IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Special Appeal No. 39 of 2020
With
Delay Condonation Application No.929 of 2020

Ravendra Kumar .....Appellant

Versus

Union of India .....Respondent

Mr. Sandeep Tiwari, Advocate for the appellant-writ petitioner.
Mr. Rajesh Sharma, Standing Counsel for the Union of India-respondent.

JUDGMENT

Coram: Hon'ble Ramesh Ranganathan, C.J.
Hon'ble Alok Kumar Verma, J.

Dated: 17th February, 2020

RAMESH RANGANATHAN, C.J. (Oral)

This appeal is filed along with an application seeking condonation of the inordinate delay of 1017 days ie for a period of nearly three years. Mr. Rajesh Sharma, learned Standing Counsel appearing for the Union of India, would oppose the application, seeking condonation of delay, contending that the explanation furnished for the inordinate delay of nearly three years, is woefully inadequate.

2. The reasons furnished for the inordinate delay of nearly three years in preferring this appeal is that, Special Appeal No.388 of 2017 was filed against the order passed by the learned Single Judge in Writ Petition (S/S) No.1587 of 2013 on 10.03.2017, by the Union of India, which was dismissed on 16.08.2018; a copy of the order was obtained by the petitioner on 31.08.2018; the petitioner had approached his counsel in November, 2018; the authorities had passed an order transferring the petitioner on 28.02.2019 to Manipur; he came on leave to his hometown in December, 2019, and again contacted his counsel; and the Counsel took twenty days' time to prefer the appeal.

3. The order under appeal is dated 10.03.2017. No reasons have been furnished by the petitioner for his silence from that date till he claims to have approached his counsel in November, 2018 ie for a period of more than one and a half years. The learned Single Judge had, while setting aside the order of dismissal passed by the respondents-authorities, directed that the petitioner's services from 01.03.2013, till he was actually taken back into service, be treated as a period under suspension so that the continuity of the services of the petitioner was maintained, and for no other purposes.

4. While the respondents herein were aggrieved by the order of the learned Single Judge directing that the appellant-writ petitioner herein be reinstated into services, the appellant herein had an independent grievance, against the very same order, to the extent he was denied salary for the period from 01.03.2013 till he was actually reinstated on 27.11.2018. The contention that he remained silent and did not invoke the jurisdiction of this Court, since the respondents had preferred Special Appeal No.388 of 2017, which was dismissed on 16.08.2018, is therefore not tenable.

5. Even otherwise, the allegations levelled against the appellant-writ petitioner are grave and serious ie of having demanded a sum of Rs.10,000/- from Mr. Vinod Kumar for his appointment as a Safai Karamchari. In the order under appeal, the learned Single Judge has held that both the appellant and Mr. Vinod Kumar were residents of the same village; Mr. Vinod Kumar had applied for the post of Safai Karamchari; the appellant-writ petitioner had demanded Rs.10,000/- from Mr. Vinod Kumar; the evidence was based of a telephonic conversation; and there was definitely a veiled threat in the telephonic conversation which suggested that, if Mr. Vinod Kumar did not give the money, it was possible that his appointment order would be withdrawn. Despite recording such findings, the learned Single Judge, thereafter, opined that such a threat may have been in jest.

6. It is well settled that, while exercising certiorari jurisdiction under Article 226 of the Constitution of India, this Court would not re-appreciate the findings of fact recorded by the enquiry officer/disciplinary authority to arrive at a different conclusion. The punishment of dismissal from service for threatening an employee to pay Rs.10,000/-, failing which his appointment as 'Safai Karamchari' would be withdrawn, was an order which would, ordinarily, not have necessitated interference by this Court. The fact, however, remains that Special Appeal No.388 of 2017, filed by the respondents-authorities against the order of the learned Single Judge, was dismissed by a Division Bench of this Court on 16.08.2018; and the said order of the Division Bench has attained finality.

7. While we may not be justified in interfering with the order of the learned Single Judge, setting aside the order of dismissal and reinstating the petitioner in service, that too in an appeal preferred by the delinquent employee,

we are satisfied that the learned Single Judge has been lenient in letting the appellant-writ petitioner off the hook, for such a grave charge of seeking illegal gratification, by merely denying him salary for the period from 01.03.2013 till 27.11.2018 (the period after the order of dismissal was passed till the appellant-writ petitioner was reinstated into service). We see no reason, therefore, to interfere with such an order at the behest of the delinquent employee.

8. The appeal must, therefore, fail both on the grounds of delay and on merits. The application, seeking condonation of delay of 1017 days, is dismissed. Consequently, the appeal stands rejected. No costs.

(Alok Kumar Verma, J.)
17.02.2020

(Ramesh Ranganathan, C. J.)
17.02.2020

NISHANT