

Court No. - 2

Case :- SPECIAL APPEAL DEFECTIVE No. - 352 of 2024

Appellant :- State Of U.P. Thru. Prin. Secy. Deptt. Of Medical Health And Family Welfare U.P. Lko. And Another

Respondent :- Deepak Singh And Another

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Alok Mishra

Hon'ble Rajan Roy,J.

Hon'ble Jaspreet Singh,J.

(C. M. Application No. 1 of 2024)

1. This is an application for condonation of delay in filing special appeal supported with affidavit.

2. Heard learned Additional Chief Standing Counsel for the State/Appellants and Shri Alok Mishra, learned counsel for the respondents.

3. As per Reporting Section there is delay of 151 days in filing of the special appeal.

4. Shri Alok Mishra, learned counsel for the respondents vehemently opposes the application for condonation of delay and places reliance upon Para 12, 16 and 19 of a recent judgment of Hon'ble the Supreme Court dated 08.04.2024 rendered in ***Special Leave Petition (Civil) No. 31248 of 2018; Pathapati Subba Reddy (died) by L.Rs. and ors. Vs. The Special Deputy Collector (LA)***.

5. We have perused the aforesaid judgment. We have also perused the explanation offered for condonation of delay.

6. Having gone through the contents of the affidavit and considering the fact that the delay is not inordinate and also, as, we find the explanation to be satisfactory, therefore, we allow the application under Section 5 of the Limitation Act, 1963. The delay is condoned. In the facts of the case, we do not see as to how the judgment rendered in ***Pathapati Subba Reddy*** (supra) would persuade us to arrive at any other conclusion.

Order on Special Appeal

7. By means of this special appeal the State has challenged judgement and order dated 04.01.2024

passed in Writ - A No. 8682 of 2023 (Deepak Singh Vs. State of U.P. and Ors.) as also the subsequent judgment and order dated 04.03.2024 passed in Civil Misc. Review Application Defective No. 37 of 2024; State of U.P. and Anr. Vs. Deepak Singh and Anr.

8. Learned Additional Chief Standing Counsel for the State/appellant has addressed us on the validity of the judgment passed in the writ petition as also in the review application.

9. Learned counsel for the respondent has also argued accordingly.

10. However, after hearing the learned counsel for the parties and going through the records what comes out is that after the judgment was rendered in Writ - A No. 8682 of 2023 on 04.01.2024 a review application was filed by the State bringing on record an order dated 21.10.2013 passed in Review Petition No. 92 of 2013 and Review Petition (D) No. 560 of 2013, by which the judgment dated 01.02.2013 passed in a bunch of writ petitions leading Writ Petition bearing No. 190 (S/S) of 2013 was reviewed. The review petitions were filed by left out persons and the petitioners who were not covered by the judgment dated 01.02.2013. Their review applications were allowed, however, with stipulation that the judgment passed in the review applications was being rendered in the peculiar facts and circumstances of the case as noted above and therefore, it would not be treated as a binding precedent.

11. The contention of the learned Additional Chief Standing Counsel for the State/Appellant is that this judgment was not taken into consideration by the Writ Court nor while hearing the review application and the same was dismissed cursorily on 04.03.2024 with the observation that there is no error apparent on the face of the record as the judgment passed in the review petition was not placed before the Court below while deciding the writ petition. The submission is that this reasoning is erroneous. In fact, these are grounds on which review application can be considered and if merit is found, can also be allowed. He referred to the principles contained in Order 47 Rule 1 CPC as also the Rules of the Allahabad High Court Rules, 1952 in this regard.

12. Per contra, Shri Alok Mishra, learned counsel for the respondent submitted that last paragraph of the judgment and order dated 21.10.2013 passed in the review

petitions refers to the judgment in the review petition and not the judgment passed in the writ petition. It is also his submission that his clients are not covered by the judgment passed in the review petition. They are covered by the judgment passed in the writ petition.

13. At this stage, learned counsel for the State submitted that in fact, the judgment dated 01.02.2013 passed in the **writ petition no. 190 (S/S) of 2013; Seema Singh and Ors. Vs. State of U.P. and Ors.** merged in the subsequent judgment dated 21.10.2013 passed on the review application.

14. None of these issues have been considered by the learned Single Judge while deciding the review application. We may in this context refer to the provisions contained in Order 47 Rule 1 CPC which reads as under:-

"1. Application for review of judgment.—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review."

15. While it is true that the provision of CPC does not

apply *stricto sensu* to the proceedings in a writ petition, but, it is equally true that the principles contained therein can always be applied. Moreover, there are provisions in this regard in Chapter V Rule 12 of the Allahabad High Court Rules, 1952 also.

16. We are of the view that the learned Single Judge should have considered the review application and the grounds taken therein in the correct perspective in view of the principles contained in Order 47 Rule 1 CPC and the provisions of Allahabad High Court Rules, 1952 which has not been done. However, as the parties have addressed the Court on the merits of the matter, therefore, we proceed to consider the validity of the original order passed in the writ petition.

17. After going through the judgment in ***Seema Singh*** (supra) dated 01.02.2013 and the judgment passed on the review petition arising from the same case on 12.10.2013 we find that in ***Seema Singh*** (supra) the writ Court had granted relaxation in age as also qualification in the body of its judgment. In addition to it in operative part it also issued certain other directions such as grant of preference to the petitioners therein.

18. It was contended by the State counsel that weightage was also granted, but, we do not find any such observation in the body of the judgment dated 01.02.2013 nor any such direction in its operative part. The use of the words 'the petitioners shall be considered for appointment on the post of Basic Health Worker (Female) taking into consideration their work and experience on the post of ANM' would not amount to giving them weightage. In point no. 3 in the operative portion it has been provided that the petitioners shall be given preference against outside candidate which is not weightage but preference. Even in the judgment passed in review petition we do not find any such weightage having been given for the past services. Weightage as ordinarily understood in service jurisprudence in the context with which we are concerned would mean particular marks being given for completing particular years of service on account of the experience gained therein, which is not the case herein. In fact, Mr. Alok Mishra, learned counsel for the respondents very fairly submitted that though his clients had prayed for weightage before the writ petition but he does not press it, meaning thereby, he does not press it in this case. Similarly he informed us that no relaxation in qualification is being sought. His clients only wanted a consideration

for relaxation in age.

19. It appears that on being informed that the matter is similar to **Seema Singh** (supra), the writ Court has simply allowed the writ petition in the light of **Seema Singh** (supra) without considering the fact of this case.

20. Now, the fact of the matter is that in this case the only question involved is of relaxation in age. In view of the provisions contained in the U.P. Public Services (Relaxation of the Age Limit for Recruitment) Rules, 1992 which have been considered in **Seema Singh** (supra), we see no reason as to why the claim of the respondents herein for such relaxation should not be considered unless it has already been considered. As the counsel for the respondents does not press for any weightage to the respondents nor for relaxation in qualification herein, therefore, that question does not arise for consideration of the same.

21. In this view of the matter, we are also of the view that the judgment passed in review petition arising out of **Seema Singh's case** (supra) has no application to the facts of this case as there essentially question of qualification of the applicants seeking review was considered and the said judgment was confined to the facts of the said case without being a precedent for other matters, certainly not any tangible bearing on its result.

22. In view of the above, judgment dated 04.03.2024 passed in Civil Misc. Review Application No. 37 of 2024 is set-aside and we dispose of this special appeal with the observation/direction that the judgment of the writ Court shall be complied by the appellants herein as regards consideration of the respondents herein for grant of age relaxation is concerned unless that has already been done, in which case the order shall be communicated to the respondents. We do not find any need for making any other observations or issuing any other directions, except that neither weightage nor relaxation in qualification is being claimed by the respondent(s).

23. The special appeal is **disposed of** with the aforesaid clarification of the judgment of the Writ Court.

(Jaspreet Singh,J.) (Rajan Roy,J.)

Order Date :- 23.8.2024/R.K.P./Santosh