

Neutral Citation No. - 2023:AHC-LKO:76345-DB

Court No. - 1

Case :- SPECIAL APPEAL DEFECTIVE No. - 893 of 2023

**Appellant :- State Of U.P. Thru. Prin. Secy. Forest Deptt. Civil
Secrt. Lko. And Others**

Respondent :- Kapil Deo Singh

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Mahendra Pratap Verma

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

Order on C.M. Application No. 1/2023

1. The present intra court appeal filed under Chapter VIII Rule 5 of the High Court Rules is delayed by 442 days.
2. The appeal is accompanied with an application for condonation of delay duly supported with an affidavit.
3. Sri Mahendra Pratap Verma, learned counsel appearing for the sole respondent has pointed out that even if the respondent may not choose to file an objection against the delay condonation application yet the maintainability of the present special appeal is highly questionable for the reason that the same has come to be filed after implementation of the judgment impugned.
4. The affidavit filed in support of the application for condonation of delay spells out detailed reasons as it is mentioned therein that the contempt proceedings have been

initiated by the respondent in respect of the impugned judgment of which the necessary compliance has already been made. It is further pointed out that the writ court while issuing a direction for reconsideration of the respondent's candidature for regularization has placed reliance upon the judgment, which has already been overruled, nevertheless, the contempt proceeding if allowed to proceed in the spirit of the direction issued by the writ court would cause undue hardship and prejudice to the State and the authority facing the contempt.

5. It is under these circumstances that the necessity to file the present special appeal arose to the State for which a legal opinion was obtained even after making necessary compliance way back on 5.4.2023. The permission to institute the appeal was granted in the month of September, 2023 looking to the threat of contempt proceedings being drawn against the officers concerned.
6. we would have rejected the appeal on the ground of delay but having regard to the facts and circumstances of the case particularly the initiation of contempt proceedings, the reasons spelt out in the affidavit which in our consideration are sufficient to explain the delay, the application seeking condonation of delay is accordingly **allowed**.

Order on Appeal

7. The preliminary objection raised by learned counsel for the respondent as to the maintainability of the present appeal deserves to be rejected for the reason that the contempt proceedings arising out of the impugned judgment dated 25.7.2022 as corrected on 25.8.2022 are still in progress.
8. Learned Standing Counsel has pointed out that the judgment placed reliance upon by the writ court having been overruled would not entitle the respondent to maintain the contempt proceeding strictly in the light of the direction issued and the compliance of the writ court judgment does not leave any scope for any further action in the said proceeding.
9. Since the respondent feeling aggrieved against the fresh order passed on 5.4.2023 has already approached this Court by filing a fresh writ petition, therefore, the fresh cause which has accrued to the respondent shall be dealt with on its own merit. We however provide that the contempt court while proceeding with the contempt proceeding arising out of the impugned judgment which has already been complied with shall consider the subsequent division Bench judgment of this Court rendered in the case of State of U.P. versus Ram Roop Yadav in Special Appeal No. 47 of 2016 on 19.7.2017 and the direction issued in the judgment impugned shall be dealt with

keeping in view the affect of such overruling of the judgment placed reliance upon by the writ court while deciding the writ petition in favour of the respondent.

10. We also clarify that in case the respondent was working on daily wage basis prior to the order of rejecting the claim for regularization, he shall be allowed to continue in the said capacity subject to the outcome of the writ petition against the fresh cause.

11. With these observations, the special appeal is accordingly disposed of.

Order Date :- 21.11.2023

kanhaiya/Shahnaz