The State of Punjab and Another

Vs

Shamlal Murari and Another

Civil Appeal No. 1415 of 1975

(V.R. Krishna Iyer, A.C. Gupta JJ)

06.10.1975

JUDGMENT

KRISHNA IYER, J. -

1. Having granted special leave we have heard Counsel on both sides in this appeal right away on all the points involved - of course, with their consent and preparedness.

2. The State, the appellant, has urged that the High Court's judgment is wrong and our conclusion rests on a consideration of three obstacles in the way of the appellant which we now proceed to dispose of. The facts necessary to appreciate the controversy are minimal and emerge from the brief, though sufficient, discussion that follow. Brevity is not inconsistent with clarity and prolixity is not always or ever a virtue.

3. The first fatal objection to the Government's case stated in the order of the High Court, is the ration in a Full Bench decision in Bikram Dass v. Financial Commissioner, Revenue, Punjab, Chandigarh (AIR 1975 Punj & Har 1 (FB)), which holds that Rule 3 relating to filing of Letters Patent appeals is mandatory which in this instance, has not been complied with resulting in the dismissal of the appeal in limine. The second obstacle in the way of the appellant is that assuming that Rule 3 is directory-cum-discretionary, an application for condonation of delay in compliance with Rule 3 had been made and the High Court, in Division Bench, had declined to exercise its discretion in favour of the appellant. The reluctance in interfering, at the appellate level, with the exercise of the discretion by the High Court is natural and proper. The third point, which is the substantive one on the merits, is as to whether it is just and legal that a government servant, who has put in 22 long and languishing years of service, should be denied increments and certain other benefits for failure to pass departmental tests for which exemption had been granted to him. The learned Single Judge had held that the failure to pass the departmental test should not be a bar to the drawal of the benefits, and since the Letters Patent appeal was not entertained on the procedural ground we have indicated above, that question did not fall for decision.

4. Right away, we may indicate that we are not impressed with the State's contention that the failure to pass the departmental test by the government servant concerned, after having put in more than two decades of service cannot stand in the way of his enjoying the benefits of increment, etc., particularly because he had been accorded exemption. Passing petty tests after a petrifying length of dull official service is an odd insistence except in important levels of work. That apart, we see no reason to differ from the learned Single Judge's finding on this matter. That should put the lid on this appeal but the concern of the State is to set right the law regarding Rule 3 above mentioned.

5. Counsel for the State contends that a large number of appeals will be affected by the interpretation of Rule 3 of the Punjab and Haryana High Court Rules and Orders, Vol. 5, Chap. 1-A by the Full Bench in Bikram Dass (supra). What is pressed before us is that Rule 3 which requires in terms, that three typed copies of (a) the memorandum of appeal, (b) judgment appealed from, and (c) the paper book which was before the Judge from whose judgment the appeal is preferred, is not mandatory, although the Full Bench has chosen to hold that it is obligatory to comply with them if the appeal is to be entertained at all. We do not agree that this fatal consequence should necessarily follow even if there is a minor deviation in fulfilling the requirements of Rule 3.

6. It is appropriate at this stage to extract Rule 3 which runs as follows :

> 3. No appeal under Clause 10 of the Letters Patent will be received by the Deputy Registrar unless it is accompanied by three typed copies of the following :-
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> (a) Memorandum of appeal; (b) Judgment appealed from, and (c) Paper book which was before the Judge from whose judgment the appeal is preferred.

7. It is true that, in form, the rule strikes a mandatory note and, in design, is intended to facilitate a plurality of judges hearing the appeal, each equipped with a set of relevant papers. Maybe, there is force in the view taken by the Full Bench that certain basic records must be before the court along with the appeal if the court is to function satisfactorily in the exercise of its appellate power. In this sense, the needs of the rule transcend the directory level and may, perhaps, be considered a mandatory need. The use of 'shall' - a word of slippery semantics - in a rule is not decisive and the context of the statute, the purpose of the prescription, the public injury in the event of neglect of the rule and the conspectus of circumstances bearing on the importance of the condition have all to be considered before condemning a violation as fatal.

8. It is obvious that even taking a stern view, every minor detail in Rule 3 cannot carry a compulsory or imperative import. After all, what is required for the judges to dispose of the appeal is the memorandum of appeal plus the judgment and the paper book. Three copies would certainly be a great advantage, but what is the core of the matter is not the number but the presence, and the overemphasis laid by the court on three copies is, we think, mistaken. Perhaps, the rule requires three copies and failure to comply therewith may be an irregularity. Had no copy been furnished of any one of the three times, the result might have been different. In the present case, copies of all the three documents prescribed, have been furnished but not three copies of each. This omission or default is only a breach which can be characterised as an irregularity to be corrected by condonation on application by the party fulfilling the condition within a time allowed by the court. We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, tho' procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all courts are to do justice, not to wreck this end product on technicalities. Viewed in this perspective, even what is regarded as mandatory traditionally may, perhaps, have to be moderated into wholesome directions to be complied with in time or in extended time. Be that as it may, and ignoring for a moment the exploration of the true office of procedural conditions, we have no doubt that what is of the essence of rule 3 is not that three copies should be furnished, but that copies of all three important documents referred to in that suit shall be produced. We further feel that the court should, if it thinks

it necessitous, exercise its discretion and grant further time for formal compliance with the rule if the copies fall short of the requisite number. In this view and to the extent indicate, we overrule the decision in Bikram Dass's case (supra).

9. The State has yet another hurdle in its way. In the present case, an application for condonation of delay in filing the three copies required by rule 3 was made and the court, in the exercise of its discretion, held that such condonation should not be granted. Discretionary exercise of power by a court cannot be lightly interfered with by a court of appeal, and we are loathe, therefore, to upset the order of the High Court declining to condone the delay, there being nothing perverse or irrational in the exercise. In this view also, the appellant has to lose. For these reasons, the appeal fails and is dismissed. There will be no order as to costs.

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