

03
26.03.2025
Ct. No. 11
Jayanta

FMA 244 of 2024
in
IA NO: CAN 1 of 2025
Pramod Kumar
vs.
Union of India & Ors.

Mr. Ziaul Islam
.....For the Appellant.
Mr. Anish Kumar Mukherjee
.....For the UoI.

The present writ petition has been preferred challenging an order dated 20.09.2023 passed in the writ petition being WPA 20978 of 2023 filed by the writ petitioner/appellant herein, namely, Pramod Kumar (in short, Pramod), assailing an order of dismissal from service dated 16.03.2012 issued by the respondent no. 4.

By the order impugned in the present appeal, the learned Single Judge dismissed the writ petition upon arriving at a finding that though Pramod was granted an opportunity to reply to the show cause notice, he failed to do so. Representations submitted thereafter praying for reinstatement were lastly rejected by an order dated 15.06.2015. A further representation submitted thereafter to the respondent no.2 was also not responded to and challenging the illegalities perpetrated, Pramod approached the Central Administrative Tribunal, Patna Bench at Patna. The

said application was dismissed on the ground of maintainability on 27.11.2015. The writ petition preferred by Pramod thereafter before the High Court of Judicature at Patna was also rejected on the ground of territorial jurisdiction by an order dated 20.09.2018. Thereafter, Pramod filed a writ petition before this Court about five years thereafter, after lodging a complaint dated 29.07.2023 against the learned advocate engaged by him at Patna. In the said conspectus, the learned Single Judge did not interfere with the order of dismissal.

Mr. Islam, learned advocate appearing for Pramod strenuously argues that though Pramod went to the office of the respondent no. 4 to submit a reply to the show cause notice dated 21.01.2012, the same was not accepted. In support of such contention he has placed reliance upon an affidavit affirmed by a Head Constable annexed at page 40 of the stay application.

Drawing out attention to the averments made in paragraph 14 of the writ petition, Mr. Islam submits that the learned advocate engaged by Pramod did not keep any contact with him and did not intimate him the fate of the writ petition before the Hon'ble High Court at Patna. About five years after the date of dismissal of the writ petition, Pramod was intimated the fact of dismissal and the files were returned. The delay which, thus, occurred is totally attributable to the learned advocate engaged by Pramod and for such

laches on the part of the learned advocate, Pramod cannot be made to suffer.

He argues that the fact that the learned advocate did not furnish necessary instruction would be explicit from the complaint lodged by Pramod before the Bihar State Bar Council. The general body of the said Bar Council took cognizance of such complaint, as would be explicit from the resolution adopted on 12.05.2024, annexed at page 63 of the writ petition. Such arguments, as urged, before the learned Single Judge were glossed over and no finding was returned on the same. Such infirmities warrant interference in the present appeal.

Mr. Mukherjee, learned advocate appearing for the respondents denies and disputes the contention of Mr. Islam and submits that admittedly Pramod did not file a reply to the show cause notice dated 21.01.2012. The affidavit affirmed by a Head Constable, upon which reliance has been placed, was affirmed after the order of dismissal passed by the competent authority on 16.03.2012.

Drawing our attention to a document dated 21.01.2012 issued by the respondent no.4, annexed at page 38 of the stay application, he submits that even prior to issuance of the show cause notice repeated reminders were issued to Pramod to immediately join his duties since he was absenting without leave with effect from 02.10.2011 but in vain. From such

sequence of facts, it would be explicit that Pramod had no interest whatsoever to resume his duties. In a discipline force, Pramod was expected to be extremely cautious in his duties and having committed the misconduct, he cannot lament. Reliance has been placed upon the judgments delivered in the cases of *V. C. Banaras Hindu University & Ors. vs. Shrikant*, reported in, (2006) 11 SCC 42 and *Chennai Metropolitan Water Supply and Sewerage Board & Ors. vs. T.T. Murali Babu*, reported in, (2014) 4 SCC 108.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Records clearly reveal that Pramod did not reply to the show cause notice issued on 21.01.2012. The said show cause notice was also preceded by letters asking Pramod to resume his duties as he was absenting without leave with effect from 02.10.2011. No explanation is forthcoming as to why Pramod waited for about five years after dismissal of the earlier writ petition on 20.11.2018. Complaint was lodged against the learned advocate about five years after dismissal of the earlier writ petition.

It is a well settled proposition that relief under Article 226 of the Constitution is discretionary. A remedy is called discretionary when it is not available as a matter of right and may be refused by the Court when the conduct of the person is such that he does

not deserve the discretionary relief. It would be a sound and wise exercise of discretion for the Courts to refuse their extraordinary powers under Article 226 in the case of a person who does not approach the Court expeditiously for relief and who stands by and allows things to happen and then approaches the Court to put forward his claims.

Applying such proposition of law to the facts of the case, the learned Single Judge refused to exercise discretion in favour of the appellant disclosing the reasons.

Upon dealing with the factual issues, the learned Single Judge arrived at specific findings and we do not find any error in the same.

In view thereof, the appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Reetobroto Kumar Mitra,J.)

(Tapabrata

Chakraborty,J.)