

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(101)

CWP-27537-2022

Date of decision: - 17.05.2023

Naval Singh

....Petitioner

Versus

Commissioner Rohtak and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. R.K. Girdhwal, Advocate, for the petitioner.

Ms. Rajni Gupta, Additional Advocate General, Haryana
for respondents No.1 and 2.

VIKAS BAHL, J. (ORAL)

1. This writ petition has been filed under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari quashing the order dated 17.01.2022 (Annexure P-9) passed by the Commissioner, Rohtak vide which the application for restoration of the revision petition bearing No.ER-30 dated 04.02.2020 has been dismissed. Challenge is also to order dated 12.10.2020 (Annexure P-7) passed by the Commissioner, Rohtak, vide which revision petition No.ER-30 dated 04.02.2020 was dismissed for non-prosecution.

2. Learned counsel for the petitioner has submitted that the Commissioner, Rohtak, vide order dated 17.01.2022 (Annexure P-9), has dismissed the application of the petitioner for restoration of the revision petition which was dismissed in default on 12.10.2020 (Annexure P-7) without considering the judgment passed by the Hon'ble Supreme Court dated 10.01.2022 (Annexure P-10) passed in “*Re: Cognizance for Extension of Limitation*” in *Suo Motu Writ Petition (C) No.3 of*

2020, as per which, in sub-clause 3 of para No.5 it has been specifically provided that in cases where the limitation was to expire during the period from 15.03.2022 till 28.02.2022, then, limitation in such a situation was to start from 01.03.2022 and a period of 90 days was granted to file the necessary application/appeal. It is further submitted that a perusal of the order dated 17.01.2022 (Annexure P-9) would show that the Commissioner, Rohtak had dismissed the restoration application on the ground of limitation as there was a gap of one year and two months between the passing of the said order dated 12.10.2020 (Annexure P-7) and the filing the said application for restoration dated 13.12.2021. It is stated that the period which was ordered to be excluded by the Hon'ble Supreme Court in the above-said case has not been excluded and the order dated 12.10.2020 (P-7) dismissing the case of the present petitioner in default was passed during the period mentioned in sub-clause 3 of para 5 of the said judgment i.e., between 15.03.2020 & 28.02.2022 and that even the application for restoration was dated 13.12.2021. It is further stated that the petitioner would be satisfied in case the order dated 17.01.2022 (Annexure P-9) is set aside and the Commissioner, Rohtak is directed to reconsider the application for restoration after taking into consideration the judgment of the Hon'ble Supreme Court dated 10.01.2022. It is also stated that since the said application was dismissed on the first date, thus, notice need not be issued to private respondents as issuance of notice would only delay the proceedings and would entail unnecessary expenses to the private respondents in pursuing the present case.

3. Learned State counsel has opposed the present writ petition and has submitted that the application for restoration was filed by the petitioner after a period of 14 months. Learned State counsel has however, not denied the fact that as per the judgment of the Hon'ble Supreme Court, the period between 15.03.2020 till 28.02.2022 was to be excluded.

4. This Court has heard learned counsel for the parties and has gone the paper-book.

5. Sub-clause 3 of para No.5 of the said judgment passed by the Hon'ble Supreme Court in “***Re: Cognizance for Extension of Limitation***” (*supra*) is reproduced hereinbelow:-

“III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

A perusal of the above-reproduced sub-clause 3 of para No.5 would show that where the limitation of a case was expiring during the period between 15.03.2020 till 28.02.2022, then, limitation in such a situation was to start from 01.03.2022 and a period of 90 days was to be granted to file the necessary application/appeal etc.

6. In the present case, it is not in dispute that the revision petition filed by the petitioner was dismissed in default on 12.10.2020 and the application was filed for restoration on 13.12.2021 as is apparent from Annexure P-9 and the same was dismissed vide order dated 17.01.2022 (Annexure P-9). The dismissal of the original revision petition as well as

the filing of the restoration application and also the order dated 17.01.2022, all fall in the period between 15.03.2020 till 28.02.2022, during which, the benefit of exclusion of limitation was granted by the Hon'ble Supreme Court. The period of limitation for filing the restoration application with respect to the case, which was dismissed on 12/10/20, was to start from 01.03.2022 and thus, the dismissal of the restoration application on the ground of limitation by the Commissioner, Rohtak, vide order dated 17.01.2022 (Annexure P-9) is against law and deserves to be set aside.

7. Keeping in view the above-said facts and circumstances, the present writ petition is partly allowed and the order dated 17.01.2022 (Annexure P-9) passed by the Commissioner, Rohtak is set aside and the Commissioner, Rohtak is directed to decide the application for restoration filed by the petitioner afresh after hearing the petitioner and in accordance with law.

8. The petitioner is directed to appear before the Commissioner, Rohtak on 29.05.2023.

9. This Court has not issued notice to the private respondents as the application for restoration was dismissed on the first date on 17.01.2022, without issuing notice to the private respondents and thus, the issuance of notice to the private respondents would only delay the proceedings and would entail unnecessary expenses to the respondents to pursue the present writ petition.

May 17, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes