

Court No. - 48

Case :- WRIT - B No. - 12225 of 1996

Petitioner :- Asgar

Respondent :- D.D.C. Padrauna And Others

Counsel for Petitioner :- Hsn Tripathi, Waqar Ahmad

Counsel for Respondent :- C.S.C., A.K. Singh, Aftab Alam, Juneed Alam, Vijai Tiwari, Vishram Tiwari, Wahaj Ahmad Siddiqui

Hon'ble Saurabh Shyam Shamsheery, J.

This writ petition is pending since 1996 whereas the crux of matter is very limited.

In the present case, an appeal was filed by petitioner with delay of about 8 months with an application to condone the delay, however, Appellate Authority has not considered the application at first instance but considered merit of the case, however, dismissed the appeal on ground of delay and being not maintainable. The Revisional Authority has upheld the said order.

Sri Mahendra Singh, learned counsel for petitioner has placed reliance on a judgment passed by Division Bench of this Court in the case of **Ram Prakash Vs. Deputy Director of Consolidation, Hardoi and Others, 2022 (2) AWC 1345 (LB)** wherein following issue was considered that :-

"If an order has been challenged before the consolidation authority is barred by the period of limitation as provided under the statute (in the present case before the appellate authority/Settlement Officer Consolidation -1, Hardoi) along with an application for condonation of delay then in that circumstances whether the application for condonation of delay under Section 5 of the Limitation Act should be decided first or the same can be decided along with merit of the case?"

Learned counsel further submits that the referred issue was answered in following terms :

"22. In view of the aforesaid discussion, we answer the question referred to the Division Bench that an application seeking condonation of delay has to be decided first before the appeal is taken up for hearing on merits. However, it can be on the same

day and there is no requirement of adjourning the hearing of appeal on merits after acceptance of the application seeking condonation of delay. "

Sri M. Mahmood, Advocate, holding brief of Sri Wahaj Ahmad Siddiqui, learned counsel for contesting respondents has fairly submitted that impugned orders are in teeth of above referred legal position and prayed that in case, the matter is remitted back to Appellate Authority, the same may be decided in a time bound manner.

In the aforesaid circumstances, the impugned orders dated 10.02.1994 and 26.3.1996 are set aside and matter is remitted to Appellate Authority to decide afresh in terms of **Ram Prakash (supra)**, preferably within a period of four months from today.

This writ petition is accordingly **disposed of**.

Order Date :- 1.11.2023

P. Pandey