mistake or error, much less an error apparent on the face of record. The impugned orders are substantially correct and there is no justification for interference.

8. In the result, the petition fails and it is accordingly dismissed summarily.