

Court No. - 2

Case :- SPECIAL APPEAL DEFECTIVE No. - 534 of 2021

Appellant :- State Of U.P. Thru. Prin.Secy. Agriculture And Others

Respondent :- Amlesh Kumar Pandey

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Ramesh Kumar Srivastava

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

1. This is an appeal filed under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952, which has been filed on 18.12.2021 challenging the judgment of the Writ Court dated 15.09.2017 passed in Writ Petition No.7505 (S/S) of 2011 and also challenging the order dated 25.09.2019 passed on Review Application No.69300 of 2018 which was filed by the appellant seeking review of the judgment dated 15.09.2017. In fact in the interregnum the original judgment of the Writ Court dated 15.09.2017 was put to challenge by an earlier special appeal which was filed belatedly and was numbered as Special Appeal Defective No.259 of 2018, however, the said appeal was withdrawn on 24.05.2019 in the following terms :-

"Court No.1

C. M. Application No. 59917 of 2018

in re:

Case :- SPECIAL APPEAL DEFECTIVE No. - 259 of 2018

Appellant :- State Of U.P Thru Secy Agriculture Deptt Lko & Ors

Respondent :- Amlesh Kumar Pandey

Counsel for Appellant :- C.S.C

Counsel for Respondent :- Ramesh Kumar Srivastava

Hon'ble Vikram Nath,J.

Hon'ble Abdul Moin,J.

Heard Sri Ramesh Pandey, learned Chief Standing Counsel for the applicants and Sri Ramesh Kumar Srivastava, learned Counsel for the sole respondent.

The appeal is filed beyond time by 6 months 29 days.

As sufficient cause has been shown by the applicants, the application is allowed and the delay in filing the appeal is condoned.

Let the appeal be treated to be within time.

Order Date :- 24.5.2018

Court No. - 1

Case :- SPECIAL APPEAL DEFECTIVE No. - 259 of 2018

Appellant :- State Of U.P Thru Secy Agriculture Deptt Lko & Ors

Respondent :- Amlesh Kumar Pandey

Counsel for Appellant :- C.S.C

Counsel for Respondent :- Ramesh Kumar Srivastava

Hon'ble Vikram Nath,J.

Hon'ble Abdul Moin,J.

Sri Ramesh Pandey, learned Chief Standing Counsel appearing for the appellants, after arguing the matter at some length, states that this intra-Court appeal may be dismissed as withdrawn as the appellants wish to file a review petition before the learned Single Judge.

Sri Ramesh Kumar Srivastava, learned Counsel for the sole respondent is present.

The Special Appeal is accordingly dismissed as withdrawn.

Order Date :- 24.5.2018 "

2. After withdrawing the said appeal, Review Application No.69300 of 2018 was filed before the Writ Court. The said review application came to be decided on 25.09.2019. However, this special appeal challenging the aforesaid impugned orders was filed only on 18.12.2021, therefore, even if the period utilised by the appellants in pursuing the review application, which was decided on 25.09.2019, is excluded as having being satisfactorily explained the fact of the matter is that the appeal having been filed on 18.12.2021, there is delay of a little more than two years. Whether the benefit of the orders passed by Hon'ble the Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020 would be given to the appellant-State is also an issue. We find that the benefit of the orders passed therein were

applicable only w.e.f. 15.03.2020. The time limit for filing the special appeal expired much prior to it. The time limit prescribed is one month which expired in October 2019.

3. Now when we peruse the affidavit containing the alleged explanation for the delay we find that for the period after 25.09.2019 till filing of the appeal on 18.12.2021, there is hardly any explanation which may be accepted by us.

4. The fact that in the interregnum, contempt proceedings were initiated and some of the orders passed in the contempt proceedings were put to challenge before Hon'ble the Supreme Court by means of S.L.P. [C] No.19007-19008/2018 which was ultimately converted into Civil Appeal Nos.6200-6201/2021 does not help the State because the subject matter of the special leave petition was the orders passed in the contempt proceedings. Moreover, on 04.10.2021 the said SLP was decided. The said order has been placed before us. No doubt, ultimately the orders passed in the contempt proceedings were quashed by Hon'ble the Supreme Court in the aforesaid Civil Appeal on 04.10.2021, but this is not at all relevant so far as filing of the special appeal against the judgment of the Writ Court dated 15.09.2017 and the order passed on the review application dated 25.09.2019 is concerned. There was nothing which stopped the appellants/State herein to challenge the said orders by filing an appeal within the limitation of one month as prescribed under the Rules of the Court or within a reasonable period or for that matter to offer a plausible and acceptable explanation for filing the appeal after more than two years.

5. In the interregnum, though the claim of the respondent for regularisation was rejected on 20.02.2018, but ultimately on 09.07.2018 the services of the respondent were regularized and the rejection order dated 20.02.2018 was withdrawn vide order

dated 14.05.2018. We have perused the order of regularization of the respondent. The said order was passed subject to result of review application. As already stated, the review application had already been rejected and the same has been challenged in this appeal which has been filed with the delay of more than two years.

6. Even after perusing the affidavit in support of the application for condonation of delay, all that we find that the explanation offered therein is that the paper book was assigned to Chief Standing Counsel and thereafter the opinion was sent to the Department on 18.01.2020 by the office of Chief Standing Counsel and in furtherance of the opinion given by the Chief Standing Counsel a proposal was sent to the State Government by the Directorate of Agricultural for preferring the special appeal against the judgment and order dated 15.09.2017 passed in writ petition as well as order dated 25.09.2019 passed in the review proceeding. No date has been mentioned as to when all this happened. Even if date 18.01.2020 is taken, this does not explain the delay in filing the appeal on 18.12.2021.

7. Further in para 18 of the affidavit it has been stated that the State Government accorded necessary permission on 23.01.2020 for preferring the special appeal and in pursuance thereof the special appeal was allotted by the Chief Standing Counsel on 24.01.2020 to the Additional Chief Standing Counsel. The Additional Chief Standing Counsel returned the paper book to the Chief Standing Counsel assigning some personal reason showing unavailability in preparation of special appeal. All this hardly explains the delay as has been noticed hereinabove. When the State Government had granted the permission on 23.01.2020 why the special appeal was filed on 18.12.2021, there is no explanation. Vague averments have been

made in paragraph nos.19 to 24, which do not satisfy us.

8. For all these reasons we do not find the explanation offered by the State for the delay in filing the appeal as satisfactory nor is it acceptable. Application for condonation of delay is rejected. Consequently, the appeal also stands **dismissed**.

(Om Prakash Shukla, J.) (Rajan Roy, J.)

Order Date :- 10.4.2024

Anand Sri./-