

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 86 of 2022

Appellant :- State of U.P. Thru. Prin. Secy. U.P. P.W.D. Lko.
and others

Respondent :- Syed Mohd. Shakeel

Counsel for Appellant :- C.S.C., Raj Mani Dubey

Counsel for Respondent :- Abul Fazal Jaffrey

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Jaspreet Singh, J.

1. This appeal is directed against the order dated 05.03.2022 passed by the learned Single Judge in Writ-A No. 16242 of 2019 whereby the writ petition filed by the respondent has been allowed.

2. The writ petition was filed by the respondent aggrieved by the order dated 27.03.2019 passed by the appellant-Executive Engineer, whereby it was indicated that from 04.01.1999 instead of work agent respondent was to be treated as mate and based on which the revised pay and all the terminal benefits etc. would be determined. Being aggrieved, the writ petition was filed.

3. The learned Single Judge, with reference to the fact that the respondent had retired on 28.02.2015 and in previous litigation between the parties, the respondent was treated as a work agent and that the order was passed without affording any opportunity of hearing, set aside the order impugned.

4. The appeal is barred by 99 days. An application under Section 5 of the Limitation Act has been filed seeking condonation of delay in filing the appeal.

5. Usual reasons have been indicated regarding the time consumed in undergoing the Government procedure in seeking

approval for filing of the appeal and that the appellants have a good case on merits.

6. The application is opposed by the counsel for the respondent, *inter-alia*, on the ground that no germane reasons have been indicated for condonation of the delay.

7. After going through the averments contained in the application and looking to the quantum of delay, we deem it appropriate to condone the delay in filing the appeal.

8. Consequently, the application seeking condonation of delay is allowed. The delay in filing the appeal is condoned.

9. Counsel for the appellants made submissions that though the learned Single Judge has referred to the litigation *inter se* parties, the said litigation was given a quietus by an order dated 27.10.2017 passed in Special Appeal No. 57 of 2006 and other connected matters whereafter, the action has been initiated by the appellants and therefore, the order impugned passed by the learned Single Judge deserves to be set aside.

10. Counsel for the respondent supported the order impugned.

11. Submissions have been made that the respondent had retired on 28.02.2015 and the order impugned was passed after four years without affording any opportunity of hearing and on that count alone, the said order could not be sustained.

12. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

13. A bare look at the order dated 27.03.2019 impugned in the writ petition, would reveal that despite noticing that the respondent has retired on 28.02.2015 and was paid terminal benefits and was receiving the post retiral benefits in a particular status, the order has been passed for revision of the pay and retiral benefits. The order is *ex-facie* in violation of

principles of natural justice and on that count alone, the learned Single Judge was justified in setting aside the order impugned. To the said extent, no case for interference in the order impugned is made out.

14. However, once the order is quashed on account of violation of principles of natural justice, it needs to be left open for the appellants, to take appropriate proceedings in accordance with law, if they so desire. However, no such liberty has been granted by the learned Single Judge, and therefore, to the said extent, the order impugned deserves to be modified.

15. Consequently, the appeal is disposed of. The setting aside of the order dated 27.03.2019, would remain, however, it would be open for the appellants to take appropriate action in accordance with law, if they so desire.

Order Date :- 19.12.2024

Asheesh/P.Sri.

(Jaspreet Singh, J) (Arun Bhansali, CJ)